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India's Public Lands: Responsive, Transparent, and Fiscally Responsible Asset Management

Edited by

Patricia Clarke Annez and Shubhashis Gangopadhyay

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Patricia Clarke Annez and Shubhashis Gangopadhyay
(Editors' Note)

1. Introduction

India's public land holdings are vast and valuable

India's public land holdings are one of government's most significant tangible assets, whether in the hands of central ministries, state governments, or local bodies. They occupy substantial acreage in high value urban areas and around major ports. A pilot inventory of public lands in the Ahmedabad Municipal Corporation[1] indicates that 32 per cent of all developed and developable land—that is, excluding the road network, water bodies, and railway lines—is public land with the Corporation. The Union Government departments and organizations are the largest landowners in the country.[2] There is no definitive publicly available inventory of central land holdings, but a study of published sources indicates that these holdings are very large and potentially underutilized.[3] The 13 Major Port Trusts hold around 100,000 hectares of land in all. The Airports Authority of India controls 20,400 hectares of high-value land surrounding major airports. Indian Railways has identified 43,000 hectares of its massive landholdings as unnecessary for railway service, and estimated the value of this excess land at some US$40 billion. The Ministry of Defence is India's largest landowner. Its holdings amount to over 700,000 acres, of which about 0.7 lakh acres are out of cantonments—many of them in prime urban areas. A pilot public land inventory for Ahmedabad estimates that the relatively small but very well located Ahmedabad cantonment occupies about 7 per cent of total developed and developable land in the city.[4]

Valuing all of India's public lands is a difficult task given (i) the absence of publicly available information on public land holdings; (ii) incomplete public information regarding existing leasing transactions; and (iii) the paucity of public land transactions through an open and competitive market mechanism that would reflect the actual market values of these lands. Wherever such competitive transactions have taken place, the valuation has been very significant indeed. For

[1] See the chapter titled *Ahmedabad Public Land Inventory* in this publication.
[2] Chawla et al. (May 2011), Government of India, Cabinet Secretariat, Report of The Committee on Allocation of Natural Resources
[3] See the chapter *Capturing The Value Of Public Land For Urban Infrastructure: Centrally Controlled Landholdings* in this publication.
[4] According to the authors of the two chapters cited above, the Ahmedabad cantonment amounts to close to 500 hectares whereas in Hyderabad, the Secundarabad cantonment at 10,000 hectares is more than 20 times larger.

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instance, in 2006 and 2007, the Metropolitan Mumbai Regional Development Authority (MMRDA) leased out 13 hectares of land in the Bandra Kurla complex in Mumbai for about Rs. 5000 crores, or roughly ten times the MMRDA annual infrastructure budget and five times the Mumbai Municipal Corporation budget![5]

In the chapter titled *Ahmedabad Public Land Inventory* the authors prepared a public land inventory for the city to provide an indicative assessment of total *unused* public lands and their potential market value. This exercise, thus, excluded all cemeteries, parks and gardens, heritage buildings, slums, land used for utilities, infrastructure lands and industrial estates. Unused lands already earmarked for public purpose[6] were also excluded from the valuation exercise. Nonetheless, using these conservative assumptions, the value of potentially marketable excess land is still substantial—ranging from a low of 20,000 crores at jantri rates to 55,000 crores at market rates. Some comparisons put these numbers in perspective. These potential fiscal resources amount to:

- Rs. 36000 to 97,000 per person living in the current Ahmedabad Municipal Corporation.
- This amount is between 84 per cent and 225 per cent of the about Rs. 43,000 per capita ***needed for all urban infrastructure investments over the next twenty years in Ahmedabad*** as estimated by the High Powered Expert Committee for Urban Infrastructure (HPEC)[7].
- The estimated value of the potentially marketable lands held by the Municipal Corporation alone (excluding State and central government lands) is between one and two times the estimated seven year capital spending requirement proposed in the City Development Strategy (CDS) for Ahmedabad prepared in 2005.
- The estimated market value of potentially marketable lands in the cantonment alone (about 3 per cent of total identified surplus public lands in Ahmedabad) exceeds the seven year capital spending requirement in the CDS.
- The per capita value of potentially marketable lands amount is between 1.5 and 4 times the total national per capita receipts for consolidated State and Central Government in India in the budget estimates for FY 2012/2013[8].
- The per capita value of potentially marketable lands in Ahmedabad is between 2.7 and 7.1 times the total national per capita developmental expenditures for consolidated State and Central Government in India in the budget estimates for FY 2012/2013.[9] [10]

[5] See the chapter titled *Unlocking Land Values to Finance Urban Infrastructure* in this publication.

