

LAND MANAGEMENT ON INDIVIDUALLY
HELD LANDS UNDER THE INDIAN ACT
RESERVE LAND TENURE SYSTEM
Experiences from the Penticton Indian Band

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ABSTRACT

This paper is based on case study research with the Penticton Indian Band (PIB) that examined the land management implications of individual landholdings (Certificates of Possession, CPs) on First Nations reserves under the Indian Act, both historically and today. We summarize the history of the landholdings system on PIB's main reserve and report on how CPs impact PIB's contemporary local land management. We also discuss PIB's efforts to adapt its land tenure and management systems locally while continuing to operate within the overall land management framework of the Indian Act; efforts that make PIB's experiences particularly interesting for other First Nations and their land managers, federal officials and policy makers, and researchers. Our objective in this paper is to complement and broaden existing research on CPs by focusing on land management challenges from PIB's experiences.

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1. INTRODUCTION

Societies around the world have rules and arrangements for holding, using, and transferring land. These “land tenure” rules determine how individuals, groups, communities, and others access and use land and other land-based natural resources. A community or geographical area may contain several types of land tenure, such as private land ownership, leases, mortgages, common property, and state ownership (Bruce 1998: 1; Dekker 2003: 209). A land tenure system describes all of these land tenure rules as well as responsibilities accompanying them and the institutions that govern land tenure arrangements. Land tenure systems can be enshrined in formal law or created by informal, local practices and agreements, or a mix of both. Land tenure systems exert powerful influences and constraints on use and management of land and resources, as well as social outcomes such as distribution of benefits from land.

Across Canada, there are pockets of land that operate under a land tenure system different from surrounding lands. The Canadian *Indian Act* (R.S.C. 1985, c. I-5) establishes a unique land tenure system for First Nations reserves,¹ areas of land held by the federal government for the collective use and benefit of an Indian Band, as defined pursuant to section 2 of the *Indian Act*.² Since 1869 Bands have had the option to officially allot and federally register parcels of land to individual Band members, effectively creating a limited form of private property on reserves (Alcantara 2003: 401). These holdings are legally referred to as “lawful possessions” and are evidenced by “Certificates of Possession,” and are locally called CPs, CP lands, or Locatee lands. Although the majority of reserves today have no CPs, where they do exist they have become an influential part of the community fabric and local land management.

There is a surprising lack of published research concerning the history, impacts, and practical implications of land tenure systems on reserves in Canada (Alcantara 2003; Baxter & Trebilcock 2009; Egan & Place 2013; Hibbard,

Lane & Rasmussen 2008). Particularly lacking is empirical research on the CP system and its implications for land management, including land use planning. There is also need for research that gives voice to local land management experiences and perspectives of First Nations communities and individuals themselves.

This paper is based upon a detailed, local-level case study of individual landholdings under the *Indian Act*, historically and today, undertaken in partnership with the Penticton Indian Band (PIB) (Brinkhurst 2013). Here, we summarize the history of the landholdings system on PIB’s main reserve and report on how CPs impact PIB’s contemporary local land management. We also discuss PIB’s efforts to adapt its land tenure and management systems locally while continuing to operate within the overall lands management framework of the *Indian Act*; efforts which make PIB’s experiences particularly interesting for other First Nations and their land managers, federal officials and policy makers, and researchers.

2. CONTEXT

2.1. *Indian Act* Land Tenure and Management System

The *Indian Act* and federal policy determine the formal components of the CP system, and reserve land management more generally (except for reserves that operate under alternative arrangements, such as self-government agreements, modern treaties, or Land Codes created under the *First Nations Land Management Act*). By law, CPs are permanent, transferrable, inheritable, and saleable to other Band members (*Indian Act*, s. 20). CP lands can be leased to Band members or non-Band members. To be officially recognized, land transactions involving CPs require federal approval (*Indian Act*, s. 20; Yuen 2009). In contrast, Band Council or general Band approval of a CP land transaction is only required if it involves a lease or a permit longer than 49 years, or in some cases if there are issues with lot access or servicing. While a

¹ Some Reserves operate under alternative arrangements, such as self-government agreements or modern treaties, but these are the minority.

² Section 2(1) “band” means a body of Indians (a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after September 4, 1951.

Band Council cannot otherwise independently veto a lease of a CP (Alcantara 2003: 414; INAC 2005: 50), it is currently federal policy to only authorize leases that have been supported by a Band Council Resolution, including confirmation that the lease does not contravene existing land use plans or by-laws. As a result, Bands can object to locatee leases and the federal government will consider this when assessing applications (Ballantyne 2010: 44; INAC 2005: 50).

