



Final Report

Evaluation of the Administration of Reserve Land Sub-program (PAA# 3.2.3)

Project Number: [1570-7/14100]

September 2015

Evaluation, Performance Measurement,
and Review Branch
Audit and Evaluation Sector



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List of Acronyms

AANDC - Aboriginal Affairs and Northern Development Canada

ATR – Addition to Reserve

EPMRB – Evaluation, Performance Measurement and Review Branch

FNLM – First Nations Land Management

FNOGMMA – *First Nations Oil and Gas and Moneys Management Act*

IOGC – Indian Oil and Gas Canada

IT - Information Technology

LED – Lands and Economic Development sector

LEDSP – Lands and Economic Development Services Program

RLEMP – Reserve Land and Environmental Management Program

TLE – Treaty Land Entitlement

Glossary of Terms

Addition to Reserve: A parcel of land that is added to the existing land base of a First Nation or is used to create a new reserve. The legal title to the land is set apart for the use and benefit of the First Nation making the application.¹

Buckshee agreements: Agreements for use of land by third parties that do not fall under the legal provisions of the *Indian Act*.

Capital moneys: Indian Moneys derived from the sale of surrendered lands, non-renewable resources and the capital assets of a band.

Certificate of Occupation: A document certifying that an individual member of a First Nation has been given a temporary allotment (lawful possession in the form of the right to temporarily use and occupy a parcel of reserve land).

Certificate of Possession: A document certifying that an individual member of a First Nation has been given an allotment (lawful possession in the form of the right to use and occupy a parcel of reserve land) by the Band Council, which is then approved by the Minister. Legal title to the land remains with the Crown.²

Customary Allotments: Customary Allotments are instruments issued by a Band Council to an individual or are based on informal agreements between band members. They are not registered in the Indian Land Registry and are not legally enforceable arrangements.

Deeds System: A land registry system that registers transactions on title rather than conferring title.³ The Indian Land Registry is similar to a deeds system as it registers transactions, although all title belongs to the Crown.

Delegated Authority and 53/60: Status conferred upon First Nations under the Reserve Land and Environmental Management Program and the previous Reserve Land Administration Program. Delegated authority and 53/60 status give First Nations increased responsibilities to administer land transactions under the *Indian Act*.⁴

First Nations Land Management Regime: An alternative to the *Indian Act* land management regime that provides certain First Nations with powers to manage their reserve land and resources

¹ Aboriginal Affairs and Northern Development Canada, "Frequently Asked Questions – Additions to Reserve." <http://www.aadnc-aandc.gc.ca/eng/1100100034816/1100100034817>.

² Aboriginal Affairs and Northern Development Canada, "Land Management." <http://www.aadnc-aandc.gc.ca/eng/1100100034737/1100100034738>.

³ Ballantyne, Brian. "Beyond Aboriginal Title in Yukon: First Nations Land Registries," in *Aboriginal Title and Indigenous Peoples: Canada, Australia, and New Zealand* eds. Haijo Jan Westra and Louis A. Knafla, 2010.

⁴ Office of the Auditor General. 2009 Fall Report of the Auditor General of Canada: Chapter 6- Land Management and Environmental Protection on Reserves, 2009. Available at: http://www.oag-bvg.gc.ca/internet/English/parl_oag_200911_06_e_33207.html, pg. 9.

under their own land codes. Once in effect, certain sections of the *Indian Act* dealing with land, resources and environment no longer apply to these First Nations.⁵

Indian Land Registry: A database maintained by Aboriginal Affairs and Northern Development Canada (AANDC) that consists of documents related to interests in reserve (and any surrendered) lands that are administered under the *Indian Act*.⁶

Land Designation: A vote by a First Nation community and subsequent approval by the Minister to allow for a surrender of land that is not absolute. This allows for leasing to non-band members on a specific parcel of land.⁷

Land Survey: The division, measurement and mapping of a parcel of land, resulting in a legal description that clarifies land tenure and can be referred to when issuing interests in land. In the context of *Administration of Reserve Land*, surveys as carried out under the authority of the Minister of Natural Resources Canada upon request by AANDC.⁸

Locatee Lease: A lease of lands held by a member of a band who is in lawful possession of the land.

Revenue moneys: Indian moneys derived from a variety of sources, which include, but are not limited to, proceeds from the sale of renewable resources, reserve land instruments (leases, permits, etc.), fines and interest earned on band capital and revenue moneys held in the Consolidated Revenue Fund.

Section 35 Easement: The grant or transfer of less than a full interest in reserve land to an expropriating authority for a specific purpose, where the underlying interest remains with Canada under reserve status.⁹ For example, provinces may be granted Section 35 easements to allow for hydro transmission lines.

Self-Governing Land Management Regime: The system for granting interests in self-governed First Nation reserve lands. Similarly to the *Indian Act* and *First Nations Land Management Act* regimes, the Department maintains a registry to record these interests.

Torrens System: A land registry system that confers title to the land and guarantees priority of title in addition to registering instruments stemming from that title.¹⁰ This is the system typically used by provincial governments in Canada.

Treaty Land Entitlement: In this context, an Addition to Reserve being processed as a result of the settlement of a treaty. These Additions to Reserves are done in Alberta, Saskatchewan and

⁵ Aboriginal Affairs and Northern Development Canada, "Land Management."

⁶ Aboriginal Affairs and Northern Development Canada, "Land Registration." <http://www.aadnc-aandc.gc.ca/eng/1100100034803/1100100034804>.

⁷ Aboriginal Affairs and Northern Development Canada, "Land Management."

⁸ Aboriginal Affairs and Northern Development Canada. "Surveys." <http://www.aadnc-aandc.gc.ca/eng/1100100034810/1100100034811>.

⁹ Aboriginal Affairs and Northern Development Canada. Land Management Manual, pg. Directive 9-1 (k).

¹⁰ Ballantyne, Brian. "Beyond Aboriginal Title in Yukon: First Nations Land Registries," in *Aboriginal Title and Indigenous Peoples: Canada, Australia, and New Zealand* eds. Haijo Jan Westra and Louis A. Knafla, 2010.

Manitoba specifically, and fall under unique legislation allowing them to be approved via Ministerial Order rather than Order in Council.¹¹

¹¹ Aboriginal Affairs and Northern Development Canada, “Frequently Asked Questions – Additions to Reserve.”

Executive Summary

In accordance with the Treasury Board *Policy on Evaluation* requirement to evaluate program spending every five years, the Evaluation, Performance Measurement and Review Branch (EPMRB) of Aboriginal Affairs and Northern Development Canada (AANDC) has conducted an evaluation of the *Administration of Reserve Land* Sub-program (sub-program 3.2.3 of the Department's Community Development Program).

The sub-program carries out AANDC's statutory responsibilities as it relates to land management under the *Indian Act*. Specifically, the sub-program consists of four core activities: Additions to Reserve, by which First Nations can create or expand land bases; creation, registration, renewal and monitoring of rights and interests in reserve land, in which AANDC administers land transactions on-reserves; land surveying and clarification of title, in which AANDC works with Natural Resources Canada to clarify internal and external reserve boundaries to facilitate Additions to Reserves and land transactions; and management of oil and gas activity on-reserve, in which the special operating agency Indian Oil and Gas Canada manages legal interests related to oil and gas on reserves. The program also involves some administrative duties related to collection of Band Moneys. Aside from \$750 000 in Grants and Contributions for land survey funding administered by the National Aboriginal Land Managers' Association, all of the program spending is operational spending.

The evaluation was conducted by EPMRB with the assistance of the consulting firm *Prairie Research Associates*, which assisted in the development of the methodology, interviews, data review, case studies and the final report. Evaluation findings were informed through literature review, document review, key informant interviews and a review of program data. Four case studies were conducted of the Regional Support Centres created in 2012, with an additional case study conducted focusing on Indian Oil and Gas Canada.

Key findings from the evaluation are as follows:

Relevance

The federal government has clear statutory responsibility for land management and oil and gas activity on reserves stemming from the *Indian Act* and the *Indian Oil and Gas Act*.

Key informant interviews and discussions with communities during case studies indicate that there is a continued need for all elements of the Administration of Reserve Land program beyond simply their statutory nature. Together, the program activities represent the core elements of land management required for First Nations to benefit from reserve land and key informants note that regional staff provide valuable assistance to low-capacity First Nations with these activities. Stakeholders' opinions were divided on the relevance of the Indian Land Registry in its particular format, but there is consensus that cleaning up the data and implementing formal policy or regulations would enhance its credibility.

While there is an ongoing need for the program's management of the *Indian Act* land management regime, key informants, case studies and literature review also all suggest that providing alternative land management options, such as the *First Nations Land Management Act*, best responds to a variety of ongoing needs among First Nations.

Document review indicates that Administration of Reserve Land is aligned with government priorities. Specifically, the Government has signaled through the Federal Framework for Aboriginal Economic Development that one of its priorities is to continually improve the administration of reserve land.

Performance – Effectiveness

Key informants and a review of departmental performance reports indicate that the program has undertaken significant work during the evaluation period to improve its design and delivery in response to the Federal Framework for Aboriginal Economic Development as well as previous evaluations, audits and Parliamentary reports. However, there are also opportunities to improve program performance across its business lines:

- Additions to Reserve - Additions to Reserve data, key informants, documents review and case studies all reveal that significant challenges remain in the Additions to Reserve process stemming from approval processes that key informants feel are overly lengthy, particularly during the Order in Council process. Best practices that could be leveraged from the Treaty Land Entitlement category of Additions to Reserve include pre-designations of land to be added to reserve and Ministerial rather than Order in Council approval.
- Land Surveys – Program data indicates that there is a gap between the demand for survey funding and the amount that AANDC is able to provide; the *Administration of Reserve Land* sub-program is able to accommodate roughly 40 percent of First Nations' survey requests per year. Key informants and case study participants noted that limited access to land surveys creates a barrier to community needs, but that innovative approaches to survey work could make surveys more accessible. In particular, by collaborating on land use planning with other program areas, the *Administration of Reserve Land* sub-program may be able to facilitate better access for First Nations with survey needs to valuable information on their land-related opportunities.
- Creation of rights and interests – A data review of the volume of land transactions under the *Indian Act* reveals the following: There has been significant use of the formal *Indian Act* land management system during the evaluation period; however, transactions under the First Nations Land Management and self-government registries demonstrate they are growing as viable alternatives; finally, transaction volume is not a sufficient indicator of economic development. Key informants, document review, case study participants and literature indicate that challenges in land administration processes and structures persist, particularly lengthy land designation processes and restrictive interpretations of legal requirements. These challenges can present barriers to economic development.

Key informants noted that it is important to update the Land Management Manual, which serves as a guide to Lands Officers' work with legal instruments in the regions. This is advisable first to improve the performance value for First Nations by ensuring that guidelines on legal instruments are conducive to flexible approaches for economic development; and second, to ensure that guidelines meet the standards of current jurisprudence, given that the manual has not been updated since 2002-2003.

Performance – Efficiency and Economy

The analysis of efficiency and economy focused on the impact of program restructuring in 2012, which saw the creation of the Regional Support Centres and the transfer of registration activities to regional offices:

- Regarding the Regions Support Centres, key informants and case study participants indicate there is a need to review their mandates and structures to ensure they are operating to their full potential. Concerns have been raised regarding the consistency of their approaches and the impact of the resources used in their current structure; three years into their operation, there is an opportunity to strategically review the way in which they contribute to the sub-program.
- Regarding registration activities, findings from data review and key informant interviews conflict on whether service standards are being met. This discrepancy suggests a lack of consistency in the way processing occurs. For example, whereas one office may log the beginning of processing as the date a file arrives in the office, another may consider the date processing begins as the date they begin work on the file.
- Key informants and case study participants have also noted that there is a risk of inconsistency in registrations, which may weaken the value of the Registry in the long term. Internal program reviews suggest improvements could be made to the Registry both through information technology enhancements and through the creation of policy. Making these improvements to the Registry could serve to enhance its value for land administration and economic activity.

A review of data on resource allocations indicates that program costs include substantial full time equivalents devoted to Additions to Reserve and permits, leases and other land transactions, and that new registration responsibilities in the regions have also presented a cost in employee time. Evidence demonstrates that opportunities for increasing efficiencies include building First Nations' capacity through the Reserve Land and Environmental Management Program, streamlining the Additions to Reserve process and monitoring regions' registration responsibilities going forward.

Finally, while Indian Oil and Gas Canada has been found to generally operate in an efficient manner, key informants expressed concern around its ability to retain its knowledgeable staff during oil and gas market fluctuations. As such, a strategy for continued recruitment and retention is advisable to mitigate this risk in future.

As a result of these key findings, it is recommended that AANDC:

1. Increase collaboration and efforts to facilitate community planning related to land use, including land surveying, which will enhance opportunities for economic development.
2. Work with federal partners and stakeholders to review and update the Land Management Manual to ensure that this instrument provides guidelines that are clear, consistent, current and conducive to flexible approaches that facilitate economic opportunities on-reserve.
3. Enhance the Indian Land Registry and related Information Technology (IT) systems in order to leverage the registry's potential for facilitating economic development.
4. Address recruitment and retention related issues to ensure that Indian Oil and Gas Canada has sufficient capacity and expertise to maintain its operation and ongoing work on modernizing its regulations.
5. Clarify the purpose and role of the Regional Support Centres.

Management Response and Action Plan

Project Title: Evaluation of Administration of Reserve Land

Project #: 1570-7/14100

1. Management Response

Land is vitally important to the community and economic development aspirations of First Nations. First Nations have significant social, economic and cultural connections to their land. The Lands and Economic Development Sector of Aboriginal Affairs and Northern Development Canada (AANDC) understands the importance of effective land management in promoting the social and economic prosperity of First Nation communities. Activities to improve the administration of reserve land have been identified as key sector priorities and work has been ongoing to strengthen and improve land administration policies, procedures and processes.

As noted in the evaluation, significant progress and improvements have been made on a range of land administration activities. These improvements are the result of the strong partnerships between AANDC headquarters and regional staff, First Nations, non-governmental organizations and other government departments. These partnerships and relationships will continue to support ongoing improvements.

The evaluation findings will inform future planning, process and policy improvements, and as appropriate will be used as input in corporate planning (i.e., Report on Plans and Priorities) and other performance monitoring and reporting activities. The evaluation findings will inform future policy and process improvements.

Most of the issues identified in the evaluation report are not new and in fact have been the focus of concerted improvement efforts over the last two years. The Lands and Economic Development Sector has taken specific, measurable, attainable, relevant and time - bound actions to address many of the issues identified in the evaluation report. Ongoing collaboration with key stakeholders and partners such as the Association of Canada Lands Survey, the National Aboriginal Land Managers Association, Natural Resources Canada (NRCan), and First Nations will continue and will lead to tangible improvements in land administration policies, systems and tools.

More work will be done to improve land administration for First Nations. Improvements are necessary to ensure the continued success and prosperity of First Nation communities and economic development initiatives.

2. Action Plan

Recommendations	Actions	Responsible Manager (Title / Sector)	Planned Start and Completion Dates
<p>1. Increase collaboration and efforts to facilitate community planning related to land use, including land surveying, which will enhance opportunities for economic development.</p>	<p>We do concur. (do, do not, partially)</p> <p>The Lands and Economic Development Sector (LEDS) has made investments in land use planning through the land use planning pilot initiative. To increase collaboration and efforts to facilitate community planning related to land use:</p> <ul style="list-style-type: none"> The Lands and Environmental Management Branch will continue to collaborate with the Community Opportunities Branch on their work with the National Aboriginal Land Managers Association, and First Nations on efforts to build land management capacity to facilitate community planning. The Lands and Environmental Management Branch will support the Community Opportunities Branch to finalise the implementation of phase 2 of the land planning pilot initiative with participating First Nations by March 2016. (Community Opportunities Branch will establish the Agreement) <p>The Lands and Environmental Management Branch has engaged the Association of Canada Lands Surveyors, the National Aboriginal Land Managers Association, and NRCan to explore efficient ways to improve land surveys. To date, the following actions have been taken to address some of the issues raised in this report:</p> <ul style="list-style-type: none"> New funding approaches for lands survey have been implemented. AANDC and NRCan have finalised a new Interdepartmental Letter of Agreement that clearly aligns federal and provincial standards and removes unnecessary survey requirements. The Lands and Environmental Management Branch is working with NRCan, First Nations and the National Aboriginal Land Managers Association to support a pilot project that will explore improved ways to use First Nations' capacity in lands survey. AANDC will work in partnership with Association of Canada Lands Surveyors and NRCan to analyse cost and capacity issues related to lands survey. 	<p>Directors General, Lands and Environmental Management Branch and Community Opportunities Branch</p>	<p><i>Start Date:</i> 2015 -2016 fiscal year</p> <hr/> <p><i>Completion:</i> March 2016</p>
<p>2. Work with federal partners and stakeholders to review and update the Land Management Manual to ensure that this instrument provides guidelines that are clear, consistent, current and conducive to flexible approaches that facilitate economic opportunities on-reserve.</p>	<p>We do concur. (do, do not, partially)</p> <p>A comprehensive plan to modernize the Land Management Manual is currently under development. This plan will be used to update the Land Management Manual so as to provide clear, consistent, and current guidelines to regional staff and land managers.</p> <p>The Lands and Environmental Management Branch, in partnership with the National Aboriginal Land Managers</p>	<p>Director General, Lands and Environmental Management Branch</p>	<p><i>Start Date:</i> 2015-2016 fiscal year</p> <hr/> <p><i>Completion:</i> March 31, 2016</p>

Recommendations	Actions	Responsible Manager (Title / Sector)	Planned Start and Completion Dates
	Association, will provide training to AANDC staff and First Nations on land administration policies and processes (i.e., Lands 101, Designation, and Leasing).		
3. Enhance the Indian Land Registry and related IT systems in order to leverage the registry's potential for facilitating economic development.	We do concur. (do, do not, partially)	Director General, Lands and Environmental Management Branch	<i>Start Date:-</i> 2015-2016 fiscal year
	The Lands and Environmental Management Branch has taken the following actions to enhance efficiency and effectiveness of the Indian Land Registry and related IT systems: <ul style="list-style-type: none"> The Lands IT System Team and Environmental IT System Team have been integrated within the Lands Directorate to maintain, clean and update the Indian Land Registry and related IT systems such as Netlands and Integrated Environmental Management System. This integration will also leverage and enable operating efficiencies within LED. A Memorandum of Understanding was signed with the Information Management Branch to enhance, maintain, and support the operation of the Indian Land Registry and related IT systems. A five year IM/IT plan will be developed to enhance, update and strengthen Lands and Environment IT systems. 		<i>Completion:</i> March 2016
4. Address recruitment and retention related issues to ensure that Indian Oil and Gas Canada has sufficient capacity and expertise to maintain its operation and ongoing work on modernizing its regulations.	We do concur. (do, do not, partially)	Executive Director, Indian and Oil Gas Canada	<i>Start Date:</i> 2015-2016 fiscal year
	In the period prior to the evaluation, Indian Oil and Gas Canada experienced recruitment difficulties due to the highly competitive nature of the oil and gas industry and low labour market availability. As market dynamics have changed, due to reduced oil prices, to ensure recruitment success, Indian Oil and Gas Canada will request Treasury Board continuation of the current market related recruitment and retention benefits and will monitor recruitment success to determine if further action is required. Indian Oil and Gas Canada will also be proactive in commencing recruitment for vacancies and known retirements as early as possible.		<i>Completion:</i> March 31, 2016
5. Clarify the purpose and role of the Regional Support Centres.	We do concur. (do, do not, partially)	Director General, Lands and Environmental Management Branch in collaboration with Associate Regional Directors General	<i>Start Date:</i> 2015-2016 fiscal year and Ongoing
	The Lands and Environmental Management Branch has taken the following measures to enhance efficiency and effectiveness of the Regional Support Centres: <ul style="list-style-type: none"> An evergreen document was developed by the Lands and Environmental Management Branch, with input from regional staff, on Regional Support Centres' roles and responsibilities. The roles and responsibilities document has been shared with Regional Support Centres and discussions held in order to clarify roles and responsibilities in land registry and submission processes. Training sessions have been provided to Regional Support Centres, and Regional Support Centres have 		<i>Completion:</i> March 2016

Recommendations	Actions	Responsible Manager (Title / Sector)	Planned Start and Completion Dates
	<p>provided training to regional officials on land registry and submissions processes, and to First Nation land managers on their roles and responsibilities in the land registry processes.</p> <ul style="list-style-type: none"> • Several meetings, including a face-to-face meeting in June 2015, were held with the Regional Support Centres to discuss existing best practices, identify gaps and opportunities for improvements and options for training in land registry and submission processes. The June 2015 meeting included representatives from the Regional Support Centres in British Columbia Region, Saskatchewan Region, Ontario Region, the Lands Directorate, Corporate Secretariat, Chief Financial Officer Sector, Regional Operations Sector and Treasury Board of Canada Secretariat. <p>The Lands and Environmental Management Branch will take actions to address issues raised in this report by:</p> <ul style="list-style-type: none"> • Consider options to further strengthen and streamline Regional Support Centres • The Lands and Environmental Management Branch will work with regional colleagues to analyse issues related to the role and the purpose of Regional Support Centres identified in the report and develop options to address them. 		

I recommend this Management Response and Action Plan for approval by the Evaluation, Performance Measurement and Review Committee

Original signed by:

**Michel Burrowes
Director, Evaluation, Performance Measurement and Review Branch**

I approve the above Management Response and Action Plan

Original signed by:

**Sheilagh Murphy
Assistant Deputy Minister, Lands and Economic Development**

1. Introduction

Administration of Reserve Land is part of Aboriginal Affairs and Northern Development Canada's (AANDC) Land and Economy programming, identified as a sub-program of the Community Development Program as per AANDC's 2014-15 Program Activity Architecture.

The program carries out AANDC's statutory responsibilities as it relates to land management under the *Indian Act*. It includes four key activity areas:

- Additions to Reserves (ATRs);
- Administration of land transactions on-reserves;
- Land surveying and clarification of title; and
- Management of oil and gas activity on reserve.

Almost all of the program funds for these activities are identified as Operational and Maintenance Funds.

1.1 Evaluation Overview

In accordance with the 2009 Treasury Board Secretariat's *Policy on Evaluation* to evaluate program spending every five years, the Evaluation, Performance Measurement and Review Branch (EPMRB) of AANDC has conducted an evaluation of the federal *Administration of Reserve Land*.

The overall purpose of the evaluation is to provide reliable evaluation evidence that will be used to support policy and program improvement and, where required, expenditure management, decision making and public reporting.

The evaluation of the *Administration of Reserve Land* addresses the *Policy on Evaluation's* Core Issues of relevance and performance (including cost-effectiveness and cost-efficiency). Additionally, the evaluation considers issues related to the program's design and delivery and considers best practices and lessons learned.