[6] 20 per cent of abandoned mill lands that are to be auctioned off as part of the bankruptcy settlement of the mills have been designated for affordable housing and excluded from our study.

[7] High Power Expert Committee (HPEC): *Report on Indian Urban Infrastructure and Services* March 2011

[8] Population Data used were from provisional estimates of the Census of India as captured on their website on May 15, 2013.

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- The per capita value of potentially marketable excess public lands in Ahmedabad is equivalent to between 74 and 200 times the annual average per capita property tax collections in the 36 largest Indian cities as estimated by a study commissioned by the 13th Finance Commission.

While this information for Ahmedabad cannot be extrapolated mechanically for all other urban areas of India, or for government's rural holdings, these indicative numbers show that public lands in urban areas are highly valuable public resources that deserve open and efficient management following good international practice. This monetary value is just one reason for efficient and effective land management. A commonly held view in India is that land is a scarce, highly valuable and finite resource. Continued acquisition of private lands for public purpose has become a contentious and socially divisive issue. Any government seeking to expropriate large tracts of new land for public purpose should manage its existing land holdings with rigour, fairness and transparency.

The governance system for managing India's public lands falls short of treating them as the valuable assets they are.

In a rapidly modernizing and urbanizing society such as India's, a society that is experiencing pressures from many different directions to invest in public services, human capital and the general welfare, managing public lands represents an opportunity to respond to these urgent needs. A more proactive management of public land assets should be part of a strategy for managing its balance sheet in the public interest. Disposing of surplus lands could free up fiscal resources for investments in other much needed public assets, such as long lived infrastructure networks that can bring benefits to society for years to come. Many argue that government should not consider managing its lands more proactively, including disposition of excess lands, since they might be needed in future. But failing to act now to improve public land governance is not necessarily a conservative position. Government agencies have regularly alienated public lands for various uses, and have already diminished the stock of land effectively at its disposition. For example, already 27 per cent of the Secunderabad cantonment has been leased to private parties.[11] PPPs such as the Delhi airport T3 terminal, include grants of highly valuable lands whose value is not reported nor can it be compared to the funds mobilized from the private parties benefitting from these grants of land. The relevant question is not whether to dispose of government lands; this is happening and will continue. The operative question is whether the governance arrangements for management of public lands can be improved to ensure that alienation of these assets better serves the public purpose.

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[9] Population Data used were from provisional estimates of the Census of India as captured on their website on May 15, 2013.

[10] One might argue that these comparisons of per capita value of potentially marketable urban land with per capita national aggregates may overstate the significance of valuable urban lands. Of course we cannot eliminate such uncertainty without a full valuation of all potentially marketable public lands in rural and urban areas—an important and desirable exercise, but one requiring substantial information and cooperation from a host of agencies in government. However, these comparisons are not implausible when one takes into account that the density of persons per hectare in our study area is about 60 times that of India as a whole. Public lands may not be so valuable outside of cities but the number of persons per hectare is also considerably lower.

[11] See Peterson and Thawakar (this publication).

The areas for improvement in the current system are outlined below. Fortunately, international and Indian experience points the way to practical remedies.

- International experience[12] shows that individual governmental agencies rarely, if ever, identify excess lands voluntarily to permit redisposition of lands no longer needed for their service function. Successful utilization of public lands has mostly happened when a strong centralized government agency has mandated the identification and redisposition of excess lands to ensure proactive management of these assets.

- The costs of holding onto lands allocated to government departments and agencies are very small. Decentralized agencies have little incentive, therefore, to get rid of them. Indeed, often, land use by decentralized government agencies do not follow agreed upon guidelines. For example, a report of the Comptroller and Auditor General ("Performance Audit of Defence Estate Management 2011) concludes that more than 81,000 acres of defence lands are "surplus" in the sense that they are not used, and are not presently planned for future use, as defence activities. The bulk of this land (52,000 acres) is vacant and unutilized. The Ministry of Defence has nonetheless taken the view that it has no surplus land assets. Some of the urban land held by the Ministry of Defence is allocated to uses that in the view of the Comptroller and Auditor General (CAG) are unauthorized. Defence has 97 golf courses covering 8,076 acres of mostly urban land. Golf courses are not authorized uses on A-1 defence lands. To avoid the charge of having surplus "recreational" land, the Army in 2004 re-labelled its golf courses as "Army environmental parks and training areas." The CAG report dryly notes that there is no evidence that the re-labelled golf courses are designed for "maintaining ecological balance".