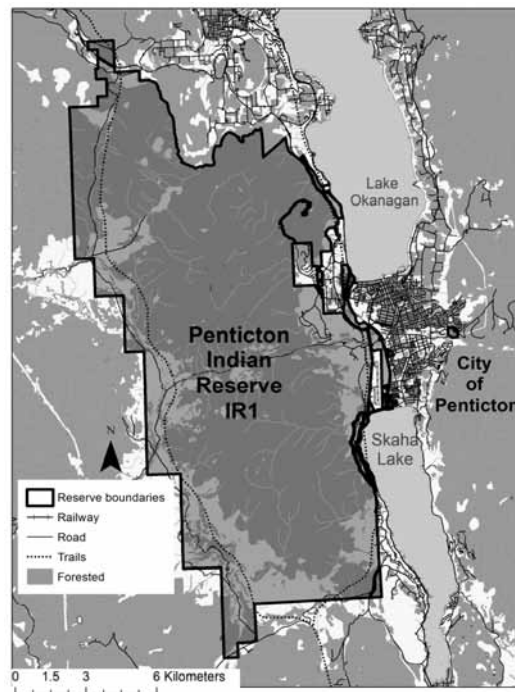
The *Indian Act* and federal policy also regulate what other authorities a Band has over its reserve lands. For example, Bands have the authority to make land use by-laws and zoning plans, but the federal Minister of Aboriginal Affairs can disallow these (*Indian Act*, ss. 81–82). Researchers have identified many potential problems with land management under the *Indian Act* land regime, particularly as a result of regulatory gaps and insufficient empowerment of Bands to administer and manage lands (Edgar &

Graham 2008; Moffat & Nahwegahbow 2004; Office of the Auditor General 2009). In the last three decades, additional authority over land management has been devolved to some Bands through negotiated arrangements, through s. 53 and s. 60 of the *Indian Act* and the Regional Lands Administration Program (RLAP) or Reserve Land and Environment Management Program (RLEMP), or through the *First Nations Land Management Act*. However, the RLAP and s. 53 and s. 60 land management programs are no longer funded by the federal government.

2.2. Penticton Indian Band

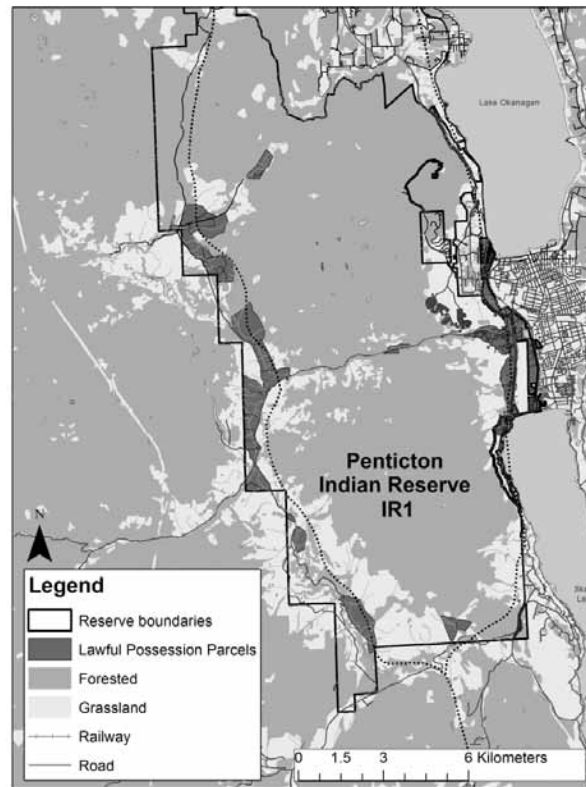
The Penticton Indian Band (PIB) is an Okanagan, or Syilx, First Nation located in the Okanagan Valley in the southern interior region of what is today the Canadian province of British Columbia (B.C.) and Syilx Traditional Territory, see Figure 1. The main PIB reserve (I.R.1),

FIGURE 1
Penticton Indian Band Reserve (I.R.1)



Source: Author generated. Date from GeoGratis. © Department of Natural Resources Canada. 2012.

FIGURE 2
Current Lawful Possession Parcels, 2012



Source: Author generated. Data from PIB Lands Office, GeoGratis. © Department of Natural Resources Canada, 2012.

initially created in 1856 and formally allotted in 1877, is currently 18,539.8 hectares (Geomatics Services AANDC 2012) and is the largest reserve by area in B.C. (PIB 2013). The landscape is a mix of forested, mountainous land, grassy bench lands, and flat lowlands. The landscape is semi-arid and primarily ponderosa pine, sagebrush, and grassland habitat, with spruce and fir at higher elevations (MoE 1998).

The current population of PIB is 1,025 members, with 537 living on reserve (AANDC 2013). PIB uses customary elections and has a reputation among First Nations and government staff for being politically active and independent. PIB has been named as one of the “land rich”

nations of the Okanagan (TOBE 2008) because it has large areas of undeveloped land adjacent to the city of Penticton. However, these lands are mostly held as CPs by individual members and families (illustrated in Figure 2). Approximately 6.5% (just over 1,200 hectares) of the total reserve area is held as CPs, but these lands are the most suitable for housing, development, and agriculture.