The period under evaluation is fiscal year 2009-10 to fiscal year 2013-14 but was guided by the Performance Measurement Strategy for the program.

Terms of Reference for the evaluation were approved in June 2015 by AANDC's Evaluation Performance Measurement and Review Committee. The evaluation was undertaken by EPMRB between June 2014 and September 2015 with the assistance of a consulting firm, *Prairie Research Associates Inc.*

1.2 Administration of Reserve Land Profile

This section of the report includes a brief description of the *Administration of Reserve Land* sub-program, including its activities, expected outcomes, management structure, and resources associated with the sub-program.¹² This section also presents the linkages between the *Administration of Reserve Land* sub-program and the Community Development program area under which Administration of Reserve Land is currently situated in the Department's Program Alignment Architecture.

1.2.1 Background and Description

Generally, the *Administration of Reserve Land* sub-program is in place to ensure that reserve land held in trust by the Crown for First Nations is managed based on the requirements outlined in the *Indian Act*. This may include: adding land to a reserve for First Nations' use; preparing, reviewing and processing legal documents related to land use; conducting land surveys to make sure boundaries are correctly outlined; providing expertise on oil and gas development; and maintaining financial trusts on behalf of First Nations for the money that comes from the use of the land.

More specifically, the *Administration of Reserve Land* sub-program comprises four core business lines:

- *Additions to Reserve*: This component allows First Nations to apply for additions to their reserve lands under three distinct streams: legal obligations (under which there are unique pieces of legislation that apply to Manitoba, Saskatchewan and Alberta related to Treaty Land Entitlement Additions to Reserves), community additions, and new reserves/other.
- *Creation, Registration, Review and renewal of land transactions*: This component allows for the establishment and registration of legal instruments related to reserve lands and involves First Nations' band administration, AANDC lands staff and, when necessary, the Department of Justice.
- *Management and Regulation for Oil and Gas Development on Reserve Lands*: This component is operated under Indian Oil and Gas Canada, a special operating unit with AANDC, which manages the legal interests related to oil and gas on-reserves.
- *Land surveys and clarification of reserve boundaries*: This program helps clarify reserve boundaries through historical research activity and land surveys. Demarcation of external reserve boundaries and internal boundaries for creation of legal instruments are undertaken as necessary for the clarification of the location of reserve lands. This work involves the Department of Natural Resources Canada under the authority of the *Canada Lands Surveys Act*.

¹² The information contained in this section is largely based on AANDC's 2014-2015 Report on Plans and Priorities and the current performance measurement strategies applicable to the Administration of Reserve Land sub-program.

In addition to these core business lines, *Administration of Reserve Land* includes some activities related to the management of Band Moneys, the subset of Indian Moneys that are for the communal use of the band. Section 62 of the *Indian Act* distinguishes two categories of Indian Moneys: capital and revenue. Land management officers in regional offices will ensure revenue from leases, permits and other legal instruments are deposited into the Consolidated Revenue Fund and held in trust under the name of the First Nation. Funds are then managed and distributed by the Indian Moneys, Estates and Treaty Annuities Directorate of the Resolution and Individual Affairs sector of the Department. This is done in accordance with the *Manual for the Administration of Band Moneys*.

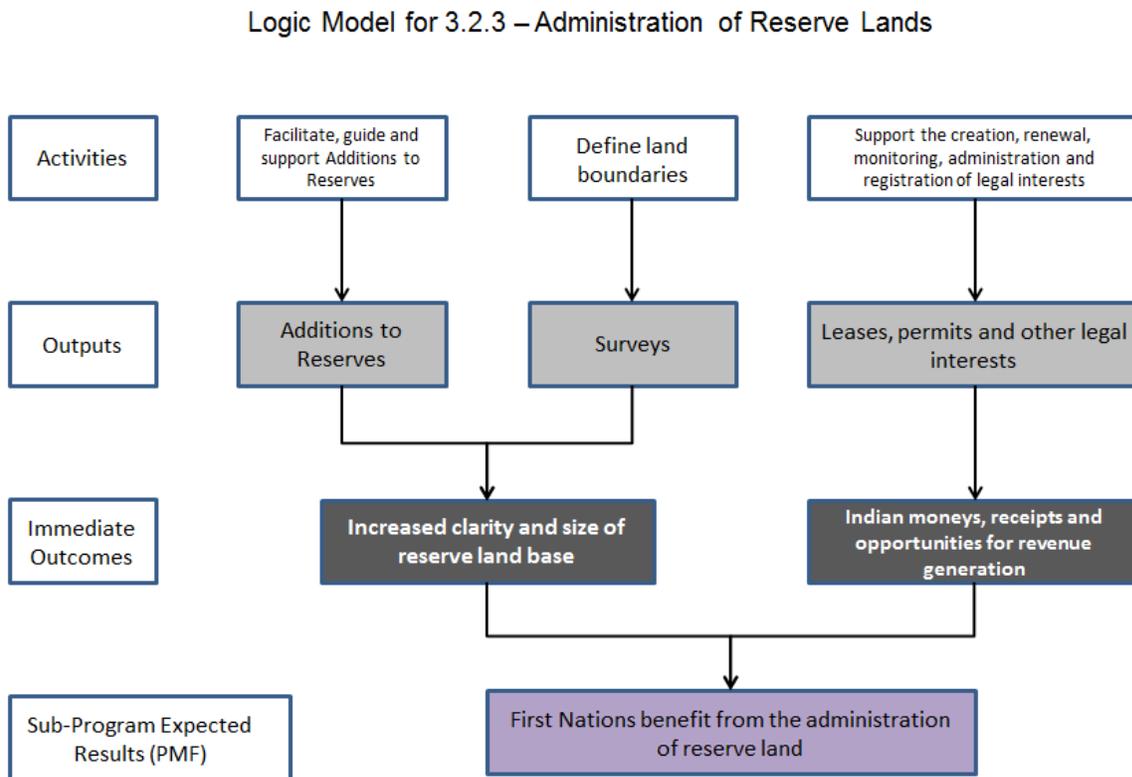
All activities undertaken as part of the federal Administration of Reserve Land sub-program are implemented within the legislative framework provided by the *Indian Act* and, as such, they only apply to First Nations whose land and economic development activities are governed by this legislation.

1.2.2 Outcomes and Expected Results

A Performance Measurement Strategy for Administration of Reserve Land was approved in March 20, 2014, by the AANDC Evaluation, Performance Measurement and Review Committee.

The logic model of the Administration of Reserve Land sub-program is outlined in the figure below:

Figure 1



Activities involving supporting the Additions to Reserve process, defining land boundaries and supporting the creation, renewal, monitoring, administration and registration of legal interest results in the following immediate outcomes for the sub-program:

- Increased clarity and size of reserve land base; and
- Indian moneys, receipts and opportunities for revenue generation.

The expected results of the Administration of Reserve Land are:

- First Nations benefit from the Administration of Reserve Land”.

Further, this sub-program is expected to contribute to the Community Development Program’s expected results, which are:

- Enhanced conditions for First Nation and Inuit communities to pursue greater independence/self-sufficiency and sustainable economic development are in place; and
- First Nation land is available for economic development.

In order to demonstrate performance, as part of the Performance Measurement Strategy, the program tracks the number of Additions to Reserves and total acres added; the number of new leases, permits and other instruments being registered; the value of money collected by Indian Oil and Gas Canada (IOGC); the value of funds collected from legal instruments; and the number of surveys created. (See Appendix B: Evaluation Matrix for indicators).

1.2.3 Program Management, Key Stakeholders and Beneficiaries

AANDC Headquarters and the regional offices both play a direct role in the implementation of activities undertaken through the *Administration of Reserve Land*. A number of other stakeholders support the implementation of these activities.

Aboriginal Affairs and Northern Development Canada Headquarters

The Assistant Deputy Minister, Lands and Economic Development, has overall responsibility for the *Administration of Reserve Land* sub-program. From an operational perspective, it is administered by the Lands and Environmental Management Branch, Lands and Economic Development Sector, which is responsible for:

- providing national co-ordination of the sub-program;
- setting the policy, based on legal requirements, for drafting, issuing, cancelling and registering legal interests as well as administering leases and permits; and
- setting the policy for Additions to Reserve and other land instruments.

Aboriginal Affairs and Northern Development Canada Regional Offices

Regions support the implementation of the sub-program through the following activities:

- they carry out most of the Additions to Reserves steps working in collaboration with First Nations;
- they work with First Nations on land designations and to administer transactions regarding creation of leases, permits and other legal interests; and
- they support the approval of requests for expenditures under sections 64, 66 and 69 of the *Indian Act*, with the exception of requests for capital expenditures under paragraphs 64(1) (d) and (k), which remain with the Minister.

Aboriginal Affairs and Northern Development Canada Regional Support Centres

Four regional support centres were created in 2012 to assist regions with new program responsibilities involving instrument registration and Additions to Reserves. Generally, they are responsible for maintaining up-to-date templates for regions' use, communicating operational changes to regions, and support to regions in the preparation of their submissions. Each centre is responsible for a specific program function:

- Designations and Section 35 submissions (located in the Vancouver regional office);
- Treaty Land Entitlement Additions to Reserve (located in the Regina regional office);
- Non-Treaty Land Entitlement Additions to Reserve (located in the Toronto regional office); and
- Registration of instruments (with employees located in both the Toronto and Sudbury offices).

Institutional Partners

- IOGC, a special agency within AANDC, is responsible for managing and regulating industry exploration, leasing and production of oil and gas from First Nation reserve lands, including the receipt of associated revenues in trust for First Nations. Once funds are collected, they are deposited into the band capital or revenue account and transferred to the respective regional office for administration as band moneys.
- The Indian Moneys, Estates and Treaty Annuities Directorate of the Individual Affairs Branch, Resolution and Individual Affairs Sector at Headquarters, is responsible for the administration and oversight of Indian Moneys at a national level. The responsibility for the ongoing and daily management of Indian Moneys has been delegated to the regional offices with limited exceptions. The Corporate Accounting and Materiel Management Branch of the Chief Financial Officer Sector is also involved in approving financial transactions.
- First Nations, in consultation with AANDC, are responsible for making land selections, preparing and submitting Additions to Reserves proposals, and addressing the interests of municipalities, provinces and other third parties during the Additions to Reserve process.

- Natural Resources Canada is responsible for a portion of the survey process. Specifically, the Surveyor General provides instructions to accredited Canada Lands Surveyors to survey reserve land. A Letter of Agreement between Natural Resources Canada and AANDC is meant to ensure that land added to reserves is properly surveyed according to standards outlined in the letter.
- The Department of Justice is involved with AANDC regions in assisting with legal matters such as the adequacy of lease templates and the administration of land designation votes; Justice may also have an advisory role in policy decisions at Headquarters.
- The National Aboriginal Land Managers Association, a recipient of contribution funding from Lands and Economic Development Services Program (LEDSP), develops tools and delivers training that directly benefits the First Nations communities engaging in programming activities under *Administration of Reserve Land*. The National Aboriginal Land Managers' Association also delivers national Grants and Contributions funding for some of the program's survey work.
- Regarding the ATRs process, stakeholders may also include provincial governments, municipal governments, other government departments, the Federation of Canadian Municipalities and third parties with legal interests in the land, depending on the specific proposal that is put forward by a First Nation.

1.2.4 Program Resources

Between 2009-10 and 2013-14, AANDC invested a total amount of \$130.5 million in Operations and Maintenance funds for the federal Administration of Reserve Land.

Table 1 provides a breakdown by fiscal year:

Table 1 - Administration of Reserve Land: Total expenditure¹³

	2009-10	2010-11	2011-12	2012-13	2013-14	Total
Indian Oil and Gas Canada	10,751,032	12,675,216	13,002,222	13,023,648	11,403,758	60,855,875
<i>Indian Oil and Gas Act and Regulatory Amendments</i>			61,617	87,331	87,159	236,107
New Reserves		516,304	2,357,609	754,339	129,759	3,758,012
Land Registry	4,534,999	2,928,846	3,697,603	2,985,111	1,678,448	15,825,007
Community Additions - Addition to Reserve	3,419,145	3,519,931	2,025,649	2,232,864	2,712,953	13,910,542
Legal Obligations - Addition to Reserve	7,094,497	6,107,512	8,009,885	6,704,878	5,828,618	33,745,390
Management of Band Moneys	375,047	506,735	559,066	367,570	356,210	2,164,627
Total	26,174,719	26,254,543	29,713,650	26,155,741	22,196,906	130,495,561

Source: Chief Financial Officer

¹³ Total Expenditures includes Vote 1, Vote 5 and Vote 10 - excludes any non-budgetary expenditures such as Employee Benefit Plan

2. Evaluation Methodology

2.1 Evaluation Scope and Timing

The evaluation examined Administration of Reserve Land activities undertaken and outcomes achieved between fiscal year 2009-2010 and fiscal year 2013-2014. This includes program design and delivery changes in 2012, whereby registration of land instruments and some ATR responsibilities were decentralized from Headquarters to the regions and four Regional Support Centres were created to assist regions in their work related to registration of land transactions, designations, and Additions to Reserve.

The evaluation focuses on AANDC commitments as per the program's logic model and examines the relevance, effectiveness, efficiency and economy and design and delivery of program activities, outputs and outcomes.

Terms of Reference were approved by AANDC's Evaluation, Performance Measurement and Review Committee in June 2014. Field work was conducted between March and June 2015. The Terms of Reference outline the scope, methodology, key issues and resources for the evaluation.

The evaluation was conducted between June 2014 and September 2015.

It should be noted that Band Moneys, while part of the scope of this evaluation, was not a main focus of this evaluation, given that this component was recently evaluated as part of an evaluation of the *Indian Moneys, Estates and Treaty Annuities*¹⁴, as well as having only partial jurisdiction falling under the Lands and Economic Development Sector.

This evaluation was considered, and further, several key informant interviews were undertaken, in order to consider this aspect in the overall evaluation of Administration of Reserve Lands.

2.2 Evaluation Issues and Questions

For the purpose of this evaluation, the outcome statements in the logic model of the 2014 Performance Measurement Strategy, and associated indicators, where available, were used to measure performance.

As per the *Treasury Board Directive on the Evaluation Function* and the approved Terms of Reference and program's logic model, the evaluation issues focussed on the following core evaluation issues and questions were addressed:

¹⁴ Aboriginal Affairs and Northern Development Canada, *Evaluation of Indian Moneys, Estates and Treaty Annuities*, 2013. Available at: <http://www.aadnc-aandc.gc.ca/eng/1382702626948/1382702680155>, 86 pgs.

<i>EVALUATION ISSUE</i>	<i>EVALUATION QUESTION</i>
Relevance	
<p><i>Continued Need for the Program</i> (assessment of the extent to which the program continues to address a demonstrable need and is responsive to the needs of Canadians)</p>	<ol style="list-style-type: none"> 1. To what extent has there been a need for providing support and guidance with respect to the Administration of Reserve Land? 2. How responsive has AANDC been to that need?
<p><i>Alignment with Government Priorities</i> (assessment of the linkages between program objectives and (i) federal government priorities; and (ii) departmental strategic outcomes)</p>	<ol style="list-style-type: none"> 3. To what extent has the sub-program been consistent with the objectives and priorities of the federal government? 4. To what extent does the sub-program contribute to AANDC's strategic outcomes and the goals associated under the Community Development program?
<p><i>Alignment with Federal Roles and Responsibilities</i> (assessment of the role and responsibilities of the federal government in delivering the program)</p>	<ol style="list-style-type: none"> 5. Is there a legitimate, appropriate and necessary role for the federal government in providing funding and support to First Nation communities for the Administration of Reserve Land?
Design and Delivery	
	<ol style="list-style-type: none"> 6. Are the division of roles and responsibilities between AANDC and stakeholders regarding the Administration of Reserve Lands appropriate in order to effectively deliver the program and contribute to supporting the program's expected results? 7. To what extent can the newly revised 3.2.3 Performance Measurement Strategy contribute to performance measurement, management and reporting (e.g., can the strategy support the assessment of results?) 8. Are there opportunities (i.e. Notable best practices and lessons learned) for altering the design and/or delivery of the program in order to improve its performance?

Performance - Effectiveness, Efficiency and Economy

<p>Achievement of Expected Outcomes (assessment of progress toward expected outcomes (including immediate, intermediate and ultimate outcomes) with reference to performance targets, program reach, program design, including the linkage and contribution of outputs to outcomes)</p>	<p>9. In what ways does the sub-program create the conditions for First Nations to have a land base ready to support economic development? (Ultimate Outcome)</p> <p>10. To what extent does the sub-program create the conditions for First Nations pursuing greater independence/self-sufficiency and sustainable economic development?</p> <p>11. To what extent are First Nations benefitting from the Administration of Reserve Land?</p> <p>12. In what ways has the clarity and size of the reserve land base changed because of the sub-program's activities?</p> <p>13. To what extent has the sub-program facilitated greater revenue-generating opportunities for involved First Nations?</p> <p>14. What factors (internal and external) have helped or hindered to achievement of expected results?</p> <p>15. Have there been any unintended positive or negative impacts around AANDC's assessment and remediation of contaminated sites on-reserve?</p> <p>16. To what extent is gender-based analysis relevant in the Administration of Reserve Land?</p>
<p>Demonstration of Efficiency and Economy (assessment of resource utilization in relation to the production of outputs and progress toward expected outcomes)</p>	<p>17. What are the costs to engaging in the following program activity areas (Additions to Reserves, surveys and leases, permits and other legal interests) and related outputs and are there opportunities for increasing program efficiencies?</p> <p>18. To what extent are AANDC's activities able to complement- or did they unnecessarily duplicate- related activities undertaken?</p>
<p>Other Evaluation Issues</p>	<p>19. What best practices or key factors of</p>

(best practices and lessons learned)	success can be identified for federal Administration of Reserve Land?
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2.3 Relevant Evaluations and Reviews

The following recent evaluations and reviews of activities pertaining to the *Administration of Reserve Land* sub-program were considered in the scoping of this evaluation and to inform the evaluation issues and methodology:

- *Impact Evaluation of Contributions to Indian Bands for Land Management on Reserve*, September 2010;
- *Summative Evaluation of the First Nations Oil and Gas and Moneys Management Act Implementation*, 2010; and
- *Evaluation of Indian Moneys, Estates and Treaty Annuities*, April 2013.

The following reviews also contributed to informing the evaluation:

- *Report of the Standing Senate Committee on Aboriginal Peoples. Additions to Reserve: Expediting the Process*, November 2012;
- *Audit of the Additions to Reserve Process*, February 2013;
- *Audit of Southern Oil and Gas*, September 2013; and
- *Report of the Auditor General of Canada on Land Management and Environmental Protection on Reserves*, Fall 2009.

2.4 Evaluation Methodology

2.4.1 Planning and Development of Methodology

Administration of Reserve Land Evaluation Working Group/ Advisory Group

Subsequent to the approval of the Terms of Reference, a Working Group/Advisory Group was formed. The purpose of the Working Group/Advisory Group was to provide feedback on key pieces of the evaluation, including the methodology, preliminary findings and final report. The Working Group/Advisory Group included members from AANDC program staff both at headquarters and in the regions, as well as a representative from *Indian Oil and Gas Canada*.

Detailed Methodology Report

The development of the methodology report was primarily informed by the Performance Measurement Strategy (dated March 2014) and through preliminary consultations with program management during the development of the Terms of Reference. An initial review of program documents was also conducted as part of the process.

The methodology report was subject to an internal peer review focus group for added quality assurance.

2.4.2 Data Collection and Analysis Phase

Data collection and analysis were conducted between September 2014 and July 2015.

The evaluation's findings and conclusions are based on the analysis and triangulation of the following multiple lines of evidence. (Appendix B, Evaluation Matrix):

Literature Review

A literature review was conducted on land management and economic development on-reserve with a specific focus on the legal and regulatory framework of the *Indian Act* and its impact on economic development. While international literature was consulted, it was found that there are not many comparable international examples and so primarily domestic literature was drawn upon. Program relevance was examined within this legal and regulatory framework and compared with other land management regimes to understand the unique context in which reserve land operates.

Documents were summarized, analyzed, and findings populated in a literature review summary template. Common themes and insights were interpreted in the summary document and later used for the triangulation of findings with other lines of evidence.

Document and file review

A document and file review was conducted, and included a review of the following:

- Legislation such as the *Indian Act* and the *Indian Oil and Gas Act* were consulted as the two pieces of legislation from which program roles and responsibilities stem. The *First Nations Land Management Act* and the *Canada Lands Surveys Act* were also consulted.
- AANDC documents, including departmental Performance Reports, Reports on Plans and Priorities, policy documents such as the *Land Management Manual* and documents outlining roles and responsibilities, organizational structure, key presentations and planning documents for future program direction. This also included a review of AANDC web pages to gain a sense of what information is available to the public regarding *Administration of Reserve Land*.
- Parliamentary documents such as two key studies by the House of Commons and the Senate as well as the Government's formal responses to these studies. The *Federal Framework for Aboriginal Economic Development* was also included in the analysis.
- Other documents, including previous audits and evaluations and the total index of documents was assessed to ensure it covered all key components of the evaluation: Additions to Reserve, creation and registration of land instruments, land surveys and oil and gas activity.

Program Data Analysis

Data analysis was conducted on data related to each of the key program components to assess program outputs related to effectiveness and efficiency. This included a review of data from the following sources:

- The National Additions to Reserve Tracking System, which tracks Additions to Reserve file progress, including time taken for processing, type of Addition and number of acres added to Reserve;
- The Indian Land Registry System, the First Nations Land Registry System and the Self-Governing First Nations Land Registry System, which include information on volume and type of land instruments registered with the Department;
- The Resource Information Management System at Indian Oil and Gas Canada which tracks royalty payments;
- Administrative data on land survey funding; and
- Internal resource allocations including number of full time equivalents allocated to each activity.

Though program data was used as supporting evidence wherever possible, these data sources were particularly useful for assessing evaluation questions regarding design and delivery changes; clarity and size of the reserve land base; revenue-generating opportunities; and costs of program delivery.

To assess performance, the following information was examined: changes in number, type and size of ATR; volume and type of instrument; amount of royalties; and number of surveys requested/funded. These data were then measured against the program's 2014 Performance Measurement Strategy.

The assessment of efficiency and economy focused on the program changes in 2012 where Headquarters staffing was restructured, registration activities were devolved to the regions and support centres were created to assist regions in their work. Two key questions that emerged from this analysis were whether the 2012 changes were affecting output levels and performance across program business lines and whether resources had been saved resulting from the changes.

As such evaluators examined the change in performance data pre- and post-2012 for major changes and also assessed information collected regarding instrument registration times (separated by permit and non-permit) pre- and post-2012. An internal Lands and Economic Development study of full time equivalent allocation across the regions for 2013-14 was cross-referenced with internal documentation on the planned resource savings related to the 2012 changes to assess whether program activities were now being conducted successfully with fewer resources.