- There is no reliable and consistent inventory of public lands that allows scrutiny of public land holdings by higher level authorities, in particular Finance Ministries/Departments, to ensure that valuable assets are not held indefinitely when they could be converted to other use, public or private.

- The absence of a regularly updated, centralized, and consistent inventory of public lands also leaves considerable scope for alienation through sale, grant, or most likely leasing, of valuable lands without scrutiny of these transactions. Peterson and Thawakar's[13] review of central agencies turned up a number of cases where highly valuable lands were alienated for well less than market values. In the case of the Kandla Port Trust (KPT) for example,[14] the majority of saltpan land was leased by KPT at Rs. 144 per acre per annum. Moreover, the schedule of rental rates called for land to be leased to large manufacturers at one-third the

[12] See the chapters by Peterson, McIvor and Verney in this book.

[14] See the chapter by Peterson and Thawakar for more details.

rate charged to small manufacturers. In one transaction, 3,981 leased acres (nominally leased for only a 5-year period) were mortgaged by the lessee for just under 50 crore. The Taj Mahal Hotel (subsidiary of Tata) pays a land rental of 13 lakh rupees per month for all of the land it occupies in the Mumbai Port Trust Area. Leases are often renewed without competition or reference to prevailing market rates.

- At present, public lands management is shrouded in mystery. The lack of publicly available information facilitates suspect land dealings and hampers efforts to realize the economic value of public land assets. Scandals have been followed by reforms. But the implementation of these reforms cannot be easily monitored since there is no public reporting; hence, it is difficult to ensure that the reforms that follow upon scandals achieve the desired effects, not to mention long term system wide improvements.

- The current system for obtaining information on public lands, which relies upon Public Interest Litigation (PLI) and Right to Information (RTI) is cumbersome and backward looking. These measures may help to identify scandals that have occurred but a more regular flow of up-to-date information and accountability is required to prevent continued corrupt or simply inefficient management of assets as valuable and desirable as public land. As the land inventory for Ahmedabad illustrates, the value at stake is too great to allow such a system to operate without oversight from higher authorities and the general public.

- Mechanisms for promoting cooperative solutions to disagreements over public land use are not working well. Individual agencies and ministries manage their lands for their own purposes and have no incentive to make small concessions that will have great benefits for public purpose. Defence and Railways landholdings sometimes stand in the way of completing urban infrastructure networks. Land exchanges could help make public lands available so that urban infrastructure projects can be completed without compromising agency capabilities. So far this process has proven very cumbersome, and the uncooperative environment has taken an important toll in time and costs to projects already approved.

    - In the case of the Hyderabad-Secunderabad Metro**,** Andhra-Pradesh was able to secure two acres of Defence land from the Secunderabad Cantonment to fill out the metro system as designed. Secunderabad Cantonment and Defence Estates cleared the land exchange after an eight-month delay. A letter from the AP Chief Secretary to the Defence Secretary was necessary to finalize the exchange. Two acres of Defence land being used for a riding school and parking were exchanged for 25 acres of state land in the Ranga Reddy district, which could be used as a firing range.

    - Coimbatore airport is in the process of being expanded to serve as an international airport. Lengthy negotiations between the Airports Authority of India and the Air Force and Navy had appeared to clear the way for a land exchange that would allow the airport to incorporate 122 acres of vacant Air Force land and 6.4 acres of vacant Navy land. However, in July 2012 both services announced that they would not transfer land to the airport. The Air Force stated that a Flying Unit would be

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"coming" in the future. The Navy stated that it needed airport access in case of an emergency. Alternate land sites could not duplicate the advantages of airport access.

- Construction of the Bangalore Metro Rail system has repeatedly bumped up against constraints imposed by Railway land ownership. In one of these disputes, Bangalore Metro Rail Corporation (BMRC) sought to build an underground station and portions of the Namma Metro corridor on Railway property. Disagreements concerning compensation significantly delayed construction and negotiations carried on for more than a year. The whole matter eventually had to be forwarded to the Centre for resolution, with interventions by the Urban Development Ministry and a special Empowered Committee.

- In Ahmedabad, while the Municipal Corporation has undertaken an ambitious program to improve slums, it has never been given the authority to install so much as a public toilet in the slums on railway lands. While the Corporation can invoke laws governing public health and safety to improve slums on private land, this cannot be done on railway lands.[15] The Ministry of Housing and Poverty Alleviation has requested States to pass laws giving ownership of slums on public lands to the existing occupants. However, no such demands are made on central ministries regarding their lands that may be currently encroached by slums.