2.3. Research Project

This paper reports findings from a three-year research collaboration with the PIB Lands Department. Our project was an exploratory case study and used primarily qualitative data and

methods. We collected information from twenty-one semi-structured interviews with Band staff and members, other First Nations staff, and federal staff. These data were supplemented with community sessions and group discussions; participant observation; federal land registry and survey data; analysis of historical and contemporary documents from the federal government and Band Council; review of legislation and policy documents; and an extensive review of published research on land tenure, First Nations reserves, and reserve land management. We analysed our data using qualitative coding, guided by (but not constrained within) the Institutional Analysis and Development Framework (Ostrom 2011), a traditional Syilx framework for inclusive community discussions and learning (Brinkhurst, Alec, and Kampe 2013), and a Strengths–Challenges–Changes framework developed with the PIB Lands Department to aid with practical application of research findings (Brinkhurst 2013). We shared our initial findings with interview participants and community members for validation and to inform a second round of analysis.

3. EVOLUTION OF INDIVIDUAL LANDHOLDINGS ON RESERVES

3.1. National History

In the early history of the reserve system created by colonial authorities in Canada, Bands managed their lands internally and used local, customary tenure systems. Over time, Canadian federal officials became more involved with reserve governance and replaced local management systems with limited local administration of the federal system. Officials routinely recommended more standardized and legally recognized registration of individual landholdings to reduce “dependence on handouts” (Alcantara 2003: 402) and “gradually eliminate communal tenure practices” (INAC 1978: 66) as part of wider goals of assimilation. Government policy developed an “overriding tendency to emphasize the individual to the detriment of the community” that persisted well into the 1970s (Cunningham 1997: 29).

The 1876 *Indian Act* created the Band Council structure of local government and gave Councils the legal authority to allot reserve lands to individuals and have them federally registered as Location Tickets (provided that allotments

were approved by the federal government). Use of Location Tickets was limited and uneven across the country, especially in western Canada where reserves were established later than those in eastern provinces. Looking to strengthen and encourage uptake of registered individual landholdings, the federal government reformed and standardized the tenure system in 1951 into the CP system that exists today (Camp 2007: 4.1.2; House of Commons 1951: 71).

3.2. PIB History

Prior to contact and European colonization, the seasonally nomadic Syilx used a system of land tenure wherein nested territories were managed by tiers of Chiefs. Local level Chiefs would grant family units the authority to use and manage specific areas and resource sites, but this was not permanent ownership, it could shift and was contingent upon responsible management and ongoing approval from the Chief and community (Carstens 1991; ONA 2001; Thomson 1994). After contact and particularly following the creation of the Okanagan reserves in the late 1800s, Syilx Bands, including PIB, gradually shifted away from customary tenure to the system of federally registered, permanent individual landholdings (Brinkhurst 2013; Carstens 1991).

The reserve system concentrated families into smaller areas of land, and seasonally nomadic lifestyles shifted to settled, agricultural lifestyles. In our interviews, PIB Elders recounted how before Location Tickets and CPs, individuals and families were given permission by Chiefs to use and live on areas of land based on their demonstrated ability or intention to use it productively, as a farm, ranch, or home site. As time passed, local federal agents encouraged Band leadership and members to formally register land holdings with the federal government as Location Tickets.

Federal registration of landholdings was attractive for some individuals and families. Location Tickets were presented as a way to protect one’s claim to land in the eyes of the colonial legal system and to provide greater security during a time of social, political, and economic upheavals. Later, registration gave individuals additional legal powers, such as the right to lease land. A small number of PIB members began to use the federal land registration system

in the 1930s but registration was uneven, depending on individuals' relationships with the local federal agent and attitudes towards written documents and the federal government generally. In 1955 the federal government created the Fry Plan sketches of existing landholdings on the PIB reserve. While these were not legal surveys, they were the first formalized maps of landholdings and were used as the basis for later surveys.

Oral history and Band documents illustrate how most PIB community members were concerned about adopting the new, foreign system and preferred the customary system of having land holdings recognized and protected by their family, traditional leadership, and the community. Thus, until the 1970s, land tenure on the PIB reserve was mixed — some landholders held land under the local customary system and others had registered lawful possessions with the federal government.

In the 1970s, the PIB Chief and Council decided to have all land holdings registered and to standardize land policies to align with the federal system. The primary drivers for this standardization appear to have been a desire to reduce land disputes in the community and give individual land holders equal opportunities to access the benefits of landholding under the federal system (Brinkhurst 2013). Around this time, PIB members grew concerned about the amount of land being allotted and registered to individuals, and the fairness of allotment decisions. In the early 1980s, PIB adopted a community policy that no more large allotments would be allowed. Instead, lands would only be allotted for small house lots in planned, Band-led housing subdivisions. This policy continues today. Aside from this local restriction, PIB Chief and Council and the Band Office use the CP system as laid out in the *Indian Act* and federal policy. It should be noted that not all members have agreed with using the CP system. Despite efforts to equalize land tenure security and to standardize land policies, some individuals and families continue to feel like they were not treated fairly in the transition to registered holdings and many individuals are not familiar with the rules, rights, and responsibilities associated with the CP system.