The program does not track efficiency and economy information as part of its Performance Measurement Strategy, therefore the data analysis would allow for an examination of trends only.

Key Informant Interviews

A total of 64 key informant interviews were conducted. This included 13 program representatives at Headquarters, 29 regional staff¹⁵, nine other AANDC staff, five federal partners, four external experts and four representatives of Aboriginal organizations.

Interview responses were grouped by interview question and then assessed to identify key themes. Key informant themes were grouped in the following categories: the *Indian Act* and AANDC's role in land administration; Additions to Reserve; the Indian Land Registry; Land Surveys; Creation of land instruments; and resourcing of support centres, regions and Headquarters. These themes were then used to support the triangulation of findings within the guiding framework of the evaluation issues and questions.

Case Studies

In March of 2015, four case studies were conducted of the regional support centres created during program restructuring in 2012:

- Vancouver Support Centre for Designations and Section 35 submissions
- Regina Support Centre for Treaty Land Entitlement Additions to Reserve
- Toronto Support Centre for non-Treaty Land Entitlement Additions to Reserve
- Toronto-Sudbury Support Centre for registry activities

Case study interview guides were created that addressed the evaluation questions detailed above. However, the specific focus of the case studies was the efficiency and economy of the support centres and the extent to which they facilitated the program activities of ATR, Designations, Section 35 submissions and registration of legal instruments. Discussions and interviews held during case studies provided valuable first-hand assessment with which to supplement the limited data regarding efficiency and economy of the new program structure.

Case studies included interviews with key support centre and lands staff in the regional offices, or focus groups where feasible. Case studies also included document and data review where applicable. They were supplemented with interviews with staff in other regional offices who engage with the support centres on a daily basis.

A case study of Indian Oil and Gas Canada was conducted in May 2015. Evaluators traveled to the agency headquarters outside of Calgary to interview senior management on program relevance, performance and design and delivery. Tsuu T'ina First Nation, which conducts oil and gas activity, was also visited to obtain a First Nation's perspective on the role of IOGC.

Evaluators also interviewed land managers in several communities travelled to as part of the evaluation of the *Lands and Economic Development Services Sub-Program*. Interview guides were designed to capture information about both programs and, as such, included questions related to land instruments, Additions to Reserves, registration activities and the usefulness of the Reserve Land

¹⁵ Staff in British Columbia, Saskatchewan and Ontario were interviewed in person while on case study; staff in Alberta, Manitoba, Quebec and Atlantic were interviewed over the phone.

and Environmental Management Program (RLEMP) in facilitating land transactions. The following communities were visited:

- Adams Lake First Nation (British Columbia)
- Cowichan Tribes (British Columbia)
- Kwantlen First Nation (British Columbia)
- St. Mary's First Nation (Aq'am) (British Columbia)
- Tsuu T'ina First Nation (Alberta)
- Kahkewistahaw First Nation (Saskatchewan)
- Miawpukek First Nation (Newfoundland)
- Land, Environment and Economic Development Committee Meeting – April 2015 – Nippissing First Nation

2.4.3 Considerations, Strengths and Limitations

A number of considerations, including strengths and limitations of the evaluation methodology are noted:

Timing posed some limitations on the extent to which the evaluation could consider fully the evaluation issues and questions. Notably, the regional support centres began operations in December of 2012, mid-way through the period covered by the evaluation. As such, consideration of their performance, efficiency and economy is based on roughly two years of operation and does not span the full five year period under evaluation.

Assessing the relative efficiency of regional responsibilities pre- and post-program restructuring in 2012 was also challenging given that the available data for full time equivalent allocations in the regions was available for the evaluation in estimate form and only for fiscal year 2013-14. As such, the evaluation data analysis is ex-post in nature and can identify potential trends. In order to address this, the evaluation methodology employed multiple lines of evidence to substantiate any shortcomings of data with other lines of evidence, namely through document and literature review and key informant interviews and extensive case study work involving interviews.

The evaluation employed both quantitative and qualitative methods, however, it should be noted that, where the reliance on quantitative data was not possible because it was either unavailable or in a format not conducive for undertaking typical evaluation work, the evaluation relied heavily on key informant interviews and case study work substantiated by information in document and/or literature review. In such cases, care was taken to ensure that it was made explicit that content is based primarily on interviewee statements.

This evaluation was undertaken concurrently with an evaluation of the *Lands and Economic Development Services Sub-Program* (3.2.1). As such, evaluators had the opportunity to draw upon evidence from the concurrent evaluation to inform the evaluation of *Administration of Reserve Land*. Specifically, economic development staff and community case study key informants were asked interview questions related to land management under the *Indian Act*, land surveys and the Additions to Reserve process. This allowed the evaluation team to integrate additional key perspectives into the evaluation of *Administration of Reserve Land*.

2.5 Roles, Responsibilities and Quality Assurance

Prairie Research Associates was contracted by EPMRB to assist in the following components of the evaluation: development of the methodology, including data collection instruments; planning and conducting of case studies; conducting key informant interviews; conducting a program data review; developing preliminary findings; and validating the document and literature reviews. This allowed for additional technical expertise during the evaluation process. As project authority, EPMRB also reviewed and approved all *Prairie Research Associates* deliverables.

The following internal quality assurance processes were also applied to the evaluation:

- Working group validation sessions: A working group, including the evaluation team and program staff at Headquarters and in the regions reviewed the methodology report, preliminary findings and the draft final report.
- Methodology peer review: Prior to beginning data collection, a one-hour focus group to discuss the methodological approach was conducted with EPMRB staff who did not work on the evaluation.
- Report peer review: The draft final report was subject to EPMRB's internal peer review process.

3. Evaluation Findings – Relevance

3.1 Federal Roles and Responsibilities for Land Management on Reserve

The federal government has a specific legislative mandate to manage land transactions and oil and gas activity on-reserves stemming from the *Indian Act* and the *Indian Oil and Gas Act*.

Additions to Reserve

There is no statutory requirement to add land to reserves. However, the federal government has authority for reserve lands under the *Indian Act*, and so once land is transferred by another government department, a province, municipality or third party to be added to reserve following a Ministerial Order or Order in Council, its management falls under the responsibility of the federal government. Furthermore, the Government does have an obligation to add land to reserves when ATR fall under the Legal Obligations category, as ATRs in this category are a result of treaty settlements, specific claim settlement agreements or court decisions. In contrast, under non-Treaty Land Entitlement (TLE) categories, there is no legal obligation to add land to reserves and, as a result, this is typically done in light of other considerations specific to a First Nation.

Land surveys

As properly surveyed lands are required for ATR and land transactions, land surveys are a necessary part of the program. Approving land surveys is a federal responsibility¹⁶: Section 24 of the *Canada Lands Surveys Act* clarifies that reserve land falls under the responsibility of the Surveyor General of Canada when surveying is required. Section 29 outlines surveying for external boundaries of a reserve (known as official plans) and Section 31 outlines surveying for internal division of land (known as administrative plans). The Surveyor General will issue instructions to a private federally-certified land surveyor to conduct the land surveys.

Creation of land instruments

The land tenure system under the *Indian Act* differs significantly from other Canadian jurisdictions. On-reserve, title is held by the Crown on behalf of First Nations as per Section 18 of the *Indian Act* and thus, AANDC has legislative duties to exercise in this area on behalf of the Minister. As such, the *Indian Act* contains a series of administrative clauses that govern the following types of land transactions, which fall under two broad categories of land holdings: communal holdings (held and administered by the Band) and individual holdings (allocated by Council, with approval by the Minister, to individual band members):

¹⁶ Note that unlike land transactions, surveys for Additions to Reserve can be done by provincial surveyors if necessary.

- Certificates of Possession – Certificates of Possession allow for indeterminate and exclusive use and occupation of the land under conditions set by the *Indian Act*.¹⁷ Governed primarily by sections 22 to 27 of the *Indian Act*, Certificates of Possession are granted formally through a Band Council Resolution, which is then approved by the Minister.
- Certificates of Occupation - Certificates of Occupation are similar in nature to Certificates of Possession in that they are considered lawful possession but are often temporary in nature.
- Designated Lands - Communally-held lands are subject to restrictions such as the inability to be used by a third party. However, bands can choose to undergo a Land Designation as per Section 38(2) of the *Indian Act*. Under a Designation a band chooses to surrender some of its rights back to the Crown and to designate the land for a specific purpose (commercial, industrial, residential, etc.). This can allow land to be leased to non-band members and for leasehold interests to be mortgaged, which literature reviewed suggests is the option most preferred by external business stakeholders.¹⁸
- Leases – Land can be leased to band members or to third parties if it has first been designated or the transaction has been specifically approved of by the Minister. ‘Locatee’ leases refer to the leasing of land held under Certificates of Possession.
- Permits - Permits for a variety of activities, such as extracting gravel or laying phone lines, are issued under several sections of the *Indian Act*. As permitting can be quite complex, mining and timber activities are governed by specific regulations.
- Easements can occur to permanently transfer land back to the Crown for purposes such as construction of provincial highways, often with financial or land compensation in exchange.

In practice, under this regime, roles and responsibilities of AANDC and First Nations differ depending on the land management status of the First Nation. Under the *Indian Act* land management regime, AANDC is responsible for creating headleases, permits and other legal instruments on Crown land based on the needs of First Nations.

If First Nations are participating in RLEMP, however, they are expected to draft the legal instruments. These are then submitted to AANDC regional offices for final approval and registration. Under delegated authority or Section 53/60 status (achieved under the former *Reserve Land Administration Program*), a First Nation is responsible for the process of creating legal instruments.

However, regional key informants have noted that, in practice, RLEMP First Nations often communicate extensively with regional offices to ensure documents are correctly drafted. The Department of Justice is also routinely consulted in cases where legal clarification is needed.

¹⁷ Marena Brinkhurst and Anke Kessler, “Land Management of First Nations Reserves: Lawful Possession and its Determinants,” *Simon Fraser University Department of Economics Working Papers*, 2013. Available at: <http://www.sfu.ca/~akessler/wp/detlawful.pdf>, pg. 4.

¹⁸ Alcantara, pgs. 424-426; Bob Starkell. *Conveyancing for Legal Support Staff: Advanced Issues – Leases on Indian Reserves*. Available at: <https://www.cle.bc.ca/PracticePoints/ABOR/Leases.pdf>, section 3.1.3.

Registration of instruments

All land transactions falling under the categories outlined directly above are registered in the Indian Land Registry System as per sections 21 and 55 of the *Indian Act*.¹⁹ Until December of 2012, all registrations were done at AANDC Headquarters. Currently, however, when a First Nation operating under the *Indian Act* land management regime completes a transaction, they submit it to the regional office for registration. It should be noted that unlike provincial registries that operate under ‘Torrens’ systems, the Indian Land Registry more closely resembles a ‘Deeds’ system. In other words, whereas provincial systems maintain lists of title and serve to confer and clarify that title, under the *Indian Act*, all title belongs to the Crown. As a result, the Indian Land Registry System does track *transactions* based on title, but it does not establish priority or certainty as to transactions that may relate to a title (with the exception of assignment of leases on designated lands).²⁰

It should be noted that all of this is in contrast to First Nations under FNLM, where the community is solely responsible for creating the legal instrument, which is then registered at Headquarters.

Some First Nations operate under an alternative land management regime known as customary allotments, whereby band councils choose to allocate lands to individuals without formal registration. While the system does not require departmental approval, this approach to land use and occupation is not legally enforceable in a court of law.²¹ Literature reviewed notes that without this legal enforcement, this land cannot be used as collateral, making investment and economic development much more difficult.²² It is estimated that 80 percent of individual allotments, 50 percent of overall band leasing and 66 percent of short-term land use on-reserves is done via customary allotment or ‘buckshee’ agreements with non-band members.²³

Oil and Gas Activities

The *Indian Oil and Gas Act* outlines the federal responsibility for oil and gas activities on-reserve. Specifically, Section 3 gives the Governor in Council the power to issue leases, permits and licenses for the exploration of oil and gas on Indian Lands, as well as power over disposition of interests and prescribing royalties. Section 4 states that royalties are to be held in trust for First Nations, and Section 6 requires the Minister of AANDC to consult with bands that will be affected by oil and gas activities. Key informants noted that the Department has a fiduciary responsibility to manage oil and gas on behalf of First Nations.

¹⁹ Aboriginal Affairs and Northern Development Canada, *Indian Lands Registration Manual*, updated December 2014. Available at: <https://www.aadnc-aandc.gc.ca/eng/1100100034806/1100100034808>, section 1-1.

²⁰ Aboriginal Affairs and Northern Development Canada, *Indian Lands Registration Manual*, section 1-2.

²¹ Alcantara, pgs. 424-426.

²² Terry Anderson and Dominic Parker, “Economic development lessons from and for North American Indian economics,” *The Australian Journal of Agricultural and Resource Economics* 53 (2009): pg. 121.

²³ House of Commons, pg. 35.

Band Moneys

Indian Moneys are typically generated from legal instruments under the land management system. Indian Moneys are governed by sections 18 (2), 28 (2), 35 (1), 38 (1), 39, 61-69 and 104 of the *Indian Act*, with sections 61-69 in particular describing how this money is to be managed.²⁴ Particularly relevant to this evaluation are the sections governing Band Moneys, which are the collective moneys to be spent in the benefit of the band: Sections 66 and 69, which authorize expenditure of Revenue accounts, and Section 64, which authorizes expenditure of capital accounts. Capital moneys are derived from the sale of surrendered lands or the sale of the capital assets of a band. These moneys include royalties, bonus payments and other proceeds from the sale of timber, oil, gas, gravel or any other non-renewable resource. Revenue moneys are defined as all Indian moneys other than capital moneys. They are derived from a variety of sources, which include, but are not limited to, interest earned on band capital and revenue moneys, fines, proceeds from the sale of renewable resources (i.e., crops), leasing activities (i.e., cottages, agricultural purposes, etc.) and rights-of-way. Capital and revenue moneys are held in separate interest-bearing accounts under the name of a particular First Nation. While lands officers ensure money is deposited into capital and revenue accounts, it is generally officers outside of Lands branches who are responsible for approving First Nations' requests for use of funds.

3.2 Continued Need

There is a continued need for all elements of the *Administration of Reserve Land program*; together they represent the core elements required for First Nations to benefit from reserve land: Access to valuable land; clarification of land tenure; legally sound instruments for economic activity (including oil and gas); documenting certainty of instruments; and revenue collection.

3.2.1 Continued Need for Additions to Reserve – Access to valuable land

The evaluation has found a continued need for the ATR process.

In some cases, this continued need is for purposes of historic redress.²⁵ Such ATRs typically fall under the *Legal Obligations* category of Additions to Reserve. Many of these ATRs are distinct because they fall under specific legislation pertaining to Alberta, Saskatchewan and Manitoba that facilitate the process for ATRs stemming from Treaty Land Entitlement Agreements. In some cases, ATRs under this category also arise as a result of court rulings or specific claim settlement agreements. There is a clear continuing need for the Legal Obligations category of ATR in order to provide land owned by the Crown to First Nations. Case study key informants referred to the duty of the Crown and the importance of reconciliation with First Nations when discussing the need to ensure such ATRs are processed in as timely a manner as possible.

²⁴ Aboriginal Affairs and Northern Development Canada, *Evaluation of Indian Moneys, Estates and Treaty Annuities*, 2013. Available at: <http://www.aadnc-aandc.gc.ca/eng/1382702626948/1382702680155>, pg. 9.

²⁵ Aboriginal Affairs and Northern Development Canada, *Impact Evaluation of Contributions to Indian Bands for Land Management on Reserve*, 2010. Available at: <https://www.aadnc-aandc.gc.ca/eng/1348773650044/1348773804939>, pg. viii.

There is also a continued need for ATRs related to economic opportunities as well as community and social needs. The previous evaluation of land management activities noted that between Confederation and 1996, the collective Aboriginal land base shrunk by two thirds; this is in contrast to the growth of the Aboriginal population by 45 percent during the same period.²⁶ Consequently, a growing population often requires more residential areas and many First Nations are looking for means to leverage economic opportunity as well. For some First Nations, these economic opportunities may lie outside of the reserve and thus require purchasing new land. In its case study work, the evaluation team witnessed the economic benefits First Nations were able to leverage off of land that had been recently added to reserve.



Figure 2- The Painted Hand casino in Yorkton, Saskatchewan

It was also noted, however, that in some cases, it is more beneficial for First Nations to keep fee-simple land and that this does not prevent them from leveraging its economic benefits.

3.2.2 Continued need for Land Surveys – Clarifying land tenure

Surveys provide a necessary support function to other components of the sub-program as they are required for Additions to Reserves, Designations and legal instruments and land transactions (including Certificates of Possession, leases and permits)²⁷.

In addition to being required for legal instruments, Additions to Reserves and Designations, surveys help to delineate where assets exist on-reserves and who has claims to these assets, as well as to define the external boundaries of a reserve, preventing encroachment by third parties. Some literature reviewed for the evaluation stresses the importance of providing certainty over title to property,²⁸ and surveys help to fill this need by defining boundaries on-reserves. While some bands may wish to hold their lands communally, others wish to divide them into individual holdings and so for these bands providing a clarity of parcel fabric that matches the off-reserve context can help provide certainty to businesses and other stakeholders.

While there is a clear need for the survey function, key informants were divided over the extent to which surveys should be funded by AANDC as opposed to being paid for by bands and individuals: Currently, AANDC only provides funding for surveys that have a communal benefit as opposed to for specific lots. One key informant suggested that the rationale behind this prioritization method stems from the concept that surveys such as those for individual land holdings in residential areas would typically be the responsibility of an individual in any other Canadian jurisdiction, and therefore should not be funded when compared with surveys for communal benefit. Other key informants expressed concerns that without funding for internal surveys, parcel fabric will not be adequately maintained, leading to future disputes and a lack of clarity for the purposes of land

²⁶ Ibid., pg. 26.

²⁷ Surveys are also required for capital projects, particularly housing; however, these are not directly relevant to the scope of this evaluation.

²⁸ Alcantara, pg. 422; Anderson and Parker, pg. 105.

administration. In some cases, new survey needs also arise as they are required to define the extent of environmental issues or to correct incomplete or incorrect surveys conducted previously. As is further discussed in Section 4.2, demands currently outstrip supply for land surveys: during the evaluation period, the Department was able to accommodate only 40 percent of survey requests, further indicating an ongoing need for the survey function.

3.2.3 Continued need for AANDC's involvement in the creation of legal instruments – Legally sound instruments for economic activity

There is a need for AANDC's involvement in instrument creation to provide legal and administrative support to First Nations, as the *Indian Act* land regime can be quite complex. As an example, as a precursor to a lease on band land being signed with an outside party, a First Nation must first undertake a Designation whereby the land is surveyed and the community holds a formal vote on the proposed land use; although the Designation process was simplified during the evaluation period (to be discussed in Section 4.1), several key informants and First Nations community representatives noted this process can still take several years, is expensive, and requires significant legal capacity for land descriptions and voting procedures. This is in contrast to the FNLM regime where the complexity of land transactions depends on the land code that each First Nation chooses to adopt.

Several key informants argued that while the *Indian Act* land management regime may present cumbersome requirements, it also provides the advantage of legal protection to First Nations. As mentioned above, most liability falls on the Crown as the authority behind the instruments. This benefits First Nations that have limited administrative or legal capacity. As such, key informants indicated that a portion of regional offices' work includes maintaining templates for standard documents such as leases and permits to ensure land instruments meet current legal requirements. Alternatively, First Nations would face significantly higher legal fees ensuring the documents were legally sound.

This concept was reinforced by one First Nations land manager who felt their community was better suited to remain under the Department's legal responsibility than to transition to the *First Nations Land Management* regime. Key informants at Headquarters and in regional offices also noted that, on occasion, AANDC is seen as a neutral third party to assist in land management when there are challenging political divisions within the community.

This legal and administrative support is of need not just to First Nations but to AANDC as well. Given that liability for legal instruments on-reserve falls mostly on the Crown, land administration expertise is important to mitigate the risk of improperly created land instruments and thus increased liability on the part of the Department.

3.2.4 Continued Need for Indian Oil and Gas Canada – Instruments for specialized economic activity

IOGC administers the *Indian Oil and Gas Act*, under which it manages oil and gas activities for First Nations. The agency undertakes a number of activities in support of First Nations involved in oil and gas development, including the negotiation, issuance and administration of agreements with oil and gas companies; the completion of environmental reviews; the monitoring of oil and gas production and sales prices; the collection of monies such as bonuses, royalties and rents; and the

monitoring of legislative and contractual requirements. The agency is staffed with experts in engineering, geology, and legal guidance, which is useful for First Nations communities that do not have the expertise or financial means to acquire guidance in such areas.

Key informants noted that, similarly to the role AANDC plays in creation of other legal instruments, these experts have a central role in providing First Nations with lower capacity the guidance needed to obtain fair agreements for their resources.

3.2.5 Relevance of the Indian Land Registry – Documenting certainty of instruments

While stakeholders’ opinions were divided on the value of the Indian Land Registry, there is consensus that cleaning up the data and implementing formal policy or regulations would enhance its credibility.

Section 21 of the *Indian Act* states that the Department is responsible for maintaining a Reserve Land Register in which to enter details related to “Certificates of Possession, Certificates of Occupation and other transactions respecting lands on-reserve.” Section 55 (1) further states that the Department is to maintain a Surrendered and Designated Lands Register, to record details regarding any transaction affecting surrendered or designated lands. Together, these registers are more commonly known as the Indian Land Registry, a system that is thus mandated by law. However, the particulars of the registry are not defined by the *Indian Act* and the evaluation has found diverging opinions on the value and purpose of the registry in its current form.

In particular, key informants were divided on whether the registry lends legal certainty to instruments in light of the fact that its purpose is not to confer title. Some argue that any legal instrument that is properly designed creates a solid legal foundation. The fact that the federal government is systematically engaged as the title holder also serves to strengthen the legal certainty surrounding such instruments. In that context, the registry serves an important, but distinct purpose by offering a publically available repository of transactions related to surveyed pieces of land. While it may not confer finality over competing claims related to land held by the Crown in cases where two instruments are registered to the same parcel of land, key informants argued it offers critical information that serves multiple purposes for the ongoing planning and management of reserve land.

While recognizing these benefits, others argue that the registry system has the potential to broaden its purpose in order to provide greater economic development opportunities. These stakeholders’ views were aligned with the literature that argues that the *Indian Act* land tenure system suffers from weak property rights that are necessary to facilitate economic development.²⁹ Proponents of this argument suggest that a Torrens registry system, which confers title, is more effective than a system whose primary purpose is to track transactions based on pre-existing title. They argue that the certainty that accompanies a Torrens system would strengthen the capacity of First Nations to attract investments in their communities by removing any ambiguity as to the existence and priority of legal instruments related to these pieces of land. As such, they argue that the registry should rest on a legislative or regulatory framework that provides finality as to the existence and priority of legal instruments related to specific pieces of reserve land.

