



# Reserve Land Management as an Expression of Aboriginal Self-Government

**W**hy is management and control over reserve land important to First Nation communities and how can they achieve it?

Many First Nations crave meaningful ways of exercising control over their land base. In part, this is because each community has strong, historical, and cultural ties to its lands. The right to manage reserve land is widely acknowledged in First Nation communities as a practical expression of self-governance. Astutely managed reserve land can contribute to the community's economy, its ability to provide for its members' needs, and the sense that it has some control of its destiny.

Self-government as expressed in reserve land management can take various forms. The clearest expression of the right to manage, control, or own land or resources is currently found where it has been negotiated as part of a treaty. Unfortunately, only a handful of BC First Nations are in this position.

Other principal avenues available to achieve community control over reserve lands flow from the *Indian Act*, R.S.C. 1985, c. I-5, and the *First Nations Land Management Act*, S.C. 1999, c. 24. The degree of autonomy afforded to the First Nation varies considerably under these and the former offers three options. Finally,

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there is some potential for negotiated land management regimes that are unique to a particular community's needs and resources.

For the purposes of this article, the term "land management" is defined as administration of economic activities on reserve land.

The *Indian Act's* provisions are interpreted by Indian and Northern Affairs Canada (INAC) as allowing for a three-tiered approach to reserve land management. All of these involve the application of *Indian Act* provisions and INAC policies developed for that purpose.

First Nations with the highest level of flexibility and control over reserve land under the *Indian Act* are delegated authority under Sections 53 to 60. The First Nation essentially operates as the Minister's agent and is accountable under the terms of the delegated authority. To be considered for "s. 53/60 delegated authority," the First Nation must meet eligibility criteria. These include the capacity to track, manage, and report on land transactions.

The First Nation must have trained personnel and all necessary equipment and

a history of sound financial management. First Nations with 53/60 delegated authority manage their reserve lands in accordance with the *Indian Act* and INAC policies, and issue permits and leases. They are not authorized to terminate leases or take certain remedial actions. There are currently only two "53/60" First Nations in BC.

Many First Nations in British Columbia co-manage reserve lands with INAC in its Regional Land Management Administration Program (RLAP). RLAP First Nations are essentially contractors, performing under the general direction of INAC staff to deliver limited services such as maintaining records, providing information about INAC land management policies, and assisting INAC on the negotiation of leases and permits.

Qualification for RLAP status is less stringent than for 53/60 delegated authority but at a minimum, the First Nation must have a trained land manager and a sound financial record with INAC.

Land management under the *Indian Act* has been undergoing a significant review by INAC in the past few years. April 1, 2005, will usher in the new "Regional Lands and Environment Program." This new program will have three stages, the first being similar to the current RLAP, the second involving greater land management responsibilities, and the third being Section 53/60 delegated authority. The new program is

designed to take a holistic approach to land management, moving beyond the simple issuance of leases and permits.

The third approach to land management under the *Indian Act*, unaffected by the new program, is the *status quo*. This involves little or no land management function by the First Nation as INAC land officers carry out all land management functions.

In 1999, the *First Nations Land Management Act* (the FNLMA) was enacted by Parliament. The FNLMA was federal legislation ratifying the *Framework Agreement on First Nation Land Management*, an agreement between the Minister and 14 First Nations. The purpose of the Framework Agreement and the FNLMA was to allow the 14 participating First Nations to manage and control their lands outside of the *Indian Act's* provisions.

The First Nation is required to develop its own land code, which includes provisions for how the lands will be managed, accountability for revenues,

procedures for developing First Nation land laws, and a process for developing rules and procedures respecting lands that are the subject of marital breakdown. The community must ratify its land code before it can take effect.

The FNLMA is considered by some First Nations as being a viable alternative to land management options under the *Indian Act*. Those that have decided to pursue this have, however, had to “queue up” for the right to be included in this initiative. The process allows for participation of a maximum of 30 First Nations at any given time.

Currently, 13 First Nations are shown on the First Nations Lands Advisory Board (the “Advisory Board”) Website as having ratified their land codes, with a 14th pending. The remaining 16 First Nations are in the development stage. Chiefs of First Nations with ratified land codes comprise the Advisory Board, who provide political leadership and work with INAC to determine which First Nations are admitted to the process.

The participation of First Nations in reserve land management has many benefits. INAC can expend fewer resources because it is doing less of the day-to-day administration, can get community and lands information more reliably, and has a better coordinated process. Those who want to use reserve lands have the advantage and responsibility of addressing community interest and needs.

Most important, First Nation land management can mean a higher degree of community satisfaction regarding their understanding and control of what happens in their backyards. Ultimately, this is an important aspect of self-governance. ▲

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