As PIB gradually adopted registered individual landholdings between the 1930s and 1980s, land management authority shifted away from Band leadership and the collective community

towards individual locatees and the federal government. While Chief and Council remained locally influential, under the *Indian Act* framework for reserve land management they had less control over the land use decisions of individual landholders. In large part this is because PIB did not formalize by-laws or land use plans with the federal government. Other local land management tools are not legally recognized under the *Indian Act* framework. Since the late 1970s, PIB has been working to reclaim land management powers and in the 1990s, leadership turned greater focus towards managing individual land uses through community land use planning and regulatory tools such as by-laws.

4. PIB'S CP LAND MANAGEMENT CHALLENGES

We investigated how PIB's land tenure history and the current CP system impact PIB's land management today. For PIB, as for other Bands (L. Vanderburg & R. de Guevara, personal communication, 2011; Bak, personal communication, 2012), there appear to be some significant benefits of the CP system, both for individual members and for Bands. These include increased tenure and economic security for individuals, the ability to lease or mortgage CPs, and improved incentives for investing in land and land developments (Fiscal Realities Economists 2007; Flanagan, Alcantara, and Le Dressay 2011; Brinkhurst 2013). As these potential benefits of CPs have been discussed elsewhere, our objective in this paper is to complement previous research and broaden the discussion of CPs by focusing on land management challenges we identified from PIB's experiences and adaptations that PIB has made to address challenges.

4.1. Limited Regulation of CP Land Use

Under section 81 of the *Indian Act*, Band Councils can choose to create by-laws and land use plans, approved by the federal government, that govern use of CP lands, including conditions for developments and leases. However, challenges with funding, enforcement, and capacity have hampered land management efforts by Bands, including PIB (Office of the Auditor General 2009). Until recently, there have been few formal regulations or constraints on CP holders in PIB,

except at the federal level. As a result, PIB lacks adequate tools to address and prevent situations of incompatible land uses, transboundary effects, and pollution from land uses on CP lands. PIB currently has two federally registered by-laws, an animal control by-law and a water systems by-law (allows the Band to charge for non-member use of the Band well system). In our interviews Band leadership, staff, and many Band members identified the need for expanded, clearer, and more enforceable land use regulations. Enforcement has proven challenging because of limited resources and the social and political challenges of enforcing rules in a small, close-knit community. While some attempts to address local land use issues met with co-operation from CP landholders, others were left unresolved because the situations became too hostile. PIB has also had challenges with lessees of CP land creating environmental or safety issues on their leased lands. Because PIB does not have a comprehensive regulatory framework for local land management, many of these situations ultimately required federal intervention. However, federal and provincial agencies have encountered difficulties enforcing their regulations on reserves (such as health and safety regulations or endangered species legislation), including opposition from individual Band members and occasionally Band governments.

4.2. Buckshee Leases

Another challenge for PIB's management of CP lands is that some land transactions by CP holders, particularly leases, are not officially registered with the Band Council and/or federal government. Informal leases, locally called "buckshee leases," other land deals (such as sale to another Band member) occur when a CP holder enters into land agreements outside of *Indian Act* provisions and without Ministerial approval. These may be known or unknown to the Band Office. These agreements expose the individual lessors, lessees, and the Band to potentially significant legal and financial risks if there are disputes over the deal or if damage is caused to the land or buildings involved. Buckshee leases also by-pass local land management efforts, such as land use planning, or federal approvals such as environmental impact assessments, and so can result in incompatible neighbouring land uses

and reduce the potential value or uses of nearby lands.

4.3. Cultural and Ecological Protection

Band Council and staff have less authority over use and management of CP lands than Band lands. This creates a landscape of fragmented control and complicates planning for landscape-level concerns such as ecosystem protection, watershed management, or habitat conservation. In PIB's history, some allotments of land were made without full consideration of associated ecological or cultural values and today this is causing some concern for ecological and cultural protection. On the other hand, in some cases CP allotments may positively influence conservation: in our interviews several PIB members indicated that having lawful possession of an area generates feelings of greater responsibility to that land and empowers them to protect it independently of changes in political leadership or Band development goals. However, other PIB CP landholders want to develop their land and they perceive ecological or cultural protection efforts as a threat to their land use and development powers.

There have been multiple cases of CP landholders in PIB and other Okanagan Bands who have been unable to develop their landholdings because of federal environmental controls (e.g., set-backs from waterways, endangered species or habitat). This can cause individuals great frustration. For many, their landholding is the only land asset available to them due to the general lack of reserve land for sale, challenges of receiving additional or alternative lands from their Band, and the expense of purchasing or renting off-reserve lands. Under the current *Indian Act* lands system it is not clear how conservation requirements should be balanced with individual interests. If CP landholders have land expropriated from them they are entitled to compensation; however, if land use is regulated or constrained in such a way as to preclude certain uses, there is currently no clear legal requirement that individual landholders be compensated.