²⁹ Alcantara, pg. 422; Anderson and Parker, pg. 105.

While key informants were generally divided between these two views, relatively common ground was found on practical steps to take to strengthen the value of the registry: first, to clean up inconsistencies in its data, which a number of key informants stated are not currently reliable; second, to put in place formal policy or regulations. The program is currently working on ways to improve the registry function, which will be discussed in Section 4.1.

3.2.6 Continued Need for Band Moneys – Collecting Revenue from instruments

The 2013 evaluation of Indian Moneys, Estates and Treaty Annuities found that there is an ongoing need for Band Moneys because there is currently no widespread alternative to access these funds, given the requirements prescribed by the *Indian Act*.³⁰ Key informants for this evaluation noted that for some First Nations, this system is preferable over an outside trust as holding accounts with AANDC avoids fees they would have to pay otherwise. If a First Nation does not have enough revenue to make these other fees justifiable, it is preferable to remain with AANDC and as such, there is a continuing need for Band Moneys for some bands.

However, key informants also spoke about the importance of increased autonomy for First Nations, particularly in the area of governance over their moneys. Key informants felt that there is a need to shift toward a model where First Nations have more control over their moneys, such as the *First Nations Oil and Gas and Moneys Management Act* (FNOGMMA). FNOGMMA is an alternative piece of legislation, enacted on April 1, 2006, that allows First Nations to assume control of their capital and revenue trust moneys held by Canada; currently, there is one First Nation operating under the Moneys Management portion of FNOGMMA. In addition to FNOGMMA, there is a growing alternative Band Moneys design under the *Indian Act* to be discussed in Section 4.1.

3.2.7 A need for alternatives to the Indian Act

Key informants, case studies and literature review all suggest that providing a variety of land management options, including the *Indian Act* and the *First Nations Land Management Act*, best responds to a variety of ongoing needs among First Nations depending on their legal, administrative and economic capacity:

It is important to note that the argument that there is a continuing need for the land tenure system stemming from the *Indian Act* predominantly comes from key informants and documents review, whereas literature generally advocates either for changes to the current regime or for a move toward greater self-sufficiency under systems such as the *First Nations Land Management* regime.³¹

Key informants also expressed a range of opinions; for some, there will always be a need for AANDC to support some bands, particularly those with limited land management capacity. Others

³⁰ Aboriginal Affairs and Northern Development Canada, *Evaluation of Indian Moneys, Estates and Treaty Annuities*, 2013. Available at: <http://www.aadnc-aandc.gc.ca/eng/1382702626948/1382702680155>, pg. 13.

³¹ See Alcantara; various witnesses as quoted in House of Commons report; Bert Waslander, “First Nation Communities and Urban Economies,” *Canadian Issues* (2009): pgs. 241-252; National Aboriginal Economic Development Board, *Addressing the Barriers to Economic Development on Reserve*, April 2013. Available at: <http://www.naedb-cndea.com/addressing-barriers/>, 38 pgs; Stephen Cornell and Joseph Kalt, “Where’s the Glue? Institutional and Cultural Foundations of American Indian Economic Development,” *Journal of Socio Economics* (2000); Robert Anderson et al, “Indigenous Land Claims and Economic Development: The Canadian Experience,” *American Indian Quarterly* (2004): 28.3-28.4, pg. 636.

felt that the *Indian Act* land management regime is an unsustainable and ineffective system that does not adequately support economic development and constrains First Nations. For these key informants, the *Indian Act* was only the beginning of a ‘continuum’ of phases of responsibility, where First Nations could gain increasing land management control through RLEMP, the *First Nations Land Management* regime and, ultimately, self-government. As such, they felt that more resources should be devoted to transferring land management ability and capacity directly to First Nations as opposed to streamlining *Indian Act* procedures. The promotion of sectoral self-governance described by these key informants is aligned with findings from the literature that indicate primary efforts should be focused on increasing community control over land management.³²

According to key informants, the *Indian Act* and the *First Nations Land Management* regimes have differing advantages and disadvantages based on their respective regulatory requirements and levels of legal protection offered. A variety of land management tools will best respond to the ongoing need for land management across First Nations in Canada. Therefore, just as there is a continued need for AANDC’s involvement in land administration, there is also a continued need for alternatives to the *Indian Act* land tenure system.

3.2.8 A need for capacity-building alongside alternatives

Multiple sources indicate that the current level of technical land management expertise found in some First Nations is a hindrance to autonomous land management; as such, there is a continued need for capacity-building efforts such as RLEMP, and this need is fundamentally linked to *Administration of Reserve Land* and the transitional approach to the *First Nations Land Management* regime discussed in Section 3.2.7.

In a 2015 survey conducted by National Aboriginal Land Managers’ Association in Ontario of 48 land managers, 13 environment officers and 35 economic developments officers, respondents highlighted project management and strategic planning training as an ongoing need; specifically, 78 percent of lands and environment respondents said the most beneficial training they could take would be in land use planning and 62 percent of respondents also identified project management as an area in which they required training. Land managers also identified Geographic Information System technology, surveys and appraisals, and land instruments as the most beneficial and necessary training areas to their work. As two thirds of land managers and economic development officers participating in the survey indicated that there was no training plan in place for their positions, it is likely that there is a lack of skills development in the aforementioned areas. While results of this study cannot be taken as representative of the country or fully definitive in Ontario, the responses to the survey suggest an ongoing need for support in these areas.

³² Ibid.

Several key informants stressed the importance of AANDC's capacity-building role in reserve land management. It was suggested that capacity could be built by AANDC through greater funding and resources to assist in hiring land and environmental managers. Key informants indicated that the department's focus should not be on communities that can internally build capacity, but on communities that are unable to build capacity without AANDC's support. It should be recognized that although capacity building activities are officially a component of LEDSP (3.2.1), they still have an impact on, and are thus relevant to discussion of, 3.2.3.

3.3 Alignment with Government Priorities – A Commitment to Continuous Improvement

Administration of Reserve Land is aligned with government priorities. Specifically, the Government has signaled through the Federal Framework for Aboriginal Economic Development that one of its priorities is to modernize land management regimes.

The *Administration of Reserve Land* sub-program is aligned with government priorities, particularly the 2009 *Federal Framework for Aboriginal Economic Development*. In particular, the framework calls for enhancing the value of Aboriginal assets, and specifically for a modern lands and resource management regime, speaking to the need for modernizing *Indian Act* land management practices.³³ Moreover, the framework establishes that Additions to Reserve “are considered essential to economic progress.”³⁴ This support is reiterated in the 2011 Canada-First Nations Joint Action Plan and the 2013 Speech from the Throne, in which the Government stated that it would “continue to work in partnership with Aboriginal peoples to create healthy, prosperous, self-sufficient communities.”³⁵ As such, the program links to the broader government priority in two clear ways: a simple-to-use Additions to Reserve process allows First Nations to create or expand a land base that facilitates economic development; and a modern land management system allows First Nations to more readily create legal instruments through which to leverage economic opportunities. Thus, it is clear that not only is the program aligned with government priorities, but that a stated government priority is in fact to continually improve the program. The extent to which staff have been engaged in improvement during the evaluation period is discussed in Section 4.1.

³³ Government of Canada. *Federal Framework for Aboriginal Economic Development*, 2009. Available at: <https://www.aadnc-aandc.gc.ca/eng/1100100033498/1100100033499>, pg. 12.

³⁴ Ibid., pg. 8.

³⁵ Canada-First Nations Joint Action Plan, 2011. Government of Canada. *Speech from the Throne: Seizing Canada's Moment-Prosperity and Opportunity in an Uncertain World*, October 16, 2013. Available at: <http://www.lop.parl.gc.ca/ParlInfo/Documents/ThroneSpeech/41-2-e.html>.

At the beginning of the evaluation period, in 2009-10, the Report on Plans and Priorities listed completing Treaty Land Entitlement ATRs as a priority.³⁶ ATRs continued as a priority during the evaluation period; the 2013-14 Report on Plans and Priorities lists streamlining the ATR process as a priority.³⁷ Moving forward, the program is also a priority for AANDC; the 2014-15 Report on Plans and Priorities states that improving leasing on-reserve through implementation of the new locatee lease policy and guidelines as well as improving the ATR policy and tracking system are priorities.³⁸

Furthermore, the 2014-15 Report on Plans and Priorities noted that updating the *Indian Oil and Gas Regulations* as a means to facilitating oil and gas activities for economic development is a government priority as well.³⁹

³⁶ Indian and Northern Affairs Canada and Canadian Polar Commission, *Report on Plans and Priorities* 2009-10. Available at: <http://www.tbs-sct.gc.ca/rpp/2009-2010/inst/ian/ian00-eng.asp>, pg. 23.

³⁷ Aboriginal Affairs and Northern Development Canada and Canadian Polar Commission, *Report on Plans and Priorities* 2013-14. Available at: <https://www.aadnc-aandc.gc.ca/eng/1358878144010/1358878190743>, pg. 41.

³⁸ Aboriginal Affairs and Northern Development Canada and Canadian Polar Commission, *Report on Plans and Priorities* 2014-15. Available at: <https://www.aadnc-aandc.gc.ca/eng/1389716657979/1389716765770>, pg. 56.

³⁹ Aboriginal Affairs and Northern Development Canada, *Report on Plans and Priorities* 2014-15. Available at: <https://www.aadnc-aandc.gc.ca/eng/1389716657979/1389716765770>, pg. 56.

4. Evaluation Findings – Performance (Effectiveness / Success)

4.1 Design and Delivery – Improvements over the Evaluation Period

4.1.1 *The program has undertaken significant work during the evaluation period to improve its design and delivery in response to the Federal Framework for Aboriginal Economic Development as well as previous evaluations, audits and Parliamentary reports.*

The *Federal Framework*, as discussed above, calls for the modernization of the land management regime and also recognizes the importance of Additions to Reserve moving forward. The program has focused both on Additions to Reserve and on the land transactions processes during the period under review.

Improving the Design and Delivery of Additions to Reserve

Regarding Additions to Reserve, the Government and the Assembly of First Nations committed to reforming the ATR policy and process in their 2011 joint action plan.⁴⁰ The Senate report on Additions to Reserve further strengthened this mandate by recommending the program identify policy options for: allowing pre-reserve designations on land to be added to reserve; support mechanisms for First Nations in negotiating with municipalities; best practices to avoid predatory pricing of land; and streamlining procedural requirements for ATRs, as was also identified in a 2009 Report from the Office of the Auditor General.⁴¹ Similar recommendations either on addressing specific challenges in the process or on revising the federal policy have also come from the Office of the Auditor General (2009),⁴² a 2013 AANDC Audit of the Additions to Reserve process,⁴³ a 2010 AANDC evaluation of Contributions for land management⁴⁴ and the 2014 House of Commons report on land management.⁴⁵ The program has since followed up by working with National Aboriginal Land Managers' Association to develop a toolkit for supporting communities through the ATR process; the National Additions to Reserve Tracking System has also been implemented to more easily monitor progress of ATR files.⁴⁶ Furthermore, where a revised policy was recommended AANDC responded by noting it has completed a draft of a new policy anticipated to mitigate some

⁴⁰ Canada-First Nations Joint Action Plan.

⁴¹ Standing Senate Committee on Aboriginal Peoples, *Additions to Reserve: Expediting the Process*, Nov. 2012. Available at: <http://www.parl.gc.ca/Content/SEN/Committee/411/appa/rep/rep09nov12-e.pdf>, pg. 2.

⁴² Office of the Auditor General. *2009 Fall Report of the Auditor General of Canada: Chapter 6- Land Management and Environmental Protection on Reserves*, 2009. Available at: http://www.oag-bvg.gc.ca/internet/English/parl_oag_200911_06_e_33207.html, 42 pgs.

⁴³ Aboriginal Affairs and Northern Development Canada, *Audit of the Additions to Reserve Process*, Feb 2013. Available at: <https://www.aadnc-aandc.gc.ca/eng/1382618250857/1382618295002>, 23 pgs.

⁴⁴ Aboriginal Affairs and Northern Development Canada, *Impact Evaluation of Contributions to Indian Bands for Land Management on Reserve*, 2010. Available at: <https://www.aadnc-aandc.gc.ca/eng/1348773650044/1348773804939>, 87 pgs.

⁴⁵ House of Commons of Canada. *Study of Land Management and Sustainable Economic Development on First Nations Reserve Lands*, March 2014. Available at: <http://www.parl.gc.ca/content/hoc/Committee/412/AANO/Reports/RP6482573/AANOrp04/aanorp04-e.pdf>.

⁴⁶ Government of Canada, Response letter to Senator White regarding Senate Additions to Reserve Report, 2012. April 2013. Available at: <http://www.parl.gc.ca/Content/SEN/Committee/411/appa/rep/rep09GovResponse-e.pdf>.

of the issues faced during the ATR process (discussed in Section 4.2.1 of this report). However, it is important to note that this policy has yet to be approved and formally adopted.

Improving the Design and Delivery of Land Surveys

The 2013-14 Departmental Performance Report notes that AANDC and Natural Resources Canada worked during the evaluation period to improve survey administration by implementing electronic approvals, removing duplication of survey efforts and ensuring instructions provided to surveyors are clearer; ultimately, the report suggests, these efforts streamline the process so that surveyors can make greater use of the survey season and provide higher quality legal descriptions.⁴⁷

Key informants also indicated that an interdepartmental letter of agreement was signed between AANDC and Natural Resources Canada to clarify the minimum requirements for a survey and therefore to lower the costs of survey products.

Improving the Design and Delivery of Land Transactions

The program has also taken steps to improve several types of land transactions. In particular, Section 207 of the *Jobs and Growth Act 2012* amended the *Indian Act* so that a simple majority vote is required to designate land on-reserve, which can save a significant amount of time and money (discussed further in Section 4.4.2). This has been accompanied by a Designations toolkit and training similar to that for ATRs to support communities through what can sometimes be a complicated process.

The program has also been working to simplify policies. For example, during the evaluation period, a new 'locatee lease policy' was developed; one legal expert explained that the policy clarifies that individuals can choose the fees of their leasing as long as they have documents confirming their rights related to the land. Though not why the policy was implemented, this has the added benefit of saving AANDC money as it removes the expensive appraisal step. Furthermore, the policy clarifies that individuals can lease to themselves, which makes mortgaging easier as individuals can demonstrate they have a defined interest in the land.

Key informants noted that one of the most effective actions the program has taken to respond to the commitment of modernizing land management has been to develop templates for legal instruments. A new commercial lease template, for example, has been developed and implemented to simplify commercial leasing activity on-reserve, making land transaction processes quicker and less expensive. Key informants noted, in fact, that having access to these templates not only streamlines the process, but can save First Nations legal fees they would otherwise be paying for the drafting of contracts in an off-reserve context.

Improving the Design and Delivery of Indian Oil and Gas

The program is currently engaged in updating its oil and gas regime to ensure it continues to be effective and efficient for the First Nations that use it.

⁴⁷ Aboriginal Affairs and Northern Development Canada and Canadian Polar Commission, *Departmental Performance Report 2013-14*. Available at <https://www.aadnc-aandc.gc.ca/eng/1403266180077/1403266487720>, pg. 81.

Key informants noted that modernizing the *Indian Oil and Gas Act*, 1974, and its associated regulations is intended to eliminate the existing regulatory gap. Levelling the playing field between off-reserve and on-reserve oil and gas activities will reduce barriers to economic development and will allow the federal government to better fulfill its obligation to manage oil and gas resources on First Nations lands.

The proposed amendments to the Act address the need to manage all aspects of industry operations on First Nation lands. In addition to modernizing dated regulations and providing greater certainty for all stakeholders, the amendments will help to ensure environmental protection of First Nation lands, increase regulatory compliance, and facilitate the collection of royalties and other monetary compensation due.

Although now passed into law, the amended *Indian Oil and Gas Act* will not come into force until there are new *Indian Oil and Gas Regulations*. A joint process is currently underway with oil and gas producing First Nations and the Indian Resource Council to develop the new regulations.

Improving the Design and Delivery of the Indian Land Registry

Key informant views on how to improve the Indian Land Registry are in line with several reports developed during the evaluation period: In March of 2014, a comprehensive study of land management by the House of Commons recommended modernizing the current land registration process.⁴⁸ Program staff responded by undertaking two studies – one of the information technology platform for the Indian Lands Registry System (discussed in Section 5.1) and one on the use of the registry and its operational processes. The latter review has explored options for changing the registry’s structure to enhance its value for economic development and economic analysis. These changes could include:

- Making registered instruments easier to find for the purposes of First Nations, banks, and other users.
- Including more metrics such as number of instruments as well as how much revenue they generate.
- Putting in place formal regulations for the operation of the registry. The FNLM registry, in comparison, is governed by regulations and allows the prioritization of competing interests for the same parcel of land; in other words, the FNLM registry assigns greater legitimacy to one instrument when two conflicting instruments have been registered for the same parcel of land.

Improving the Design and Delivery of Band Moneys

The evaluation of Indian Moneys, Estates and Treaty Annuities found that capital and revenue accounts are growing, demonstrating some success in the Band Moneys activity.⁴⁹ As discussed in Section 2.1, Band Moneys were not a significant focus of this evaluation and as such performance was not specifically examined. However, key informants noted that there are nonetheless continuing delays in providing access to these moneys, which First Nations argue presents a barrier to

⁴⁸ House of Commons, pg. 69.

⁴⁹ Aboriginal Affairs and Northern Development Canada, *Evaluation of Indian Moneys, Estates and Treaty Annuities*, pg. 19.

economic development. In particular, for capital accounts there are many approval stages for releasing funding to First Nations such as examination of financial audits. Case study participants in one community expressed concern over lengthy delays and noted that without timely access to money, economic development on the reserve slows down and band members have to borrow and cash-manage to make payments on leases.

Regional office participants also suggested that First Nations with significant capital revenue generation may prefer alternative moneys management options rather than the current structure under AANDC. This issue has arisen before and has resulted in a growing design and delivery alternative for the program. Under Section 64 (1)(k) of the *Indian Act*, the Minister is given the authority to release capital funds for use for any reason they deem to be in the benefit of the band. Current Band Moneys precedent is evolving in this area as a result of two court cases involving Samson and Ermineskin First Nations in Alberta. These two communities are being transferred direct control over their capital moneys under Section 64(1)(k) of the *Indian Act*.⁵⁰

Key informants noted that recently other First Nations have decided to pursue this option as well, which may yield favourable results and present a strong design and delivery alternative to the current Band Moneys structure. Key informants also noted that it may prove to be an easier alternative than the *First Nations Oil and Gas and Moneys Management Act*. They stated in particular that FNOGMMA has challenges around financial bonding requirements and community vote thresholds. Its statutory requirements oblige First Nations to develop financial codes, whereas they noted that the 64 (1)(k) option simply requires them to have a trust agreement with the chosen trustee. For future evaluation work, Capital trust accounts' performance under this alternative should be closely monitored.

4.2 Performance – Areas for Further Improvement

4.2.1 Additions to Reserve

The Treaty Land Entitlement Model

Additions to Reserve data demonstrate that the Treaty Land Entitlement model facilitates Additions to Reserve well: there were 197 Additions to Reserve (more than 350,000 acres of land) during the period covered by the evaluation, 120 of which were processed under the Treaty Land Entitlement category. Best practices under the Treaty Land Entitlement category of Addition to Reserve include pre-reserve designations of land to be added to reserve and ministerial rather than Order in Council approval.

Key informants, case study participants and document review all confirm that the TLE model expedites the ATR process.⁵¹ This is corroborated by program data, which show that of the 197 ATRs processed during the evaluation period, 120 (61 percent) were TLE ATRs. The TLE model applies to the legal obligations category of ATR specifically under unique claims settlement legislation in Alberta, Saskatchewan and Manitoba: the *Manitoba Claim Settlements Implementation Act* and the *Claim Settlements (Alberta and Saskatchewan) Implementation Act*. ATRs processed under the TLE model are distinct in two ways:

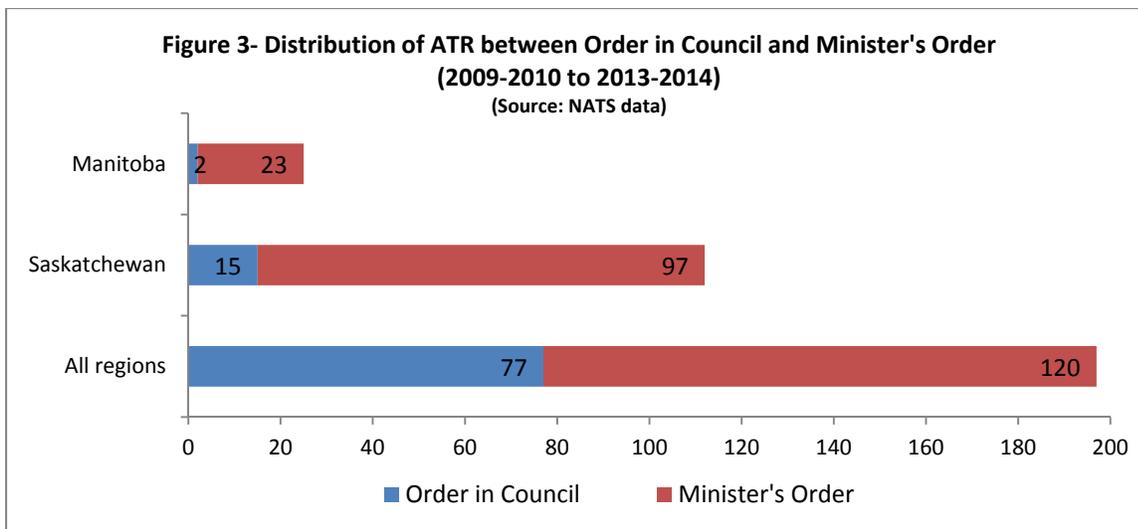
⁵⁰ Ibid., pg. 15.

⁵¹ House of Commons, pg. 41.

First, communities are allowed to conduct votes on designations of the land *before* it is added to reserve.⁵² Key informants note that the pre-reserve designation approach can facilitate the process because a common challenge for ATRs is the wariness of third parties regarding their interest in the land once it falls under the reserve framework, given the *Indian Act's* unique rules and its leasing restrictions. These key informants suggest that having the land pre-designated for commercial or industrial interests, however, helps demonstrate to third parties that there is consent from the band for their activities to continue when the land is added to the reserve.

Second, the claims settlement legislation allows for an ATR to be approved via Ministerial Order rather than via an Order in Council, which is required in all other ATR cases.⁵³ Several key informants suggested that ministerial approval tends to be a quicker process than Order in Council approval as there is typically an extra stage of analysis applied by central agencies regarding the net benefit of the ATR. This is in contrast to legal obligation ATRs, which are not subject to this analysis given that they have already deemed to be a legal obligation.

Case study key informants noted that the TLE model generally makes the ATR process faster, and this is corroborated by program administrative data. As Figure 3 demonstrates, significantly more TLE ATRs were processed than Order in Council ATRs:



Sixty-one percent of the ATRs approved during this period were completed by Ministerial Order. Moreover, Figure 3 indicates that Saskatchewan and Manitoba, where the special legislation applies, are the provinces that have had the highest volume of ATRs processed during the evaluation period. Saskatchewan had a total of 112 of the 197 ATRs approved during the evaluation period. In terms of total acres, Manitoba First Nations received the most: 147,981, representing 42 percent of the total land added to reserve.⁵⁴

⁵² Ibid.

⁵³ Ibid.

⁵⁴ It should be noted that while this is an impressive figure, acreage may not be the best indicator for progress on ATR files; 100 acres in a remote setting may be substantially easier to process than one acre in a municipality as the land may have fewer third party interests to accommodate.

One notable exception to the trend of most ATRs processed being TLE ATRs is that during the evaluation period, 34 non-TLE ATRs were completed in British Columbia. Of these, 19 were completed in 2013-14, following the establishment of the regional support centre. However, while this figure may at first appear to be a result of the support centre's influence, regional key informants note that the reason for a higher level of processing in that fiscal year is because First Nations placed additional emphasis on having ATRs completed, particularly those for specific claims; the regional office responded by devoting more time and effort to ATR files relative to other work. As such, data combined with key informant responses suggest that when additional resources are devoted to the process, non-TLE ATRs can also be expedited. Nonetheless, the overall data suggest that it is easier to have a TLE ATR processed using the same level of resources as a non-TLE ATR.

Thus, data, documents and key informants demonstrate that the TLE model has been very successful at expediting the Additions to Reserve process. The House of Commons report from 2014 suggested including key elements of the TLE model into future ATR policies or legislation.⁵⁵

ATRs pre-approval - challenges

Although the TLE model has been successful, challenges remain in the ATR process. Generally, there are several key steps in the ATR process⁵⁶: the First Nation selects the land (which can be federal Crown, provincial Crown or private land), negotiations are undertaken with anyone who has a formal interest in the land, and then approval is requested from the Government (in principle from the Regional Director General and then from Headquarters and, finally, is subject to either ministerial or Governor in Council⁵⁷ processes). During the stakeholder negotiation portion of the process, First Nations often experience difficulty engaging third parties. The 2012 Senate report, for example, noted that municipalities and other third parties can sometimes be unwilling to negotiate in good faith.⁵⁸ In some cases, while the final decision rests with the federal government, a refusal on the part of municipalities and other third parties to negotiate can significantly stall the Additions to Reserve process. As discussed above, pre-reserve designations of land under the TLE model can ease third parties' concerns regarding their legal instruments by demonstrating the land in question can continue to be leased to outside parties following conversion to reserve status. Working to address third parties' concerns in this way can move the ATR process along more quickly. In other cases, easements are offered on specific portions of the land for these third party interests.

⁵⁵ Ibid.

⁵⁶ Although a number of other steps occur in the ATR process, those listed here represent the major milestones.

⁵⁷ If the ATR requires Governor in Council approval, the Agreement in Principle is given by the Minister, not by the Regional Director General.

⁵⁸ Standing Senate Committee on Aboriginal Peoples, pg. 1.

During other ATR processes, First Nations have found that third parties price land at higher than market value, knowing that the land is of significant value to First Nations given cultural attachment and/or economic potential; the 2012 Senate report on Additions to Reserve refers to this as “predatory pricing.”⁵⁹

Other notable challenges include negotiating municipal service agreements. In cases where First Nations are gaining access to pre-existing services such as water distribution and garbage collection, they must negotiate agreements for continued service delivery. Ideally, municipalities always negotiate in good faith; however, witnesses to the Senate committee for its 2012 report on Additions to Reserve noted that sometimes negotiations are strained and delayed because municipalities do not want to see the Addition to Reserve processed.⁶⁰

Generally speaking, these types of challenges can delay the ATR process, resulting in significant costs such as legal fees and missed opportunities. While they are beyond the influence of the program, they are important to note given their impact on the program’s stated goal of adding acres to the collective reserve land base.

ATR approval process

Lengthy approval processes, particularly during the Order in Council process, are a significant challenge for Additions to Reserve.

In 2009, the Office of the Auditor General recommended developing service standards for the ATR process, which the Government recommitted to do in 2013 as part of its new policy.⁶¹ These service standards have yet to be put in place as the policy is awaiting approval, and the Department has not yet given formal estimates as to how long the ATR process does or should typically take. Without service standards in place as to how long the processing of an ATR should typically take, one cannot label the lengthy approval process as a delay.

Key informants were of the opinion, however, that the ATR approval process can be quite lengthy, suggesting that often several years pass before negotiations with third-party interests are resolved. In particular, it was noted that ATRs submitted for Order in Council face significant extra scrutiny as there can be a lengthy discussion whereby the Treasury Board Secretariat seeks to determine the net benefit of the ATR in question. While some of the challenges of the ATR process are beyond the control of program staff, some of the recommendations from previous evaluations, audits and other reports on the ATR process were addressed with the expectation that a new ATR policy is being considered. This policy is designed to streamline the approval process, including a standard assessment of questions typically asked by the Treasury Board Secretariat. The policy has been drafted but has yet to be approved. However, if the policy is not approved, it is worth considering other measures to facilitate the approval process given the significant weight the ATR policy is given in the Report on

Best practice: Saskatchewan office has gone paperless by scanning all ATR documents. This saves on paper costs and billing from the Department of Justice for travel.

⁵⁹ Ibid, pg. 2.

⁶⁰ Ibid., pg. 14.

⁶¹ Government of Canada, Response letter to Senator White regarding Senate Additions to Reserve Report, 2012. April 2013. Available at: <http://www.parl.gc.ca/Content/SEN/Committee/411/appa/rep/rep09GovResponse-e.pdf>.

Plans and Priorities and responses to previous evaluations, audits and Parliamentary reports (as discussed in sections 3.3 and 4.1.

ATR policy and support

There can be significant benefits to Additions to Reserves, including economic opportunity, cultural significance and historic redress.⁶² The businesses that the evaluation team saw during case studies emphasized that ATRs can contribute significantly to the economic development of First Nations. Therefore, the implication of overly lengthy ATR processes is that economic opportunities may be lost. Furthermore, some regional staff spoke of the importance of maintaining the Honour of the Crown by working toward achieving commitments made on specific ATRs and maintaining a healthy relationship with First Nations in their region. They felt that the challenges experienced with ATR put the Department at risk for strained relationships.

In light of the benefits of ATRs, there are several areas of support in Lands and Economic Development for navigating what can otherwise be a lengthy and expensive process. During the evaluation period, for example, program staff created an internal website where staff across the country can share templates and best practices to facilitate the approvals process. In December of 2012, two Regional Support Centres were also created to facilitate this process: one in Saskatchewan for TLE ATRs, and one in Toronto for non-TLE ATRs. These support centres are mandated to maintain up-to-date templates for key documents and to perform a quality control check by reviewing at least 10 percent of submissions to Headquarters. The work of these support centres will be discussed further in Section 5.1.

As discussed above, the evaluation period also saw the creation of an ATR toolkit created by National Aboriginal Land Managers' Association with support from Lands and Economic Development to help communities in the pre-approval process. Moreover, a new stream of funding became available under LEDSP for land management purposes, including costs associated with ATRs (such as access to legal advice, costs associated with meeting third parties, etc.).

Nonetheless, it is important to note that the key challenges outlined above remain. The best practices found under the TLE model of ATR suggest a way forward for non-TLE ATRs, and are thus an option for senior management and policymakers to consider. While the new ATR policy is in draft stage only, the Department is currently considering modeling the process for economic development ATRs after those under the 'legal obligations'

Best practice: Allowing pre-reserve designations and ministerial approvals speeds up the ATR process

Multiple stakeholders have emphasized that a renewed ATR policy would significantly improve the Additions to Reserve process.

category. Additional changes likely to be included are a clearer role for AANDC in assisting in negotiations with third parties, a joint work plan with the First Nation required at the beginning of the process to clarify responsibilities, and service standards (mentioned above) for timelines on the Additions to Reserve process. The potential new policy may also include a standardized 'Net Benefit Assessment' element to ATR packages to assist central agencies in determining

⁶² Aboriginal Affairs and Northern Development Canada, *Impact Evaluation of Contributions to Support Land Management*, pgs. vii, 26; Aboriginal Affairs and Northern Development Canada, "Lands," <http://www.aadnc-aandc.gc.ca/eng/1100100034731/1100100034735>.

whether applications should be approved.

It remains to be seen whether this new ATR policy will be approved. However, in the meantime, staff should consider examining other strategies for shortening the ATR approvals process.

4.2.2 Performance - Land Surveys

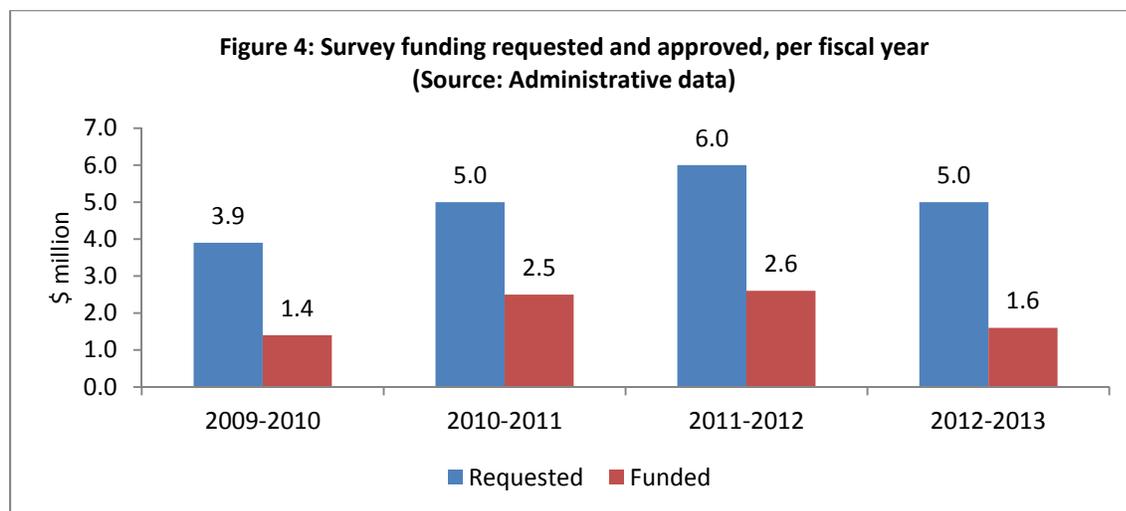
Given that clearly-defined land parcels are a requirement for land activity on reserve, key informants and case study participants indicate that limited access to land surveys creates a barrier to community land-related needs. However, innovative approaches to survey work such as Geographic Information System technology, emphasis on land-use planning and capacity-building to conduct surveys locally could make surveys more accessible.

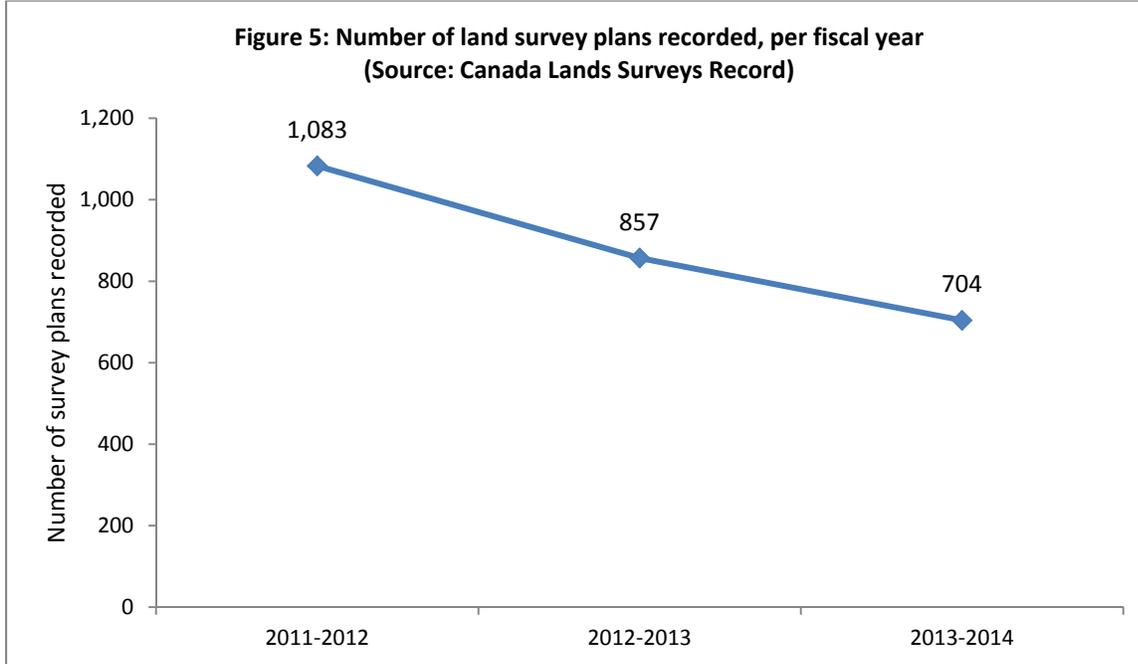
The land survey resource gap

There are two types of Canada lands surveys: Official plans are for reserve boundaries and are required for lands work such as Additions to Reserve and Section 35 transfers. As per the 2014 agreement between AANDC and Natural Resources Canada, these are approved by the regional offices instead of Headquarters. Administrative plans, in contrast, are for internal boundaries and apply to land instruments such as leases, Certificates of Possession and Occupation, and Designations. These can now be approved at the band level.

Currently, the Department maintains some funding for land surveys deemed to support economic development (such as for Designations, Section 35 surrenders and ATRs), and \$750,000 of this funding is administered through the *Administration of Reserve Land* sub-program by the National Aboriginal Land Managers' Association. Survey funding can also be accessed through LEDSP's targeted pot of funding for land management capacity. It should be noted that the Department does not offer funding for Administrative plans on individual allotments.

During the evaluation period, an average of 40 percent of requests per year were funded. Figure 4 shows the amount of funding requested and the amount of funding approved from 2009-10 to 2012-13, and Figure 5 shows the number of surveys recorded from 2011-12 to 2013-14:





As can be seen in Figure 4, survey demands significantly exceed survey funding. Moreover, as Figure 5 demonstrates, the total number of land surveys recorded per year has decreased since 2011-12. Thus, there is a substantial gap between what First Nations have identified as a need for surveying and the surveying resources AANDC can provide. It is important to note as context that some of the requests made are deemed ineligible for funding as they are related to needs other than economic development.

The implications of the land survey resource gap

Without access to land surveys, not all First Nations will be able to maintain clearly defined parcel fabric on-reserve. However, evaluation findings indicate that ensuring clearly defined parcel fabric on-reserve is one of the essential steps to ensuring communities have a land base that can facilitate economic activities and other community needs such as clearly defined lots for the purposes of housing.

For example, the evaluation team visited Kahkewistahaw First Nation in Saskatchewan as part of its case study work. As can be seen in Figure 6 below, Kahkewistahaw is unique amongst reserves in Canada as a significant majority of its land (in red) falls under the *Indian Act*, whereas other land parcels fall under the *First Nations Land Management Act*. Kahkewistahaw, the province, and the federal government are currently trying to clarify the northern boundary of the community's main reserve. Due to movement of the river along this boundary, there have been changes in the jurisdictions under which certain parcels of land fall. However, as one case study participant noted, the survey work is difficult to afford, which slows down the process. Until this is resolved, this land cannot be brought under the community land code.

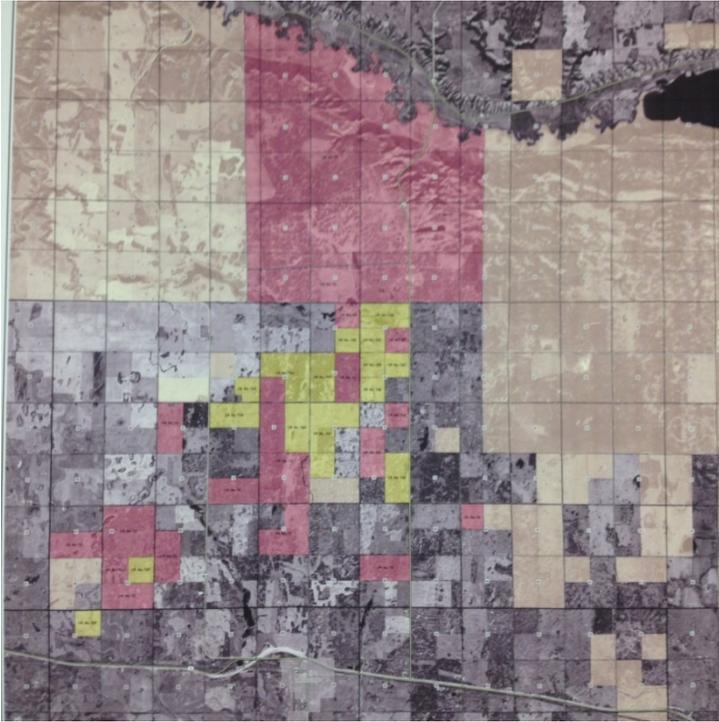


Figure 6 – Kahkewistahaw First Nation Parcel Fabric

As one participant noted, Kahkewistahaw’s First Nations Land Management land code works well and is preferable for facilitating business on the reserve. As such, a lack of resources for land surveys is currently slowing Kahkewistahaw’s process of economic development.

There was significant concern among key informants that many First Nations face the same challenges as Kahkewistahaw and are unable to access enough funding for surveys. Specifically, many First Nations are not in a position to pay for the Administrative plans necessary to maintain a clear parcel fabric. Key informants and case study participants expressed concern that parcel fabric may become unclear in future given the extent to which natural landscape changes and properties change hands. Lack of clear parcel fabric in turn would make using the formal land management system under the *Indian Act* difficult as clearly defined parcels are a requirement for most land transactions. Therefore, there is a risk that a lack of survey funding has implications for future community needs on-reserve.

Addressing the land survey resource gap

While providing more funding would be one option, the gap in surveys requested versus surveys funded is significant (\$3.4 million for 2012-13 as can be seen in Figure 4) and so closing this gap likely falls outside of the program’s resourcing ability. An alternative approach, however, could examine whether land surveys can be conducted in a more cost-effective manner so as to facilitate First Nations’ abilities to pay for them from own-source revenue.

Key informants argued that the current system requiring surveys to be conducted by a federally certified Canada Lands Surveyor (as per Section 26 (1) of the *Canada Lands Surveys Act*) is cost-prohibitive. While key informants were unable to provide exact statistics, estimates on these costs ranged from two to three times the cost of a survey under the provincial system off-reserve. In addition to the administrative costs of facilitating work between AANDC, Natural Resources Canada and First Nations as well as the sometimes remote nature of the work, there are relatively few federally certified lands surveyors as compared to the provincial certified lands surveyors. A limited supply in the labour pool appears to be driving up costs.

It should be noted that AANDC has taken steps to reduce the cost of surveys where possible. For example, as mentioned in Section 4.1, the Department recently signed an interdepartmental letter of agreement with Natural Resources Canada to clarify the minimum requirements for land surveys. It is hoped that this clarification is a first step toward making surveying less costly. Other options suggested by key informants included: funding more surveys related to economic development and recovering the costs when the given parcels of land begin to generate rent; more use of the Geographic Information System technology; and a pilot project whereby First Nations technicians would be trained to conduct survey work, with Natural Resources Canada assuming an approval role.

Going forward, one expert in surveying argued that a greater emphasis on land use planning would better leverage funding for surveys. According to this key informant, a land use plan gives a First Nation a better sense of its total land base. It also allows a First Nation to more clearly understand the land that is of economic value and the environmental requirements to keep in mind when developing land. By having a clearer sense of their opportunities and requirements, First Nations would be able to make survey requests in a more strategic manner. Several other key informants also mentioned the value of land use planning as a means of facilitating economic development.

Currently, the LEDSP program provides some funding for land use planning, and greater collaboration between the two programs could enhance the value of limited survey funding. As the Lands and Environment Management Branch is engaged directly with First Nations regarding land surveys, and thus has a strong understanding of survey needs, there is an opportunity to work with LEDSP staff to ensure that funding for land use planning helps to address the need for survey funding. Specifically, land use planning done in areas where surveys have been requested could provide First Nations with more information about their land and the potential opportunities and barriers that it contains.

Recommendation: Increase collaboration and efforts to facilitate community planning around land, including land surveying that will enable opportunities for economic development.

4.2.3 Creation and Registration of Land Instruments and Transactions

Volume of land transactions under the Indian Act

An assessment of the volume of land transactions under the *Indian Act* reveals the following: There has been significant use of the formal *Indian Act* land management system during the evaluation period; however, transactions under the FNLM and self-government registries demonstrate they are growing as viable alternatives; finally, transaction volume is not a sufficient indicator of economic development as the volume of instruments registered does not necessarily correlate with revenue generated.

The *Administration of Reserve Land* sub-program's Performance Measurement Strategy, adopted in March 2014, lists 'facilitating greater revenue-generating opportunities for involved First Nations' as an immediate outcome. This is measured in part by the number of legal instruments being actively managed.

The evaluation has found that the number of land instruments on-reserves is growing. Just over 48,000 land transactions were registered on-reserve during the period covered by the evaluation, of which 71 percent are related to instruments on *Indian Act* reserves. This is a clear indicator of land-related activity occurring on-reserves under the *Administration of Reserve Land* sub-program. Moreover, it is a strong indicator of the Crown fulfilling its role as set out in the *Indian Act*.

Comparison with other registries

A review of administrative data from land registries during the evaluation period shows that while land instruments in the Indian Land Registry grew by six percent (34,423 new instruments) during the evaluation period, communities under FNLM saw increases of 13 percent (8,390 new instruments) in the number of active instruments on-reserve; for self-governing First Nations this figure was even higher at 26 percent (5,579 new instruments). The data are captured in Table 2 below. This shows that there is a growing uptake of these alternatives to the *Indian Act*, highlighting the importance of providing a variety of land management options to First Nations.