4.4. Land Use Incompatibilities

Individual land holdings on reserves increase the need for land use planning, especially if there is

high potential for leasing or development. With a CP, individuals have authority to decide how to use their land, including potentially developing it or leasing it to a third-party user or developer. If a Band lacks land use planning tools such as zoning or land use by-laws, it runs the risk of having incompatible land uses and negative cross-boundary effects between land parcels. This is a leading concern of PIB Band staff and landholders, who are concerned that decisions by landholders or their lessees might negatively impact neighbouring land uses or development potentials. In PIB this concern is largely precautionary, given that there has not been a high level of development on CP lands to date. However, PIB does have some existing uses and leases on its lands, including industrial and commercial uses, that already influence land uses and potential developments around them.

4.5. Spatial Planning Concerns

CP landholdings on some reserves have resulted in challenges with ensuring access to lots and providing infrastructure and servicing (Chawathil First Nation 2010). Larry Parady, Manager of Lands, Environment and Natural Resources in the Atlantic region of Aboriginal Affairs and Northern Development Canada, attributes many of these issues to the lack of planning when holdings were originally allotted (L. Parady, personal communication, 2012). In many reserves, including PIB, allotments were historically made for agricultural land uses and so were often large, irregular, and dispersed. The original spatial layout of lots typically persists today and has repercussions for access and servicing infrastructure. The lot layout that was at one time attractive for agricultural or privacy reasons today means lots are often landlocked, difficult to access by vehicle, and require extensive, inefficient infrastructure to service. For PIB, many proposed developments on CP lands have stalled because of a lack of access and servicing to lots.

CP landholdings have also inhibited or delayed some community infrastructure development on PIB's reserve. For example, attempts by Chief and Council to improve road safety (by widening them and adding sidewalks) were opposed by affected landholders and the perceived political and social repercussions of forcing the issue meant that Band staff and Council

dropped their plans. Even in such cases of significant community benefit, there has been and is strong reluctance by PIB's leadership to resort to expropriation of land. In PIB, there is historical sensitivity about governments' abusing their power and taking lands from the Band and individuals. As well, respect for individuals' decisions and not using force against them is a deeply embedded cultural value for PIB members. These local cultural and historical factors effectively make the Band Council's expropriation powers a non-functional authority.

4.6. Obstacles to Land Development

Some aspects of CPs may be advantageous for private land development, such as faster approval processes than for developments on Band-held land (Gailus, John & Chunick 2009: 1.1.6). However, less frequently discussed are land development challenges associated CP lands: constraints on Band developments; fragmentation; fractionation; and limited land markets.

PIB's CP allotments have reduced the amount and type of land available for Band-led developments. Allotments are frequently located on land that is most suitable for housing, agriculture, physical infrastructure, and other economic developments. The majority of PIB's most developable and economically valuable land is now held by individuals under CPs. As well, developments on remaining Band land can be constrained or delayed because they require access or other permissions from CP holders. Individuals can be reluctant to grant consent, particularly if they do not support the development or if it significantly impacts their own land uses. As noted previously, expropriation of individual lands is unattractive for PIB's Chief and Council. Another concern is highlighted by the Chawathil First Nation (near Hope, British Columbia) in their Community Land Use Plan, where they explain that because the federal government does not fund residential or community development on CP lands, the presence of CP holdings has seriously reduced the Band's ability to raise capital for community projects (Chawathil First Nation 2010). This is less of a concern for PIB because it has retained greater amounts of Band land, although the locations may not be ideal for development.

Another development challenge that PIB has encountered with CP lands is fragmentation of prime developable land into parcels held by many different owners. For large-scale developments, such as commercial areas or large housing developments, fragmentation means that multiple landholders must agree on the development and coordinate negotiations and plans. Comparing two ongoing development negotiations, one entirely on Band land and the other involving multiple CP landholders, a PIB Lands staff member observed that developing on lands held by many individuals

makes more obstacles, because you need all these people on board to sign on to the whole thing ... just to get it started ... and you're never going to get all of these people to agree to one thing. You're never going to get half ... you never will have them signing off on certain things that would make it a reality. (PIB Lands staff member, personal communication, 2012).