Land regimes	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	Total
<i>Indian Act</i>	7,760	6,882	7,736	6,297	5,748	34,423
FNLM	1,823	1,656	1,803	1,724	1,384	8,390
Self-governing First Nations	1,063	1,150	1,306	945	1,115	5,579
Total	10,646	9,688	10,845	8,966	8,247	48,392

Sources: Indian Land Registry System, First Nations Land Registry System and Self-Governing First Nations Land Register

Assessing revenue-generating opportunities

While at a surface level these data suggest First Nations under FNLM and self-government are experiencing higher growth in revenue-generating opportunities, the volume of land transactions may not be a sufficient indicator to determine whether revenue-generating opportunities are in fact increasing. Whereas ten transactions registered in one year could be for instruments not designed to generate revenue, one transaction registered in the next year could be a permit for a gravel business with substantial revenue-generating potential. This challenge reinforces the need for adequate metrics in the Indian Land Registry such as revenue generated from leases and permits.

Further complicating analysis is the substantial regional variation in the types of transactions that occur. For example, whereas Certificates of Possession are quite common in Ontario and there are roughly 11,000 active Certificates of Possession in British Columbia, there are only about 250 Certificates of Possession in Saskatchewan. In contrast, Saskatchewan First Nations seem to prefer land designation; program data indicate that between February 2013 and March 2015, Saskatchewan submitted more than 50 percent of total Designations to Headquarters. One key informant in the Saskatchewan region suggested that historic treaties in the province have created a tradition of land that is communally-held rather than being divided into individual holdings.

Factors affecting formal registration

While it is difficult to assess from data whether revenue-generating opportunities are increasing, literature and documents reviewed outline the factors that are likely to affect uptake of the formal land management system. An internal AANDC presentation estimates that only 10 percent of First Nations under the *Indian Act* have mortgage and lease activity that is formally registered. Allotments given to members without approval by the Minister are known as “customary allotments” and use of land by a third party outside of *Indian Act* provisions is generally referred to as “buckshee” arrangements. These are organized exclusively by the band and band members without AANDC’s involvement. While First Nations can choose how to organize their lands, it should be noted that customary allotments do not have legal protection as they are not formally recognized under the *Indian Act*. This may present barriers to economic development as, from a legal standpoint, there is limited certainty regarding an individual’s title when leasing property. If a dispute over a customary allotment were to occur, anyone having developed land on the parcel or who claimed interest in it would have to resolve the issue without the support of a court and could risk losing their investment.

In one study of land management on-reserves reviewed for the evaluation, the authors examined factors affecting what they refer to as ‘lawful possession’, focusing on Certificates of Possession in comparison to informal systems. It did not examine designated lands. At the time it was written, the study found that 54 percent of Certificates of Possession are in Ontario, followed by 22 percent in Quebec and 19 percent in British Columbia, leaving the remaining five percent spread across the other regions.⁶³ Overall, the study suggests, Certificates of Possession only cover 2.93 percent of total reserve land.⁶⁴ The communities that do take advantage of this particular land instrument tend to be smaller, closer to urban areas and have higher rates of education and employment.⁶⁵ The

⁶³ Brinkhurst and Kessler, pg. 7.

⁶⁴ Ibid.

⁶⁵ Ibid., pg. 11.

authors conclude that “allotting, registering and administering land through the federal system is likely not a priority for bands or individuals struggling with poverty, given costs and effort involved, both on the band and individual level.”⁶⁶

These findings could suggest a number of implications: perhaps, as they have noted, the research indicates that the system is complex and requires resources and education to navigate, leaving lower-capacity communities unable to effectively take advantage of the certainty provided by formal land management. However, an alternative explanation is that for bands with less economic opportunity (given factors such as proximity to an urban centre, levels of education or less economically productive land), there is less incentive to use the *Indian Act* land management system.

Best practice: RLEMP funding under LEDSP that allows for a dedicated land manager helps communities to strengthen their formal land tenure regimes.

During case studies evaluators heard that with significant community communication and persistent efforts to ensure land transactions are registered, the number of buildings being built with formal permits has increased significantly during the evaluation period. As such, the community has defined boundaries in place to strengthen the clarity of parcel fabric on-reserve. While this may be a simple matter of choice for many First Nations, it is also important to consider the barriers present in the *Indian Act* land management regime, which may affect its uptake and how the Department can make changes to make the system as simple and efficient as possible.

Challenges in land administration

Key informants expressed concern that challenges in land administration processes and structures persist, particularly lengthy land designation processes and restrictive interpretations of legal requirements. These challenges can present barriers to economic development by causing processing delays and risk-aversion that may not be conducive to business:

While program staff have made significant efforts to streamline land management practices under the *Indian Act*, there are still challenges that may affect First Nations’ decisions to use the system and their ability to shape economic development.

The most universal theme to emerge from discussions with key informants around the adequacy of land administration under the *Indian Act* was a discussion of the limitations associated with the requirement to obtain a land designation before a lease can be issued to an outside party. Assuming that attracting businesses to reserves contributes to economic development, designations then become a crucial determinant of this process. Improvements have been made to this process under the *Jobs and Growth Act*, such as the removal of the requirement for a ‘double majority’ approval in communities. However, several key informants and case study participants stated that the designation process is still lengthy and expensive. To undergo a Designation, a community requires a survey, and must then obtain community approval. This includes conducting a vote, and there are costs associated for both the Department and the community in issuing ballots, explaining the Designation to community members, and then assisting them with the voting process. All of this occurs for the purpose of leasing a piece of land to a non-band member for business activity, and

⁶⁶ Ibid., pg. 20.

can take several years to accomplish. Participants in a case study of a First Nations economic development conference in Nipissing, Ontario, reiterated that outside businesses and investors prefer a two-week turnaround time for settling contracts, and that the *Indian Act* land regime is not designed for this. These perspectives, of course, should be balanced with comparison to other land regimes. As one key informant suggested, major developments in cities can also take several years when one accounts for public consultation and zoning processes.

The National Aboriginal Economic Board suggests that the federal government has conflicting roles in both facilitating Aboriginal economic development and minimizing the Crown's liability.⁶⁷ Several key informants spoke to this as well, noting in particular that consulting with the Department of Justice is a crucial component of the program. However, it was noted that the mandate of lawyers acting on behalf of the federal government is to protect the Crown from liability. Some key informants felt that in some instances, this results in decisions that are not as favourable when considered from an economic development perspective.

It should be noted that concerns over the conflict between protecting the Government from liability and facilitating economic development were expressed by key informants from AANDC as well as external stakeholders. The locatee lease policy developed during the evaluation period was used as an example where *Indian Act* legislation was interpreted in a way that is more beneficial for Aboriginal economic development.

Best practice: AANDC's new locatee lease policy is an example of innovative interpretations of the *Indian Act* that allow for increased flexibility or efficiency help to better support First Nations' economic development.

It should be noted that key informants pointed to the Land Management Manual as an opportunity for improving the land management regime on-reserves. The Land Management Manual is the comprehensive set of policies on land transactions that effectively operates as regional lands staff's instruction manual. However, as these key informants noted, the manual has not been updated since 2002-2003 and thus, it may not be aligned with current practice. It therefore does not provide adequate instructions for those who wish to consult it. Key informants were of the opinion that an updated Land Management Manual would help regional offices operate more efficiently and thus, work toward making the formal land management system simpler to use. The revision of the manual, furthermore, would also present an opportunity to examine other areas of policy like locatee leasing for sections where the system can be further streamlined. However, as several key informants have noted, Headquarters staff in the program face a heavy workload and more support is needed in order to provide a comprehensive update on the manual.

4.2.4 Oil and Gas Activities

In 2013-2014, IOGC was managing the oil and gas resources of more than 50 First Nations that had active oil and gas agreements. In the same fiscal year, IOGC collected \$157.5 million on behalf of First Nations for oil and gas operations conducted on-reserve land, exceeding its performance target by \$37.5 million.⁶⁸

⁶⁷ National Aboriginal Economic Development Board, pg. 10.

⁶⁸ Aboriginal Affairs and Northern Development Canada. *Departmental Performance Report 2013-14*. Available at: <https://www.aadnc-aandc.gc.ca/eng/1403266180077/1403266487720>, sub-sub program 3.1.2.3.

The environmental unit at IOGC is responsible for ensuring companies are compliant with environmental protection legislation, regulations, and IOGC’s environmental protection terms. In 2013-14, the unit visited eight reserves and inspected 146 surface agreement sites, resulting in the issuance of 55 inspection letters.⁶⁹

4.2.5 Other factors affecting performance

It is important to note that there are factors outside of the program’s control that have an impact on land management on-reserves. For example, a First Nation’s distance from an urban centre likely affects the amount of land transactions and economic opportunity that will occur on-reserve.⁷⁰ The literature also notes that governance is a key factor; some argue that good governance strengthens investors’ confidence, and that steps to separate business from politics are vital.⁷¹ Governance was in fact mentioned as a key factor by a number of key informants, and several participants in the Nipissing case study corroborated this by noting they found having an independent economic development corporation to be a best practice for economic development on-reserve. The strength of the surrounding economy and a First Nation’s bylaw-making power were both also cited as factors that affect land management on-reserve.⁷² Key informants have also mentioned that an initial stream of incoming revenue is necessary for services and infrastructure.

Finally, document review, key informant interviews and case study work all pointed to the importance of access to land use planning as a way to take stock of assets and clarify land use across a reserve.⁷³ Additionally, key informant interviews suggested that providing greater access to land use planning for First Nations is a way to better assess their needs, and thus to use funding effectively.

<p>Best practice: Access to land use planning can help to determine survey needs, economic opportunities, and more strategic funding practices.</p>
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Matrimonial Real Property Implementation

The *Family Homes on Reserves and Matrimonial Interests or Rights Act*, adopted in June of 2013, is designed to ensure that spouses of First Nation interest-holders on-reserve have formal legal input into decisions related to those interests.⁷⁴ As part of the implementation of the Act, First Nations had the ability to enact their own Matrimonial Real Property laws as of December 2013; for those who did not, the federal regulations came into effect in December 2014.⁷⁵

While this was outside of the evaluation period’s scope, it is worth noting that it has an impact on the program going forward. Specifically, permits and licenses, transfers of property, mortgages, assignments, leases and sub-leases fall under the legislation and now land transactions require a form with attestation from spouses that matrimonial interests are not being encumbered by a land transaction.

⁶⁹ 2013-14 IOGC Annual Report, p. 13. Received from IOGC during Alberta case study visit, May 19, 2015.

⁷⁰ Waslander, pg. 105.

⁷¹ Anderson and Parker, pg. 105.

⁷² House of Commons, pgs. 44, 49.

⁷³ Including House of Commons, pg. 23.

⁷⁴ Aboriginal Affairs and Northern Development Canada, “Matrimonial Real Property on Reserves.” <https://www.aadnc-aandc.gc.ca/eng/1100100032553/1100100032557>, last updated Feb. 26, 2015.

⁷⁵ Ibid.

Case study participants in regional offices and communities noted that the new paperwork that accompanies the legislation caused delays at times. There was confusion over the initial form and then a new version was developed, and in some instances, submissions had to be revised; British Columbia region in particular noted that these changes have been the source of some registration backlogs this year.

These challenges in implementation appear to be simply a temporary result and likely not a challenge for the program going forward.

5. Evaluation Findings - Performance (Efficiency and Economy)

5.1 Regional Support Centres

Evaluation findings demonstrate that the Regional Support Centres created to enhance program efficiency operate using inconsistent practices and in some cases may not have the resources necessary to achieve intended outcomes. As such there is a need to review the Regional Support Centres' mandates and structures to ensure they are operating to their full potential:

Program restructuring occurred mid-way through the evaluation period, in December of 2012. In particular, responsibility for lands registration was transferred from Headquarters to the regions. The purpose was to achieve cost savings, as the corresponding transfer included a reduction in staff of 23 full time equivalents at Headquarters.⁷⁶ Part of the rationale for giving more of this work to the regions was also that land officers work with communities on a daily basis, and because they have a direct relationship and first-hand knowledge, they are likely to do the most effective registration.

In order to assist regions in their new workload, Headquarters created four Regional Support Centres to assist them in their duties: one to support regions with Designations and Section 35 submissions in Vancouver; one in Ontario to support registration of land transactions, with the work shared by Toronto and Sudbury; one in Regina to support Treaty Land Entitlement ATRs; and one to support non-Treaty Land Entitlement ATRs in Toronto. The support centres are responsible for maintaining templates for use by the regions and for reviewing a sample of submissions as quality assurance. Case studies key informants have stated that the quality of submissions is improving as a result of the support centres' quality control work. However, significant challenges were revealed as well. Case studies found that there are diverging interpretations of the mandate of the support centres, and different levels of effectiveness.

Considerations for the ATR support centres:

The Toronto support centre for non-TLE ATRs reviews one in ten applications as required by its mandate. However, the Regina support centre, by virtue of the fact that many of the TLE ATR applications take place in Saskatchewan, is able to review all applications going forward. As case study key informants in Saskatchewan explained, they have discovered it is much more efficient to review everything, as it saves time in the long-run that would otherwise be spent in back-and-forth discussions with Headquarters.

Efforts made by these support centres are targeted at the final portion of an ATR process (the Departmental administration phase) whereas the majority of challenges occur during the part of the process where First Nations are examining, purchasing, and negotiating land with third parties. Some key informants have noted that the submission packages for TLE and non-TLE ATRs are not very different. As such there is not a clear rationale for having two distinct ATR centres.

⁷⁶ It should be noted that this was the intended change as per internal planning documents. Actual numbers may have varied since implementation of deficit reduction.

Considerations for the Registration Support Centre:

The Registration support centre's work in the first two years of operation focused on ensuring all regions had the necessary equipment to process transactions, and then training the regions on the impact of the new Matrimonial Real Property legislation on registration requirements. Furthermore, for most of the first three years of operation the centre, designed to have 2.5 full time equivalents full time equivalents, it only operated with 1.5 total full time equivalents. As such, there were not sufficient resources to adequately monitor submission quality and respond to regional requests for assistance. This is made more difficult by the fact that each region has First Nations with unique preferences regarding types of land instruments and holdings, and as such each regional office requires unique areas of expertise that one support centre may not be able to effectively address.

The most universal theme to emerge from key informant discussions on the support centres was that in its current form and with its given level of resources, the Registration Support Centre is ineffective. As a result, key informants in Headquarters and the regions noted that in practice, Headquarters is still answering many regional questions related to land transactions. This is a challenge because Headquarters is no longer appropriately staffed to provide this level of support. Several suggestions for changing the design and delivery of the support centre were made, including moving it to Brantford where regional staff have considerable corporate memory, or relocating it to Headquarters to facilitate communication with the Indian Land Registrar.

Considerations for the Designation and Section 35 Support Centre:

Case study participants noted that Designation and Section 35 submissions seem to be improving over time. However, they noted that there are areas for improvement: first, it would be helpful for Headquarters to include the Centre in discussions surrounding changes to submissions to give the Centre more of a chance to provide input on the documents that are presenting challenges. Second, case study participants felt that in some cases, Headquarters staff could benefit from a more up-to-date awareness of Designation and Section 35 policy. They noted that it is likely difficult for Headquarters staff to do this given that they do not work with First Nations day-to-day on the files, but that it would nonetheless be beneficial to the process. Finally, case study participants suggested that Designations and Section 35 submissions face some of the same processing delays as Additions to Reserve, and that the Centre would benefit from increased communication with Department of Justice.

Overall, case studies, data review and key informant interviews yielded the following findings about the support centres:

- There is a lack of clear rationale for maintaining two separate ATR centres. While there are differences between the two, the processes and requirements are very similar.
- Aside from the TLE centre in Saskatchewan, where most TLE ATRs occur, there is a lack of a clear rationale for the regions selected for the support centres; specifically there is not a clear rationale for maintaining a registration support centre in a regional office, as each region has differing registration needs.

- For those centres that only review a selected number of files for quality control purposes, it is particularly important that they be provided with ongoing feedback from headquarters or central agencies on the quality of proposals being submitted. This may allow the centres to provide more targeted feedback to regional staff and save future back-and-forth communication with Headquarters and central agencies. Findings indicated that, at the time of the evaluation, there was limited communication of this nature. This is important to ensure that they focus their activities where needs are most prevalent.
- For those centres that provide templates to be used for final approval, findings indicate that it has proven challenging to maintain up-to-date templates that can be readily applied to all regions of the country.

Best practice: Regular communications between Support Centres, Headquarters and regions will help to share key changes and best practices in land administration as they arise.

As was discussed above, part of the rationale for registration at the regional level is that regional staff have the closest relationships with communities. However, this process only works if regions are given the necessary tools for their duties, which means having the most effective support possible.

Recommendation: Clarify the purpose and role of the Regional Support Centres.

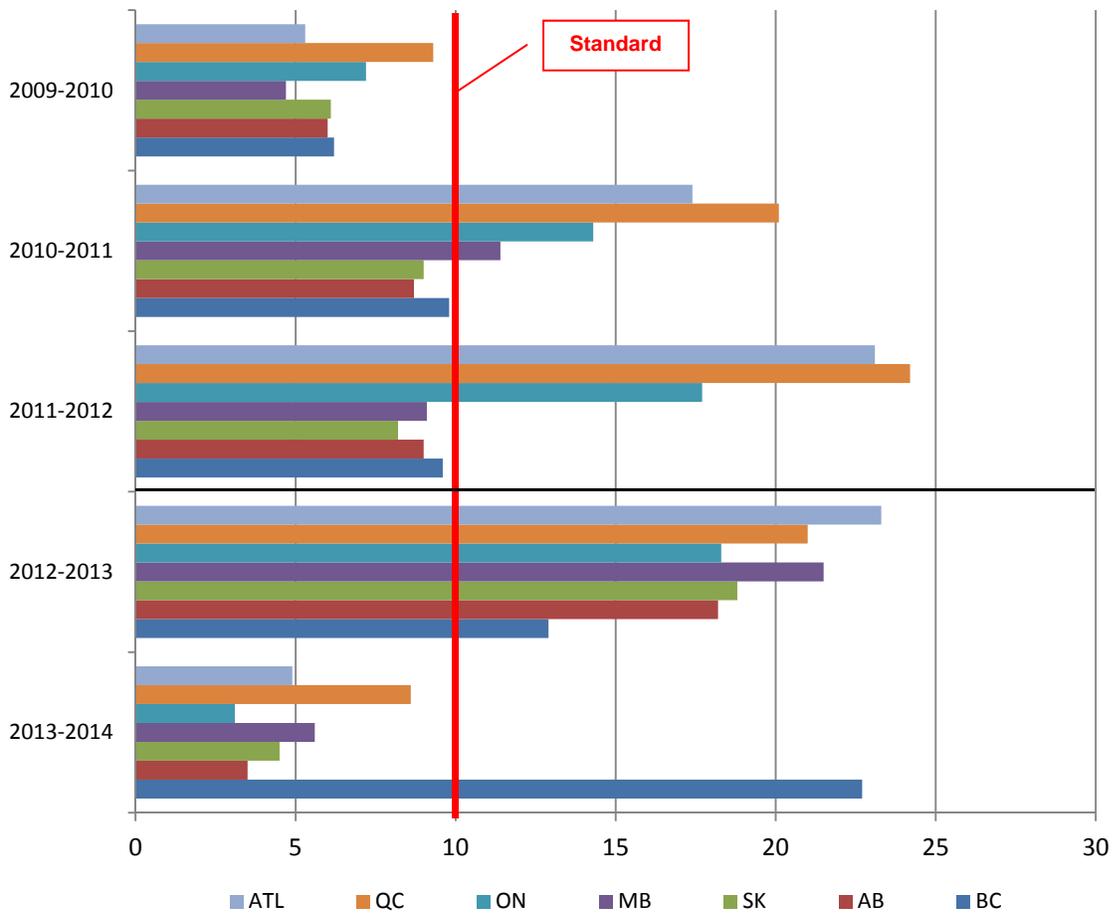
5.2 Transfer of Registration Responsibility to Regions

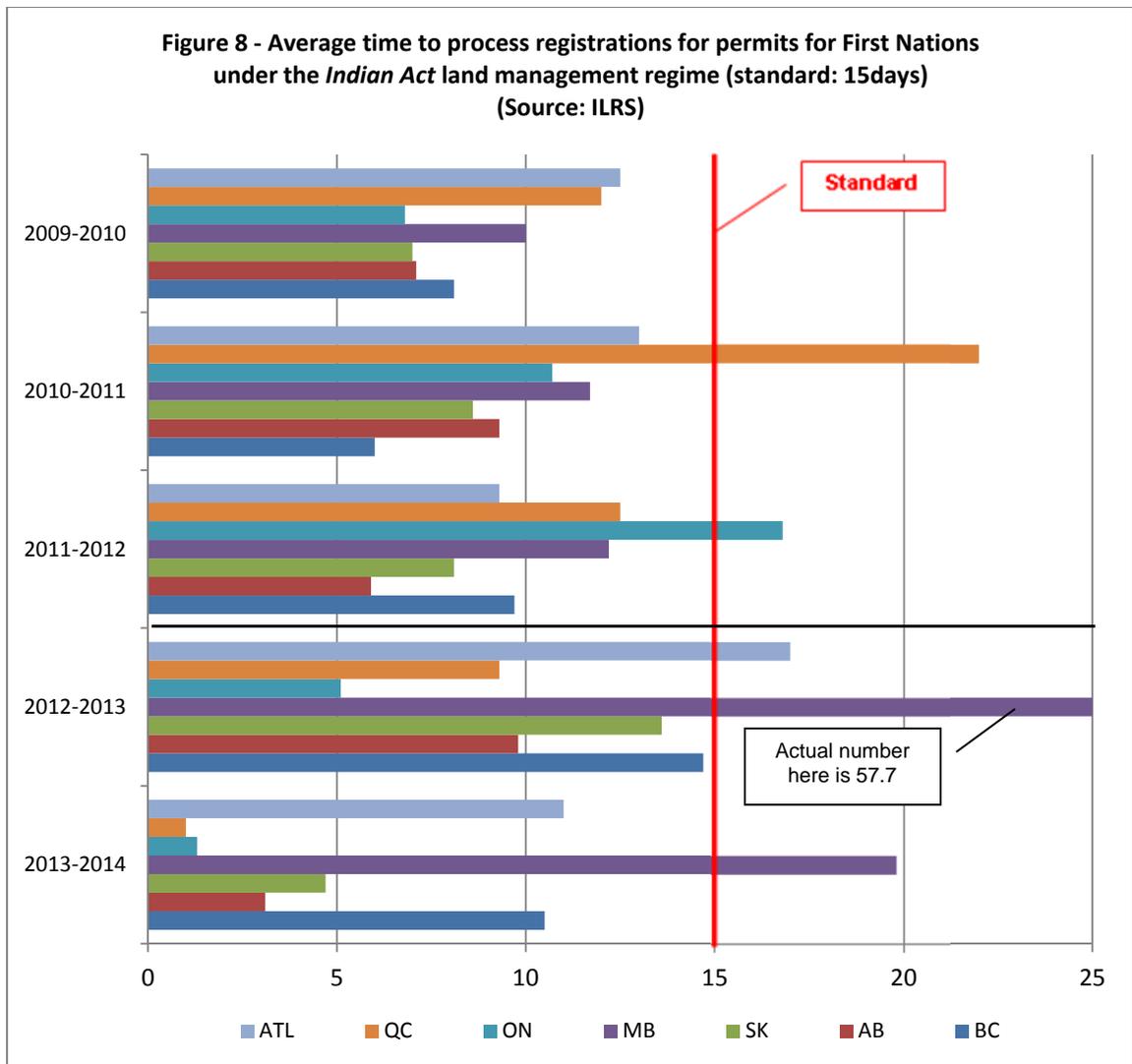
5.2.1 Registration delays

While data reviewed indicates registration standards are being met, key informants suggest there are significant delays. This discrepancy is likely due to differing interpretations across the regions of how to track processing times.