Another form of fragmentation occurs when a single landholding becomes shared among a large number of co-owners, a situation known as "fractionation" (Shoemaker 2003: 729). Fractionation occurs when individuals inherit a share of an interest in a parcel as a result of tenancy-in-common laws, such as those that apply to reserve lands (INAC 2005). In extremes, fractionation can result in more than 1000 individuals all holding shares in a single parcel of land in as little as six generations (Indian Land Tenure Foundation 2012). This can severely reduce the per-capita economic value of the land involved (Deaton 2007; Indian Land Tenure Foundation 2012; Shoemaker 2003) and makes the land parcel essentially impossible to use if land laws require all owners of shares in the land to consent to any proposed use (Indian Land Tenure Foundation 2012). In PIB, fractionation is only in early stages but it is occurring: there are cases of parcels with as many as 40 individuals who have a tenancy-in-common interest. In interviews PIB CP holders reported issues with reaching agreement between as few as three co-owners. As well, some individuals with a share to a CP may no longer live on reserve and the Band may not have contact information for them, effectively preventing any land use decisions until they can be found. Additional complications can arise if a

non-Band member inherits an interest in a CP. Non-members cannot own part of a CP, and unless they agree to transfer or sell their interest, it is opened for purchase by any Band member. In these cases, there is potential for non-family members to acquire interests in fractionated parcels. PIB Lands staff described situations where this has seriously exacerbated disagreement over the use of the fractionated parcel. Interestingly, not all our interviewees considered fractionation to be negative because it can mean that land decisions are made by a family, or at least a group of individuals, and so prevents individual decisions that may be damaging or short-sighted for collective interests.

A third challenge to land development is the constrained market for CP lands. The *Indian Act* requires that only Band members can hold CPs (other than leases), limiting the pool of potential buyers. For PIB, many Band members do not have the funds available to purchase a CP. As well, CP sales are very rare because most land holders prefer to hold on to their land or transfer or subdivide it to family members. As a result of these factors, it is difficult to acquire reserve land other than through allotment. As well, much of the information and institutional infrastructure typically generated by a land market (such as reliable estimates of fair market value, or venues for public listings of land sales) are less available or more difficult to access.

PIB's constrained land market means that it is harder, sometimes impossible, for individuals to obtain land that is most appropriate for their land uses. Land parcels differ in their characteristics and suitability for various uses. When the exchange of land parcels is difficult, as it is in PIB, an inefficient distribution of land can result. In PIB's experience, some CP holders who have development proposals do not have suitable landholdings and sale or exchange of their lands has not been viable. Other PIB members complain about CP holders who have land with high development potential but do not want to develop.

4.7. Uncertainty

Managing CP lands on the PIB reserve is complicated by disagreements and ambiguities over the legal rights of CP holders, rights that some individual landholders interpret to be more

extensive than what is officially laid out in federal policy. There is also a general unfamiliarity with land-related procedures under the *Indian Act*, such as the process for making legal transfers of land or wills, or the negotiation and registration of leases. In interviews, PIB staff explained that the lack of understanding of the rules of the *Indian Act* and federal policy means that some CP holders are very sensitive and reactionary to anything perceived as limiting their rights. This makes it difficult for Band staff to collaborate with landholders on land regulation, management, and planning. As well, many landholders are frustrated by the complexity and unfamiliarity of CP system rules and policies, especially the various assessment and reporting requirements of the federal approval process for leases and developments.

4.8. Community Relations

Finally, many of our research participants expressed concerns about how the federal individual landholding system impacts community relations because of perceived inequality and ongoing disputes over land. In some reserve communities, permanent individual landholdings have created or worsened inequality. An example of this situation exists just north of PIB. The Westbank First Nation, a self-governing First Nation with extensive land development projects, today has the majority of its reserve land held as CPs by a small number of individuals, meaning other members have very limited access to reserve land (L. Vanderburg & R. de Guevara, personal communication, 2011; Flanagan & Alcantara 2002: 14). Many Westbank CP holders have leased their lands for housing developments. Interviewed Westbank First Nation staff explained to us that while this has greatly benefited the individual landholders, it has also undermined community cohesion and concentrated wealth and power over land (R. de Guevara & L. Vanderburg, personal communication, 2011). In PIB there is also uneven land distribution because some families were historically allotted much larger areas than would now be permitted by the Band Council. Since land sales or exchanges with non-family members are rare occurrences, most land stays in the family, handed down through generations. There is also inequality of land value and development

options, depending on location, size, access restrictions, or other limits to development. The distribution of power is also affected, because CP holders with large, developable holdings have more sway over development on the reserve than other Band members. Interviewees expressed concern that increasing development on CP lands will make unequal land distribution more apparent and exacerbate political and social tensions.

Land disputes also continue to cause conflict between community members, families, and the Band Office. The severity of disputes range from strained relations to court cases. In PIB's history, there were problems with inequality of land allotments, inconsistent registration practices, boundary disputes, and disputed land deals. Some of these problems were related to differences between those who used the traditional, local land tenure system and those adopting and using the federal government's system. Many disputes are ongoing or will flare up again after appearing to be resolved for many years. This has created an environment where individuals and families are defensive and intensely private about land matters. Landholders are suspicious of the Band Office and federal government. There is animosity and rivalry between families rooted in land disputes or inequality of landholding. And land decisions are sensitive within families and often lead to disputes. The lack of openness regarding land strains community land decisions, such as land use planning, and discourages collaboration between landholders. These impacts are not only social and political—some disputes slow or prevent construction of homes, infrastructure, and other potential developments. Efforts by Band staff or individual landholders to coordinate land uses to avoid incompatible uses or achieve infrastructure efficiencies have suffered because many landholders are unwilling to engage or trust each other with information (A. Eneas, personal communication, 2011; J. Kruger, personal communication, 2011; L. Alec, personal communication, 2012).