As mentioned in Section 5.1, program restructuring included a change in registration responsibilities from Headquarters to the regions due to the reduction in staff at Headquarters. In order to track its effectiveness in completing the registration of land transactions, the Department has adopted service standards; for non-permits the standard is 10 days (changed to 15 days for the 2015-16 fiscal year) and for permits the standard is 15 days respectively once the documents are deemed to be in a registerable format. A key component of the evaluation has been to examine the effects of program restructuring, including the effects on registration of land transactions. As is demonstrated in figures 7 and 8, registration times initially lagged in the mid-point of the evaluation period but this appears to have generally improved as regions have adapted to their new duties:

Figure 7 - Average time to process registrations for non-permits for First Nations under the *Indian Act* land management regime (standard: 10 days)
 (Source: ILRS)





There are concerns, however, with these data. As one can see from Figure 7, processing times for non-permits spiked in 2010-2011, before major program restructuring occurred. It is not clear from the data alone that either increases or decreases in processing times are a result of restructuring, as other factors are likely at play. For example, regional staff indicate that the implementation of *Matrimonial Real Property* legislation was an external factor that had a significant impact on the registration of land instruments.

Moreover, while the data show processing times decreasing, they are not corroborated by case study discussions or key informant interviews. Several case study participants suggested that non-permits, for example, take significantly longer than ten days to process, sometimes spanning several months. This discrepancy suggests a lack of consistency in the way processing occurs. For example, whereas one office may log the beginning of processing

Best practice: Regular communication between regional staff and First Nations can help make expectations on processing times and procedures more consistent amongst all program partners.

as the date a file arrives in the office, another may consider the date processing begins as the date they begin work on the file. It would thus be advisable to review the way processing is tracked to ensure consistency, and to communicate the agreed upon process to First Nations land managers in such a way that all parties develop a common understanding of how regional offices process documents.

5.2.2 Data Integrity

There is a risk that land transactions are being registered inconsistently across the regions. This may weaken the value of the Registry in the long term due to a lack of comparability and, in some cases, inaccurate information.

Now that registration is being conducted in a decentralized manner, inconsistency is a risk. A number of key informants mentioned that different registration processes are in fact occurring in the regions, and expressed concern that it will weaken the integrity of the Indian Land Registry in the long-run. In fact, the most universal theme to emerge from key informant interviews regarding the registry was not whether it inherently provides certainty to stakeholders, but that ensuring clean and consistent data is necessary for maintaining its value. Aside from the quality assurance component of the Registry Support Centre, which faces the challenges discussed in section 5.1, the evaluation found no process currently in place to address the issue of inconsistency during the evaluation period. It should be noted, however, that a Quality Assurance process has recently been initiated for future registration.

Concerns about inconsistency are exacerbated by the fact that the *Administration of Reserve Land* sub-program operates with outdated software. In particular, the Netlands system used to track leases and permits runs on ‘active server pages’ which is a technology that is no longer supported. Moreover, because it does not have the ability to integrate with the Trust Fund Management System, which is used to issue payments, there have been cases where revenue from a land instrument is entered into the Trust Fund Management System but cannot be properly matched with the corresponding instrument in Netlands. As a result, suspended funds can occur. In some cases the Indian Land Registry System can be used to clarify the problem, but this is not always possible.

It is important to note that the program has launched a review of its Information Technology (IT) systems to determine the feasibility of adapting Netlands, the Indian Land Registry System and the National Additions to Reserve Tracking Tool in order to either integrate them or enhance communication across systems. Immediate steps are being taken to move Netlands to a more up-to-date NET framework.

Best practice: Up-to-date, integrated IT systems make decentralized information management processes more efficient, consistent and clear.

In the longer term, however, supporting the recommendations of the review would facilitate better information management capabilities and could mitigate some of the risks discussed in this section. As the program continues to review its IT systems and options for upgrading, it is important to consider that there is an opportunity for increased integration of all land-related IT components. In particular, one key informant with expertise in surveying and land fabric recommended implementing a system whereby land use plans are integrated into the same platform as surveys and land instruments. A single-window system design that includes a land use plan with access to surveys

and information on land interests and ATRs could serve to greatly improve clarity and efficiency across all areas of the program.

As the program examines options for how best to strengthen the registry itself, as discussed in Section 3.3.5, it is strongly worth considering changes to the IT platform that lend value to the registry’s clarity and consistency.

Recommendation: Enhance the Indian Land Registry and related IT systems in order to leverage the registry’s potential for facilitating economic development. *Note: this recommendation also applies to Section 3.2.5 of this report.*

5.3 Program Costs and Opportunities for Increased Efficiency

Program costs include substantial full time equivalent time devoted to Additions to Reserve and permits, leases and other land transactions; new registration responsibilities in the regions have also presented a cost in employee time. Opportunities for increasing efficiencies include building First Nations’ capacity through RLEMP, streamlining the Additions to Reserve process and monitoring regions’ registration responsibilities going forward.

The costs of the program in dollar figures are shown in Section 1.1.5 of the report. However, given the nature of the program as almost exclusively Vote 1 spending (internal staffing costs), examining the percentage of employee time spent on program activities provides a useful basis on which to look at opportunities for increasing program efficiency.

In 2013-2014, the Lands and Economic Development sector undertook a study of how full time equivalents are allocated amongst different business lines across the regions. It is important to note that the study represents a snapshot of 2013-2014 rather than a trend across the evaluation period. Furthermore, the division of full time equivalent time is based on employees’ estimates, and so the study notes that the information should be taken as representative of potential breakdowns in full time equivalent time only and not used as an exact account of costs in employee time. It is also important to note that the breakdown in employee time does not take into account the different types or levels of employees. Nonetheless, the study gives useful information on the general amount of work required to maintain each portion of the program.

Table 3 - Core Lands Work in the regions, 2013-2014		
Activity	# full time equivalents	% full time equivalents⁷⁷
Additions to Reserve	31.37	29.6
Land Transactions	12.14	11.5
Permits and sub-leases	41.22	38.9
Registration	21.2	20
Total	105.93	100

The study indicates the following:

⁷⁷ Note: percentages are calculated as a share of the total number of full time equivalents working on core lands work and thus the employees engaged in other LED work (economic development and environment) are excluded from the calculation.

- With current resources, the regions are able to produce a significant output in each of the lines of business. Specifically, in 2013-2014 regions facilitated over 1000 permits, leases and sub-leases (in addition to other ongoing files), completed almost 500 rent reviews, 3400 monies collections and processed 3100 monies transactions. This was in addition to assisting in almost 300 surveys and finalizing 47 ATRs.
- Lands work occupies the largest portion of LED full time equivalent in the regions. Specifically, 47 percent of full time equivalents are in Lands, in contrast with 18 percent in economic development, 12 percent in environment and 23 percent engaged in other activity.
- Of Lands work, it is roughly divided as follows: 29.6 percent on Additions to Reserve; 11.5 percent on land transactions; 38.9 percent on permits and sub-leases; and 20 percent on registration. It should be noted that survey work is considered to be a part of the Additions to Reserve and land transactions processes in this analysis as opposed to being considered on its own.

While it is not possible to compare the relative efficiencies of business lines in the program (adding an acre to a reserve versus completing a survey versus drafting a land instrument), the following observations can be made about overall program efficiency:

- First, that the area of work occupying the most resources in regional LED offices is leasing, permits, and other land transactions (a combined total of 50.4 percent). As has been discussed above, the RLEMP program is designed to enhance First Nations' capacity and resources for preparing land transactions and instruments. This is beneficial for the dual purposes of reducing the workload on LED staff and of providing First Nations more control of land management. The better resourced the RLEMP program is, then, the more efficiently LED directorates can operate and the more of this 50.4 percent can be devoted to other activities.
- Additions to Reserve occupies roughly one third of employees' time in regional LED offices. Challenges related to efficiency in processing ATRs are discussed in Section 4.2.1 of the report, and as discussed above, elements of the new ATR policy such as a joint First Nation-regional office work plan (or alternative strategies) would serve to increase program efficiency here.
- Registration currently occupies, on average, one fifth of regional LED branches' work, or roughly 21 full time equivalents worth of resources. Internal documents indicate that an estimated eight full time equivalents worth of resources were to be freed up by transferring registration responsibilities to the regions in 2012, and so initial analysis suggests the program has yet to see efficiency gains from this resource change. It should be noted that regions are still adjusting to new duties and thus, it is likely that efficiency in this area will increase. However, it is nonetheless important to monitor this area of the program going forward in order to determine whether further changes need to be made to enhance efficiency. As discussed in Section 4.7, the program's current efforts in this area are encouraged.

Finally, in consultation with regional offices to conduct the study, LED noted that one regional office felt more resources devoted to monitoring and compliance of instruments could reduce the amount of litigation the Department faces, thus increasing efficiencies. Monitoring and compliance as well as program liabilities are discussed immediately below in Section 5.4.

5.4 Access to Legal Support

While evaluation evidence did not yield an estimate of potential liabilities, key informants and documents mentioned three key program risks: an out-of-date Land Management Manual, new instruments being created with reduced access to legal advice, and an inability to monitor compliance with instruments.

Land Management Manual

The Land Management Manual is the instruction manual used by regional staff (and, to a certain extent, First Nations) who are creating and registering legal instruments. This manual was last updated in 2002-2003.⁷⁸ Key informants from AANDC and Department of Justice noted that given the shifting nature of land management on-reserves, it should be updated regularly. It was noted in particular that it is pressing to update the manual, as out-of-date instructions may not be in line with current legal practice. As such, a comprehensive review by Department of Justice and updating by AANDC staff is advisable to ensure that the instructions regional staff use incorporate the most current legal precedent.

Access to Department of Justice

Key informants also note that as a cost-saving measure, access to advice from Department of Justice has been reduced during the evaluation period. Case study key informants note that this service is important to ensure there are no legal risks in the documents being drafted by First Nations and executed by AANDC. While Department of Justice is still very present in the program's activities, there is now a formalized process whereby request forms are filled out in order to have access to Department of Justice. Key informants both from AANDC and Department of Justice noted it is now not practical to ask small questions to Department of Justice, and that the result could be increased legal issues in the instruments being created. It should be noted that key informants both from AANDC and from Department of Justice stressed this point and expressed a willingness for more communication.

Monitoring and Compliance

Finally, compliance is a challenge with land transactions on-reserves. The House of Commons report on land management in 2014 found that the workload placed on staff means they are not equipped to monitor whether stakeholders on reserves are in compliance with legal requirements. This issue has been noted for the Government of Canada as a whole on environmental regulations; overall, the federal government is supposed to have a compliance inspection rate of 60 percent of environmental regulations; however, with current resources, it has only managed to inspect

⁷⁸ Aboriginal Affairs and Northern Development Canada. *Land Management Manual*, 655 pgs.

13 percent of instruments.⁷⁹ Considering the increasing volume of instruments on reserve, this presents an ongoing legal challenge.

It should be noted that most of this information comes from key informants only, and they were unable to contextualize the legal risk that is present because it is not easily measurable and because the main concern key informants had was that the amount of liability is not known. Thus, the evaluation was unable to measure the extent of this issue. However, liabilities that trigger litigation related to land transactions include collection of rent, missed rent reviews, not ensuring insurance is in place, and a lack of environmental cleanup that was supposed to have been done by the lessee. What was clear to evaluators was that while reductions in staff and access to the Department of Justice may yield short-term cost savings, the implications in liabilities created by outdated instructions, a lack of legal advice and a lack of monitoring could yield significantly higher costs to the program in future. It would be advisable, in particular, to place greater emphasis on updates to the land management manual with input from the Department of Justice to refresh regional offices' instructions.

Recommendation: Work with federal partners and stakeholders to review and update the Land Management Manual to ensure that this instrument provides guidelines that are clear, consistent, current and conducive to flexible approaches that facilitate economic opportunities on-reserve. *Note: this recommendation also applies to Section 4.2.3 of this report.*

5.5 Efficiency and Economy of IOGC

In negotiating lease agreements and administering royalties, IOGC has the challenge of maintaining competitive royalty rates. Changes to provincial rate royalty regimes, lower commodity prices and lower industry activity have an impact on the agency's ability to ensure First Nations obtain the highest possible yield from their oil and gas resources. While the agency has no control over wider developments in the oil and gas industry, it was suggested that a separate royalty and regime base would ease the agency's administrative burden.

The evaluation team had the opportunity to visit Tsuu T'ina Nation, a community that lies adjacent to Calgary, Alberta. The evaluation team heard that members of the Nation meet with IOGC staff on a regular basis, and that the relationship between the two parties is working well. Similarly, key informants from IOGC noted that the efficiency of the agency is dependent on maintaining good relations with First Nations.

IOGC employs a large number of experts in oil and gas development, who provide guidance to First Nations that do not have sufficient financial or human resources in areas such as engineering, geology, and legal expertise. In recent years, the agency has had difficulty in maintaining its base of technical expertise. Key informants noted that it is challenging to replace retiring staff and attract qualified employees in a competitive market. Currently, as oil prices are low, these market dynamics may have changed.

⁷⁹ House of Commons, pg. 35.

While conditions in the oil and gas market are beyond the control of IOGC, it is worth considering a strategy to ensure knowledgeable employees are retained by the agency as competition elsewhere continues. This will be important in future as competition for human resources presents a risk to maintaining the strong performance of IOGC in the context of fluctuating market dynamics.

Recommendation: Address recruitment and retention related issues to ensure that IOGC has sufficient capacity and expertise to maintain its operation and ongoing work on modernizing its regulations.

6. Other Evaluation Issues

An ongoing lack of effective environmental regulations and capacity to address gaps may result in a lack of certainty regarding, and enforcement of, the environmental regulatory framework for First Nations land transactions; the evaluation found environmental risks, but no tangible impacts as a result of these risks.

Whereas provincial environmental regulations and standards apply off-reserve, on-reserve land activity is subject to federal rules and regulations, which are meant to provide the same environmental standards as exist elsewhere in Canada.⁸⁰ It should be noted, however, that the *Canadian Environmental Assessment Act* only applies to federal projects on-reserve; as such, the Act applies to any formal land transactions on reserve but not to the many transactions that occur outside of the formal system.

In 2009, at the beginning of the evaluation period, the Office of the Auditor General found that there was a significant regulatory gap on-reserve. Specifically relevant to this evaluation, the report noted that AANDC is supposed to require environmental reviews when issuing leases. However, the report found that between 2006 and 2009, AANDC did not obtain environmental studies in 60 percent of cases reviewed.⁸¹ The report noted further that AANDC does not have the capacity to conduct these inspections on compliance with environmental regulations and so as a result, there were environmental impacts occurring with landfills, drinking water and air quality.⁸² This report expressed a need for the federal government to close the environmental regulatory gap.

The House of Commons study on land management in 2014 found that the environmental regulatory gap still exists, leaving First Nations vulnerable to environmental damage; the report noted that the *Indian Act* has not kept pace with environmental protection, as the fine for environmental violations on reserve is only \$1000.⁸³ Combined with an inability to adequately monitor compliance with regulations, the current structure of environmental protection on-reserves presents challenges to proper stewardship of the environment through land management activities.

Key informants noted that the current environmental regime presents a disadvantage to First Nations relative to off-reserve communities. It was suggested to evaluators by an interviewee specializing in environmental regulations that a lack of a clear environmental regulatory framework on-reserve may serve to hinder economic investment as it is difficult to assess project costs and environmental responsibilities.

⁸⁰ Office of the Auditor General, pg. 2.

⁸¹ Ibid., pg. 24.

⁸² Ibid., pg. 2.

⁸³ House of Commons, pg. 24.

It should be noted that the Government responded to the recent House of Commons report by explaining it was enhancing coordination of practices in Quebec and the Atlantic and providing further environmental training in order to address environmental concerns; furthermore, it recommitted to examining regulatory gaps in the *Canadian Environmental Assessment Act* and *Indian Oil and Gas Act*, as identified by the Office of the Auditor General.⁸⁴ It should also be noted that the Aboriginal Economic Development Board has identified IOGC as a model for efficiency when conducting environmental assessments.⁸⁵ Program staff indicate that further measures have been taken to address the environmental regulatory gap. As it is not a core program business line, a full assessment of the environmental regime on reserve was beyond the scope of the evaluation and so these activities are not addressed here.

Best practice: Land use is an important consideration in funding need. Any opportunity to collaborate with the *Contaminated Sites* and LESDP targeted program staff on contamination prevention and remediation is encouraged.

Evaluators did not see or hear about any tangible impacts as a result of the above-mentioned regulatory gap or concerns surrounding environmental considerations in land management. Nonetheless, given the ongoing concerns as recently as March 2014, the issue should continue to be closely monitored in future.

Adequacy of data collection and the Performance Measurement Strategy

The Performance Measurement Strategy approved in March 2014 notes that “program managers have requested that an evaluation of 3.2.3 *Administration of Reserve Land* sub-program be conducted by the Evaluation, Performance Measurement and Review Branch of AANDC in order to establish baselines and confirm program design for the re-aligned program.”⁸⁶ Through data collection and analysis, evaluators developed an understanding of the feasibility of collecting data against the indicators in the strategy and the appropriateness of identified baselines, as well as whether these indicators provide a comprehensive performance story for the program.

The program’s outputs can be tracked; specifically, the number of ATR submissions provided for approval, the number of boundary surveys completed and the number of leases, permits and other legal interests registered were all provided to evaluators. Other data such as number of acres added to reserves were also readily available when requested.

Establishing proper baselines and targets is a greater challenge because much of what the program intends is influenced by external factors, such as what band administrations and individuals on-reserves choose to do. For example, at the sub-program expected results level, reaching a total of 10,000 new leases, permits and other instruments is identified as a target to have reached by March 2015. However, program staff have noted this depends entirely on the economic activity occurring in a First Nation and not on the performance of the program. Moreover, as discussed in Section 4, a legal instrument is not a standard unit of comparison given that residential, commercial and industrial activities vary greatly. Similarly, a target of 36 ATRs per year does not clearly indicate whether First Nations benefit from the administration of reserve land. In other cases, the program

⁸⁴ Government response to House of Commons report.

⁸⁵ Aboriginal Economic Development Board, pg. 18.

⁸⁶ 3.2.3 Administration of Reserve Land Performance Measurement Strategy, pg. 16.

has not established a target or baseline for this reason, for example, there is no clear baseline for what the value of funds collected by IOGC and AANDC should be as an indicator of the program's performance, given that it is based on many factors, including world oil prices (as indicated in the Performance Measurement Strategy).⁸⁷

Moving forward, then, evaluators encourage the program to continue work already started on developing efficiency indicators to make its Performance Measurement Strategy more comprehensive. Given that the level of instruments and the value of funds generated depend on outside forces, the program can better examine its performance by focusing on indicators that measure whether its part in the process is done in an accurate manner and without delay. For example, the program may wish to integrate its registration standards, which it already tracks, as they are a good indicator of whether AANDC is helping to properly facilitate land administration. Similarly, implementing a service standard for ATR processing has also been discussed.

The program may also wish to build in an indicator to track monitoring and compliance with legal instruments to facilitate improvements in this area, as well as designing an indicator for the effectiveness of the Regional Support Centres.

The Performance Measurement Strategy also signals the program's intention to eventually change the sub-program expected result so as to read "the expected result of effective administration of reserve land is to ensure that the foundational tools and conditions are established for community and economic development to take place while managing federal responsibilities."⁸⁸ After having studied the program's design and mandate, evaluators found this to be a more accurate expected result for the program than the current expected result. This is because it recognizes the program stems from statutory responsibilities but also that it facilitates foundational aspects of community and economic development: clear parcel fabric, properly-designed legal instruments and, where necessary, Additions to Reserve.

The evaluation has found strong linkages to other LED programs, particularly the Lands and Economic Development Services Program.

Linkages with LEDSP

As noted in Section 2, the evaluation of *Administration of Reserve Land* was conducted concurrently with the evaluation of the *Lands and Economic Development Services Program*. By following a concurrent methodology the evaluations have revealed a number of important linkages between the two programs. (See Appendix D for context)

First, the RLEMP training and funding offered through LEDSP has a significant impact on the work done by Lands and Economic Development staff in regional offices. As RLEMP facilitates greater First Nations' land management capacity, it arguably enhances the value of the tools discussed under this program (Designations, Certificates of Possession, leases, permits, etc.). Communities with land management capabilities can more easily put strategic revenue-generating instruments in place, track their tools and make speedier transactions. Moreover, as First Nations

⁸⁷ Ibid., pg. 14.

⁸⁸ 3.2.3 Administration of Reserve Land Performance Measurement Strategy, pg. 15.

under RLEMP and FNLM take on more land management responsibilities it relieves pressure on regional staff, who have been given additional duties during the evaluation period.

The LEDSP program also provides support for key land management processes through its targeted funding as of its consolidation in 2014. In particular, First Nations can access funding for some of the costs associated with ATRs and Designations such as legal fees and survey costs. As many key informants across the two evaluations noted, funding for land use planning under LEDSP enhances the ability to make sound and strategic decisions on which parcels of land will make the most environmentally and economically feasible grounds for projects.

Finally, on a conceptual level, the merging of Lands and Economic Development in the Department during the evaluation period demonstrates a core concept articulated in the *Administration of Reserve Land* performance measurement strategy and corroborated by the two evaluations: that a proper land base is required to facilitate economic development. As one senior key informant stated, efforts at attracting business may not yield results unless proper land tenure is first in place. As such, the *Administration of Reserve Land* Sub-program and the *Lands and Economic Development Services* Sub-program can be seen as twin pillars of economic development preparedness.

7. Conclusions and Recommendations

7.1 Conclusions

The evaluation has found that the *Administration of Reserve Land* Sub-program is firmly based in legislative requirements.