5. PIB LAND TENURE AND MANAGEMENT ADAPTATIONS

The land management challenges faced by PIB associated with CPs are products of, to varying degrees, PIB's history, culture, and environmental

context; specific aspects of the federal reserve land tenure system; constraints on local reserve land management authority; and PIB's local land management decisions. For the remainder of this paper, we discuss some of the local adaptations that PIB has made in attempts to reduce or mitigate CP land management challenges.

5.1. Planned Subdivisions

To help manage the need for land and housing in a sustainable and cost-effective way, PIB has developed several housing subdivisions. Lots are standardized and laid out to facilitate efficient use of space and community infrastructure and plan for future growth and expansion. Some members are dissatisfied with the subdivision approach, expressing concerns about being so close to neighbours, not being able to choose the location of one's house, and not being able to choose one's neighbourhood. The explanation offered by Band staff is that subdivision development is necessary for long-term housing availability and protection of the Band's collective interests (T. Kruger, personal communication, 2012). One issue for accessing subdivision lands for some members is that allotment of a house lot is conditional upon building a house on it, using either your own funds, a Band mortgage, or paying rent to the Band, and not all members are able to do this (E. Alec, personal communication, 2011; PIB member, personal communication, 2011). Otherwise, members share housing with family or seek more affordable options off-reserve.

5.2. Community Land Allotment Policy

PIB's history of individual land allotments and registrations differs from many other Bands because of a community policy adopted in the early 1980s that restricted land allotments to small house lots in the Band's planned subdivisions. This was, in part, a reaction to concerns about inequality of land distribution. Another motivation was to ensure that future members would always be able to have a home on the reserve (E. Alec, personal communication, 2011; C. Eneas, personal communication, 2011). The policy has been effective at preserving large areas of reserve land as Band land, especially when compared to nearby reserves like Westbank where Band land is very restricted (L.

Vanderburg & R. de Guevara, personal communication, 2011). The PIB policy has also reduced infrastructure costs because compact sub-divisions are most cost-effective to service with roads and utilities than more dispersed lots.

There is strong support for PIB's allotment restrictions from Band leadership, staff, and many community members, but the restrictions do create some challenges. Band staff and members expressed concern that restrictions on allotments are restricting housing availability on the reserve. The costs associated with subdivision house lots (discussed above) mean that not everyone who needs a house can afford a subdivision house. The potential alternative of building a less expensive house elsewhere on the reserve, outside of the Band subdivisions, requires that another member (typically a family member) with a large enough CPs lot subdivides a parcel or grants them permission to build a house on their land. However, not everyone has that option. To help address these concerns, potential reforms to the policy are being explored as part of PIB's current land use planning process.

5.3. Education and Incentives for Registering Leases

PIB has taken steps to discourage informal "buckshee" leases, including a by-law that requires that a lease be registered before the Band will allow utility companies to extend servicing to the site. As well, PIB Council and the PIB Lands department are encouraging locatees to work with Lands staff and educating landholders about the benefits of legal, registered leases and the risks of not registering (G. Gabriel, personal communication, 2011; T. Kruger, personal communication, 2011). A PIB Lands staff member reported that over the past 20 years, buckshee leases have decreased dramatically, from "almost all" leases to just "a handful" (PIB Lands staff member, personal communication, 2011).

5.4. Sharing Benefits and Costs

Developments and leases on CP lands create benefits and costs for individual landholders and the Band. However, benefits are primarily private while many costs, such as investments into infrastructure or increased traffic on reserve, are

borne by the Band collectively. PIB and other Bands are adapting mechanisms used in off-reserve contexts to help balance the distribution of benefits and costs of land developments and leases, primarily property taxation and community benefit agreements.

Property taxation is conventional in most Canadian communities but relatively new to many reserves. Under s. 83 of the *Indian Act* and the 2006 *First Nations Fiscal Management Act*, Bands can choose to adopt their own property taxation policies, without which tax monies collected from non-member lessees and developers go to provincial or federal governments, not the Band. PIB adopted taxation of leased lands and non-member residents in 2007. While there was initial opposition from some community members, today most have accepted this limited taxation scheme and implementation is going smoothly (T. Kruger, personal communication, 2012). As an alternative to taxation, some Bands collect a percentage of the revenue CP owners received from tenants, but this can be seen as discouraging individual development efforts (L. Vanderburg & R. de Guevara, personal communication, 2011).

PIB staff are also promoting community benefit agreements as a way to address costs and benefits to the Band in potential leases or developments (T. Kruger, personal communication, 2012). Tools like this are standard practice in many cities and communities in Canada, where municipal planners negotiate with developers to include community amenities in development design, such as landscaping, sidewalk improvements, or recreational space. PIB hopes that community benefit agreements in both Band-led and CP holder developments will help share costs more equitably and create tangible benefits for all members.

5.5. Locatee Lands Project

PIB's Locatee Lands Project is an innovation in reserve land management and environmental conservation on CP landholdings (or "Locatee lands"). The En'owkin Centre, a cultural and ecological education organization located on the PIB reserve, is working with neighbouring CP landholders to develop voluntary conservation agreements that protect endangered habitat on their lands. In exchange, the En'owkin Centre

provides annual payments (currently funded by grants) to compensate the landholders for the loss of the use of their land and provide incentives for conservation (J. Armstrong, personal communication, 2011). The project is essentially a hybrid between a conservation easement and conservation payments, two mechanisms that are regularly used off-reserve. This initiative is unique in the context of reserves in Canada, both in its legal mechanism of a locatee easement but also in that it generates a sustainable income to the landholders in exchange for preserving the land, something that outright purchase or regulation of the land would not do (J. Armstrong, personal communication, 2011). PIB Band staff members are reluctant to consider more forceful conservation regulations both out of respect for individual landholders and because regulations could be changed by subsequent administrations if they became a political issue. Some interviewees also explained that there is sensitivity around forcing Bands and landholders to bear the cost of species protection when it is the lack of protection off-reserve that is endangering many species and habitats. The Locatee Lands Project has met with support from the locatees involved, other community members, and Chief and Council, who are looking into ways to further support and expand the program. Approaches like the Locatee Lands Project may prove attractive to Bands operating within the *Indian Act* lands system that want to address local conservation without relying upon command-and-control conservation regulations or external authorities.

5.6. Collaborative Community Land-Use Planning

Finally, PIB staff and members identified the importance of land-use planning for addressing challenges in the use and management of all reserve lands (Band land and CPs). For several decades, PIB has been building local planning capacity and its recent Comprehensive Community Plan and ongoing Land Use Plan process demonstrate commitment to participatory, inclusive, and collaborative community planning. Some of the expected outcomes of these planning efforts are local land use laws and policies, including by-laws and land-use regulations that will apply to CP lands. Members and staff antici-

pate that these tools will improve the clarity and consistency of Band and federal land management decisions and approvals.

PIB leadership and staff stress the importance of building collaborative relationships with and among all members, including CP landholders. Working closely with CP holders is critical for avoiding conflicting land uses and optimizing development opportunities. Especially in large-scale infrastructure projects and other developments, PIB Council and staff have a central role to play as facilitators of arrangements that numerous landholders can agree upon. At the same time, while specific collaborations with landholders are needed, PIB leadership and staff are sensitive to the inequalities of power that exist between landholders and other members, and the importance of designing planning processes to include and empower all community members. This approach to planning goes beyond regulations and emphasizes partnerships between landholders and the Band to further everyone's interests, individual and collective.

6. CONCLUSIONS

The history of PIB's transition from a local, customary tenure system to the federal system of registered individual landholdings brought and coincided with many changes in local land management. Over many decades, PIB's local and collective management of reserve lands was displaced by centralized federal policies and oversight processes. While the federal system has improved over time and does address some local land management needs, it lacks comprehensiveness, local knowledge and experience, and social and cultural sensitivity. The experiences of PIB suggest that increasing Bands' authority and capacity for local land management can be a more effective, equitable, and sustainable approach to reserve land management. This is especially so on reserves where the CP system exists because these permanent, externally protected, individualized landholdings have increased the powers of individual landholders without a corresponding increase in a Band's land management powers. Bands need to be empowered to use their own, locally appropriate and legally defensible land regulations and other mechanisms that will match their land management system with their land tenure system.

Today, some First Nations are choosing to opt out of the *Indian Act* land management system entirely through self-government agreements and modern treaties, the *First Nations Land Management Act*, or other proposed legislation. For a Band or First Nation, the development of a comprehensive local land tenure and management system is a formidable challenge and requires significant political, technical, and legal resources over the long term. Many Bands, including PIB, are instead making local adaptations to the *Indian Act* and CP systems, building their own internal land management capacity, and gradually reclaiming land management powers. To be sustainable, equitable, and effective, efforts to strengthen First Nations' local land management must be holistic, community-led, culturally and historically sensitive, and informed by local experience. PIB, along with many other Bands, is championing this approach by adopting land management tools and authorities on its own terms and defined by its own community values and goals.

There are many ways that the current *Indian Act* land tenure system could be reformed to address reserve land management challenges. However, potential reforms and policies need to consider and accommodate the wide range of needs, goals, and local capacity of Bands. As the history of Location Tickets and CPs illustrates, a narrow emphasis on individual rights and empowerment without due consideration of wider collective rights and management authorities can cause a host of new and expanded land management challenges. The experiences of PIB illustrate the importance of identifying and addressing local challenges of individual landholdings. As PIB is discovering, through local reform, there are ways that First Nations can transform their current individual landholdings system from an imposed colonial system intended to undermine and divide communal land traditions, into a locally defined system that provides strength and opportunity for both individuals and communities.

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