However, there is an ongoing need for the program beyond just its legislative mandate, as it administers the core requirements for a land base that facilitates benefits for First Nations. Additions to Reserve allow access to land that is of value. Land surveys clarify tenure over land. Creation of legal instruments allows for legally sound vehicles for economic development and other land transactions, and IOGC provides expertise in a unique area of these land transactions. The Indian Land Registry is designed to document these legal instruments and with improvements its potential for facilitating economic development could be further leveraged.

The evaluation has also found that improving *Administration of Reserve Land* is a priority for the federal government as a means to implementing the *Federal Framework for Aboriginal Economic Development*. Program staff have undertaken significant efforts during the evaluation period to modernize the program, including designing templates for legal instruments, toolkits for Additions to Reserve and Designations, methods for internal sharing of best practices, and work to lower the costs of surveys.

However, there are areas for further improvement in the program's design and delivery. An updated Land Management Manual can help to ensure land transactions are done expediently and with up to date legal advice. As a sub-section of the manual, a revised Additions to Reserve policy can save First Nations time in accessing valuable land. Efforts to support land use planning can help to ensure First Nations know where their assets lie and that they are accessing limited survey funding in the most strategic manner possible. Upgrading the Indian Land Registry System and giving the Registry backing in formal policy will enhance its user-friendliness, the integrity of its data, and therefore the certainty of land transactions on reserve. A strategy to enhance recruitment and retention at IOGC will help to maintain the expertise First Nations rely upon when developing their oil and gas resources.

Significant restructuring occurred in the program's design and delivery during the evaluation period with the goal of maintaining the same outputs by using fewer resources. However, concerns have been expressed that program changes may have resulted in adverse effects such as delays, excessive workloads, increasing liabilities for the Department and inconsistencies in data. Moving forward, it is important that program management examine the *Administration of Reserve Land* delivery structure to ensure that intended efficiency gains of restructuring have been met.

Finally, the evaluation identified concerns, but no tangible impacts, surrounding an ongoing environmental regulatory gap as well as areas where the program could benefit from increased legal support, monitoring and compliance.

Discussions at Headquarters, in the regions and with community members all reveal that for many First Nations, the *Indian Act* is the most realistic land management structure for the foreseeable future. Challenges with the *Indian Act* notwithstanding, program staff have the opportunity to continue to modernize land administration for the benefit of communities across the country. Given the fundamental importance of land and land management to First Nations' well-being, further efforts in this area are strongly encouraged.

7.2 Recommendations

Based on evaluation findings described in this report, it is recommended that AANDC:

1. Increase collaboration and efforts to facilitate community planning related to land use, including land surveying, which will enhance opportunities for economic development.
2. Work with federal partners and stakeholders to review and update the Land Management Manual to ensure that this instrument provides guidelines that are clear, consistent, current and conducive to flexible approaches that facilitate economic opportunities on reserve.
3. Enhance the Indian Land Registry and related Information Technology systems in order to leverage the registry's potential for facilitating economic development.
4. Address recruitment and retention related issues to ensure that Indian Oil and Gas Canada has sufficient capacity and expertise to maintain its operation and ongoing work on modernizing its regulations.
5. Clarify the purpose and role of the Regional Support Centres.

Appendix A – Works Cited

- Aboriginal Affairs and Northern Development Canada, "Lands," <http://www.aadnc-aandc.gc.ca/eng/1100100034731/1100100034735>.
- Aboriginal Affairs and Northern Development Canada, "Land Management." <http://www.aadnc-aandc.gc.ca/eng/1100100034737/1100100034738>.
- Aboriginal Affairs and Northern Development Canada, "Land Registration." <http://www.aadnc-aandc.gc.ca/eng/1100100034803/1100100034804>.
- Aboriginal Affairs and Northern Development Canada, "Locatee Lease Policy and Directive." <http://www.aadnc-aandc.gc.ca/eng/1374091139187/1374091182369>.
- Aboriginal Affairs and Northern Development Canada. "Matrimonial Real Property on Reserves." <https://www.aadnc-aandc.gc.ca/eng/1100100032553/1100100032557>, last updated Feb. 26, 2015.
- Aboriginal Affairs and Northern Development Canada. "Surveys." <http://www.aadnc-aandc.gc.ca/eng/1100100034810/1100100034811>.
- Aboriginal Affairs and Northern Development Canada. *3.2.3 Administration of Reserve Land Performance Measurement Strategy*.
- Aboriginal Affairs and Northern Development Canada, *Audit of the Additions to Reserve Process*, Feb 2013. Available at: <https://www.aadnc-aandc.gc.ca/eng/1382618250857/1382618295002> , 23 pgs.
- Aboriginal Affairs and Northern Development Canada, *Evaluation of Indian Moneys, Estates and Treaty Annuities*, 2013. Available at: <http://www.aadnc-aandc.gc.ca/eng/1382702626948/1382702680155>, 86 pgs.
- Aboriginal Affairs and Northern Development Canada. *Impact Evaluation of Contributions to Indian Bands for Land Management on Reserve*, 2010. Available at: <https://www.aadnc-aandc.gc.ca/eng/1348773650044/1348773804939> , 87 pgs.
- Aboriginal Affairs and Northern Development Canada. *Indian Lands Registration Manual*. Last updated December, 2014. Available at: <https://www.aadnc-aandc.gc.ca/eng/1100100034806/1100100034808> .
- Aboriginal Affairs and Northern Development Canada. *Land Management Manual*, available at: <https://www.aadnc-aandc.gc.ca/eng/1100100034737/1100100034738>, 655 pgs.
- Aboriginal Affairs and Northern Development Canada and Canadian Polar Commission. *Report on Plans and Priorities 2013-14*. Available at: <https://www.aadnc-aandc.gc.ca/eng/1358878144010/1358878190743>.

- Aboriginal Affairs and Northern Development Canada and Canadian Polar Commission. *Departmental Performance Report 2013-14*. Available at: <https://www.aadnc-aandc.gc.ca/eng/1403266180077/1403266487720>, pg. 81.
- Aboriginal Affairs and Northern Development Canada and Canadian Polar Commission. *Report on Plans and Priorities 2014-15*. Available at: <https://www.aadnc-aandc.gc.ca/eng/1389716657979/1389716765770>.
- Alcantara, Christopher. "Reduce Transaction Costs? Yes. Strengthen Property Rights? Maybe: The First Nations Land Management Act and Economic Development on Canadian Indian Reserves." *Public Choice* 132 no. 3/4, pgs. 421-432.
- Anderson, Robert, Bob Kayseas, Leo Paul Dana and Kevin Hindle. "Indigenous Land Claims and Economic Development: The Canadian Experience." *American Indian Quarterly* (2004): 28.3-28.4, pgs. 634-648.
- Anderson, Terry and Dominic Parker. "Economic development lessons from and for North American Indian economies." *The Australian Journal of Agricultural and Resource Economics* 53 (2009): pgs. 105-127.
- Ballantyne, Brian. "Beyond Aboriginal Title in Yukon: First Nations Land Registries," in *Aboriginal Title and Indigenous Peoples: Canada, Australia, and New Zealand* eds. Haijo Jan Westra and Louis A. Knafla, 2010.
- Brinkhurst, Marena and Anke Kessler. "Land Management of First Nations Reserves: Lawful Possession and its Determinants." *Simon Fraser University Department of Economics Working Papers*, 2013. Available at: <http://www.sfu.ca/~akessler/wp/detlawful.pdf>, 32 pgs.
- Canada-First Nations Joint Action Plan, 2011.
- Cornell, Stephen and Joseph Kalt. "Where's the Glue? Institutional and Cultural Foundations of American Indian Economic Development." *Journal of Socio Economics* (2000): pgs. 443-447.
- Government of Canada. *Federal Framework for Aboriginal Economic Development*, 2009. Available at: <https://www.aadnc-aandc.gc.ca/eng/1100100033498/1100100033499> , 25 pgs.
- Government of Canada, Response letter to Senator White regarding Senate Additions to Reserve Report, 2012. April 2013. Available at: <http://www.parl.gc.ca/Content/SEN/Committee/411/appa/rep/rep09GovResponse-e.pdf>.
- Government of Canada. *Speech from the Throne: Seizing Canada's Moment- Prosperity and Opportunity in an Uncertain World*, October 26, 2013. Available at: <http://www.lop.parl.gc.ca/ParlInfo/Documents/ThroneSpeech/41-2-e.html>.
- House of Commons of Canada. *Study of Land Management and Sustainable Economic Development on First Nations Reserve Lands*, March 2014. Available at:

<http://www.parl.gc.ca/content/hoc/Committee/412/AANO/Reports/RP6482573/AANOrp04/aanorp04-e.pdf>.

Indian and Northern Affairs Canada and Canadian Polar Commission. *Report on Plans and Priorities 2009-10*. Available at: <http://www.tbs-sct.gc.ca/rpp/2009-2010/inst/ian/ian00-eng.asp>.

National Aboriginal Economic Development Board. *Addressing the Barriers to Economic Development on Reserve*. April, 2013. Available at: <http://www.naedb-cndea.com/addressing-barriers/> , 38 pgs.

Office of the Auditor General. *2009 Fall Report of the Auditor General of Canada: Chapter 6- Land Management and Environmental Protection on Reserves*, 2009. Available at: http://www.oag-bvg.gc.ca/internet/English/parl_oag_200911_06_e_33207.html, 42 pgs.

Standing Senate Committee on Aboriginal Peoples. *Additions to Reserve: Expediting the Process*, Nov. 2012. Available at: <http://www.parl.gc.ca/Content/SEN/Committee/411/appa/rep/rep09nov12-e.pdf> , 31 pgs.

Starkell, Bob. *Conveyancing for Legal Support Staff: Advanced Issues – Leases on Indian Reserves*. Available at: <https://www.cle.bc.ca/PracticePoints/ABOR/Leases.pdf> , 42 pgs.

Waslander, Bert. “First Nation Communities and Urban Economies.” *Canadian Issues*. (2009): pgs. 99-106.

Appendix B – Evaluation Research Matrix

Issues / Questions	Indicators	Literature Review	Documentation Review	Key Informant Interviews				Financial and Administrative Data Review	Case Studies
				AANDC Representatives at Headquarters and Regions	Major Stakeholders (other government departments, Provincial / Territorial governments)	Aboriginal Organizations and Representatives /Community Members	Non-Stakeholder Experts		
Relevance (Continued Need)									
1. To what extent is there a need for providing services, support and guidance with respect to the Administration of Reserve Land.	Evidence of policy and/or legislative requirements for the services/activities		√	√					
	Evidence of a documented original rationale for the provision of services/ conduct of activities		√	√					
	Evidence of a continued relevance of original programs rationale: continued existence of factors that were basis of original rationale	√	√	√	√	√			
	Extent to which services have been used by various clients		√	√	√	√		√	√
	Evidence of continued need for the provision of services / activities	√	√	√	√	√			√
	Evidence of continued need for the underlying functions of each component (new <i>Prairie Research Associates</i>)				√		√		
Relevance (Alignment with Government Priorities)									
2. To what extent has the sub-program been consistent with the objectives and priorities of	Extent of linkages between the program and federal government priorities and objectives		√	√					

Issues / Questions	Indicators	Literature Review	Documentation Review	Key Informant Interviews				Financial and Administrative Data Review	Case Studies
				AANDC Representatives at Headquarters and Regions	Major Stakeholders (other government departments, Provincial / Territorial governments)	Aboriginal Organizations and Representatives /Community Members	Non-Stakeholder Experts		
the federal government?									
3. To what extent does the sub-program contribute to AANDC's strategic outcomes and the goals associated under the Community Development program?	Extent of the alignment between the Program and AANDC's priorities and strategic outcome		√	√					
Relevance (Alignment with Federal Roles and Responsibilities)									
4. Is there a legitimate, appropriate and necessary role for the federal government in providing direct delivery of services and/or funding and support to First Nation communities for the Administration of Reserve Land?	Degree to which the program is consistent with current federal roles and responsibilities		√	√					
	Degree to which the program overlaps and/or duplicates other federal programs		√	√					
	Potential for devolution for responsibility from the program to another level of government	√	√	√	√		√		
	Potential for devolution of responsibility from the program to the private sector or to an external entity	√	√	√	√		√		

Issues / Questions	Indicators	Literature Review	Documentation Review	Key Informant Interviews				Financial and Administrative Data Review	Case Studies
				AANDC Representatives at Headquarters and Regions	Major Stakeholders (other government departments, Provincial / Territorial governments)	Aboriginal Organizations and Representatives / Community Members	Non-Stakeholder Experts		
Performance (Effectiveness/Success)									
5. In what ways has the clarity and size of the reserve land base changed because of the sub-program's activities? (Immediate Outcome)	Number of approved Ministerial Orders and Order in Council (Performance Measurement Strategy)		√						
	New acreage added to reserves (Performance Measurement Strategy)		√						
6. To what extent has the sub-program facilitated greater revenue-generating opportunities for involved First Nations (Immediate Outcome)	Number of legal instruments being actively managed (Performance Measurement Strategy)		√						
	Percentage annual increase in the use of legal instruments (Performance Measurement Strategy)		√						
	Value of funds collected by Indian Oil and Gas Canada and AANDC (Performance Measurement Strategy)		√					√	
	Indian moneys funds accessed by First Nations and individuals (Performance Measurement Strategy)		√					√	
7. To what extent are First Nations benefiting from the administration of reserve land? (Intermediate Outcome)	Extent to which the creation, renewal, monitoring, administration and registration of legal interests are effectively supported and maintained		√	√		√			√
	Extent to which additions to reserve are supported by Regional Support Centres		√	√		√			√

Issues / Questions	Indicators	Literature Review	Documentation Review	Key Informant Interviews				Financial and Administrative Data Review	Case Studies
				AANDC Representatives at Headquarters and Regions	Major Stakeholders (other government departments, Provincial / Territorial governments)	Aboriginal Organizations and Representatives /Community Members	Non-Stakeholder Experts		
	Extent to which the division of roles and responsibilities between AANDC and stakeholders regarding the administration of reserve lands appropriate in order to effectively deliver the program and contribute to supporting program's expected results		√	√	√	√			√
	Evidence of clearly defined, documented and communicated roles for AANDC and other stakeholders with respect to the program		√	√	√	√			√
	Extent to which processes and services are performed in a timely manner (new <i>Prairie Research Associates</i>)			√	√	√			√
	Number of addition to reserves (Performance Measurement Strategy)		√						
	Number of new leases, permits and other instruments (Performance Measurement Strategy)		√						
	Value of money collected by Indian Oil and Gas Canada on behalf of First Nations (Performance Measurement Strategy)		√						
8. In what ways does the sub-program create the conditions	<i>Need to define what is land base ready to establish indicators</i>								

Issues / Questions	Indicators	Literature Review	Documentation Review	Key Informant Interviews				Financial and Administrative Data Review	Case Studies
				AANDC Representatives at Headquarters and Regions	Major Stakeholders (other government departments, Provincial / Territorial governments)	Aboriginal Organizations and Representatives /Community Members	Non-Stakeholder Experts		
for First Nations to have a land base ready to support economic development? (Ultimate Outcome)									
9. To what extent does the sub-program support First Nations pursuing greater independence/self-sufficiency and sustainable economic development? (Ultimate Outcome)	Percentage of band generated revenues in relation to total revenues (Performance Measurement Strategy 3.2)		√						

Appendix C – Relevant Statutes

Canadian Environmental Assessment Act

Canada Lands Surveys Act

Claims Settlements (Alberta and Saskatchewan) Implementation Act

Family Homes on Reserves and Matrimonial Interests or Rights Act

First Nations Land Management Act

First Nations Oil and Gas and Moneys Management Act

Indian Act

Manitoba Claims Settlements Implementation Act

Appendix D – Linkages to Community Development Program

This context is important to demonstrate the linkages between Administration of Reserve Land and other programming within the Community Development Program.

In accordance with the *Federal Framework for Aboriginal Economic Development*, whose purpose is to enhance the value of Aboriginal assets, AANDC operates five overarching programs that relate specifically to the management of Aboriginal land and the promotion of economic growth as per the Department’s FY2014-15 Program Alignment Architecture:

- 3.1 - Aboriginal Entrepreneurship;
- 3.2 - Community Development;
- 3.3 - Strategic Partnerships;
- 3.4 - Infrastructure and Capacity; and
- 3.5 - Urban Aboriginal Participation

Administration of Reserve Land is situated as sub-program 3.2.3 under the Community Development Program.

In 2013-14, the Community Development program went through an exercise to streamline reporting requirements, which resulted in the current Program Activity Architecture, the development of a revised performance measurement strategy and Consolidated Authorities.

The table below outlines the previous (2013-14) and current (2014-15) program alignment architecture regarding activities related to Additions to Reserve Land.

Table 1.0 Program realignment during 2013-2014 and 2014-2015 of the evaluation period

2013-14 PAA)	(2014-15 PAA)
Land and Economy	Land and Economy
	(3.2) Community Development Program
3.2 Federal Administration of Reserve Land Program	(3.2.3) Additions to Reserve Sub-Program
(3.2.1) Additions to Reserve	Additions to Reserve
(3.2.2) Registration of Rights and Interests in Reserve Land	
(3.2.3) Clarity of Reserve boundaries	Land surveys and clarification of reserve boundaries
(3.2.4) Environmental Management	

3.1 Aboriginal Economic Development	
3.1.2 Activation of Community Assets Sub Program	
(3.1.2.2) Creation of Rights and Interests in Reserve Land	Creation, registration, review and renewal of land transactions
(3.1.2.3) Federal Management of Oil and Gas Interests in Reserve Land	Management of and Regulation for Oil and Gas Development on Reserve Lands

Linkages with the Lands and Economic Development Services Program

The overarching program *Community Development* mentioned above includes another Sub-program entitled *Lands and Economic Development Services*, whose activities have a direct impact on the *Administration of Reserve Land* Sub-program. While not directly covered by this evaluation, it constitutes an important contextual component as part of the evaluation of the *Administration of Reserve Land* Sub-program.

The following four components are included in the *Land and Economic Development Services* Sub-program (LEDSP):

- *LEDSP-core funding*: This program provides core funding for First Nations to support economic development work, often through the hiring of an Economic Development Officer.
- *Reserve Land and Environment Management Program (RLEMP)*: This program provides core funding for First Nations communities that wish to take on additional responsibility for land management under the *Indian Act*.
- *First Nations Land Management Act*: This act provides the legal mechanism for First Nations to opt out of the land management provisions of the *Indian Act*, and support provided through this program helps First Nations transition through the stages needed to take on this land management responsibility independent of AANDC.
- *First Nations Oil and Gas and Moneys Management Act*: This act provides the legal mechanism for First Nations to opt out of either the IOGC management of oil and gas resources on reserve or the administration of band moneys by AANDC, with funding provided through the program meant to help First Nations transition into these responsibilities independent of AANDC.
- *LEDSP-targeted funding*: This program provides targeted funding for economic development and land management activities.

As the above-description indicates, the *Land and Economic Development Services* Sub-program supports First Nations whose land and economic development activities fall under the *Indian Act* or under either the *First Nations Land Management Act* or the *First Nations Oil and Gas and Moneys Management*

Act. As a result, there are three dynamics between these two Sub-programs that are worth noting for the purpose of this evaluation:

- First, both the LEDSP-core and RLEMP activities aim to enhance First Nations’ abilities to assume a greater level of involvement and participation in the set of activities covered by the *Administration of Reserve Land* Sub-program. For instance, RLEMP provides training for First Nations to initiate the creation of legal instruments. As such, the extent to which these two programs (CEDP and RLEMP) are implemented successfully can logically be expected to have a direct impact on the achievement of the expected results covered by this evaluation.
- Second, as more First Nations opt out of the *Indian Act* through either the *First Nations Land and Management Act* or the *First Nations Oil and Gas and Moneys Management Act*, fewer First Nations will require services under the *Administration of Reserve Land* Sub-program, particularly as it relates to the creation of legal instruments, the work of IOGC, or the administration of band moneys.
- Third, the targeted funding portion of the LEDSP program provides funding to support First Nations with various land management activities. In particular First Nations can apply for funding to support costs associated with Additions to Reserve, land surveys and Designations.

The following table shows that the immediate expected outcomes of the two programs are designed to be complimentary:

Sub-program	Expected immediate outcomes
Administration of Reserve Land	<ul style="list-style-type: none"> • Increased clarity and size of reserve land base • Indian moneys receipts and opportunities for revenue generation
Lands and Economic Development	<ul style="list-style-type: none"> • First nations have a land base ready to support economic development • First nations and Inuit developing economic development and land-use planning, and conducting land and environment management activities, regulatory compliance and environmental preventative activities • First nation communities are prepared for autonomous land, oil and gas, and money management
Source: Performance measurement strategies.	

Linkages with Investment in Economic Opportunities (3.2.2) and other economic development programming

As discussed directly above, *Administration of Reserve Land* is a key pillar of preparedness for economic development opportunities. Evaluators have found that LEDSP is designed to foster preparedness for the *Investment in Economic Opportunities* program, and to the extent that land management is required for economic development (effective land use planning, surveying, Designations, ATRs that yield economic opportunities), *Administration of Reserve Land* provides the necessary inputs for First Nations to take advantage of programming for economic opportunities such as 3.2.2.

Linkages with Contaminated Sites on Reserve (3.2.4)

Environmental considerations are key to effective land management on reserve. Evaluators visited two communities where contamination was an issue. In one of these communities, contamination from a previous railroad was hindering use of a road and contamination on the waterfront of the reserve due to previous mining activity was hindering land use, whereas other waterfront lots were being used for cottage rentals and thus own-source revenue. As such the contamination presents not only a barrier to healthy land but to potential economic development opportunities as well.

Thus there is an important linkage to the *Contaminated Sites on Reserve* program as it is designed to remove the contamination which can sometimes present a barrier to land management and economic development. As a best practice program staff are encouraged to collaborate with the *Contaminated Sites* program by identifying sites through land use planning, surveys and environmental assessments.

Linkages with the Treaties and Aboriginal Government Sector

Evaluators found linkages with the *Consultation and Accommodation* program (1.2.3) and *Management and Implementation of Treaties* program (1.3) in the ATR component of *Administration of Reserve Land*. Specifically, consultation is required with neighbouring First Nations when a First Nation is contemplating an ATR, as there may be overlapping claims in these areas. As such, having regional staff well-informed on consultation requirements and procedures is necessary for the Additions to Reserve process; the evaluation did not find any issues in this area.

Additionally, as mentioned in section 3.3.4, most ATRs under the Legal Obligations category stem from Treaty Land Entitlements in Manitoba, Saskatchewan and Alberta and as such they fall under special treaty implementation legislation. ATRs processed under the TLE framework, then, contribute to implementation of these treaties and so *Administration of Reserve Land* contributes directly to program 1.3.