- Recent attempts at centralization and reform are encouraging but as yet incomplete. Prior to 2011, land-use decisions regarding centrally controlled lands were mostly delegated to the individual landowning institutions and local management. This came to an abrupt end in March 2011. The Cabinet secretary circulated an order requiring all decisions about "alienation" of public lands to be referred to Cabinet for approval. The immediate causes behind this order were a series of highly publicized land scams, in which local officials and private parties conspired to capture the value of public lands.

- The policy announced by the Prime Minister's office in August 2012 aims to unlock centrally controlled land for infrastructure projects. The policy authorizes central institutions to transfer land to other departments of government, to sub-national governmental units, and to public-private partnerships when the land will be used for infrastructure projects. In practice the Cabinet freeze on public land disposition remains in effect. All land use commitments to third parties for periods exceeding 11 months must be approved by Cabinet. Cabinet has become the centralized choke point holding back public land-use decisions and critical infrastructure projects. This highly centralized approach is causing very substantial delays. A structural reform that replaces the undisciplined decentralized system

[15] While moral hazard is often cited as a reason to avoid improving slums on public lands, it should be noted that all slums on public lands in Ahmedabad form a very small part (4%) of total public lands. Moreover the overall area under slums in the AMC has increased very little in the last ten years. This refusal to allow minor service provision improvements serves little purpose beyond protecting a bureaucratic prerogative.

with a rigorous and accountable system with centralized control processes is needed. Otherwise, the pressures currently building up are likely to eventually undo the intended benefits of the cabinet freeze, and run the risk of channelling most benefits of public land disposition to those best connected and most powerful rather than serving broad public interests.

2. Building Blocks for Improving Management of Public Land Assets

A range of measures could be used to improve governance of public lands in India. Because India has a federal structure, such reforms could take place either at the Union government level for centrally owned lands or at the State level for lands held by the States. The package of reforms would be applicable in its totality to either level. Federal systems in other countries typically maintain a separation between management arrangements for state and federal level land assets, and such a separation is recommended in India as well. For this reason, the discussion below does not specify the level of government that should be involved. For Union government, these recommendations for institutional change are particularly timely in the context of the current Cabinet freeze on any type of alienation of centrally owned lands. The "freeze" has been imposed by Cabinet, in order to provide time for development of a Cabinet-level policy.

2.1 Establish an Annual Comprehensive Inventory of Public Lands

Establishing a proper inventory of public lands is a necessary first step to their better management. No country in the world has put in place a system for land asset management without such a consistent, centralized inventory with mandatory participation by all agencies holding lands.

The elements of a good land inventory are straightforward. An inventory of public lands should record:

- The location and dimensions of each land parcel
- Legal title, and any restrictions on development
- Current use and future planned use, if part of a public development plan
- Valuation--for parcels of economic significance

Coverage of this inventory should be comprehensive. It should apply to all departments in a ministry, to any agencies depending on a ministry for their funding and to any public sector undertaking (PSU) owned wholly or partly by government.[16] Introducing common norms across all ministries, agencies and public sector units (PSUs) for recording and inventorying public land assets should be a high priority. Consistency and comprehensiveness are more important than introducing sophisticated technological platforms that may slow down the creation of the desired

[16] Minority owned government PSU's may cause some complexities but government should use its powers even as a minority shareholder to persuade the agency to participate voluntarily. It is likely to be in the interests of all shareholders to know the location and be able to make decisions on how to manage these assets with a sense of their potential value. Well managed PSUs are unlikely to have large excess lands and should have nothing to hide.

inventory. Experience in other countries, for example, has shown that it is quite feasible to start as simply as an excel spreadsheet while building in more sophisticated functionality over time.

In India's case, where accrual accounting is being introduced, an overhaul of reporting practice could be implemented in the context of accounting reforms that require different levels of government to prepare balance sheets as well as budgets and annual financial reports. Land assets would figure on the asset side of agencies' balance sheets. Reporting in this fashion would highlight the large role that publicly owned land could play in public finances.

At least as important as improving the quality of public land inventories is making them publicly accessible. A publicly accessible inventory of public lands is an essential element in accountability. Any lands being offered for sale or transfer should be flagged for public examination. An "accessible" inventory is not only one that the public has the right to access, but one that is designed to be user-friendly. That implies being able to sort the inventory by different characteristics, such as vacant properties or properties owned by a certain agency, and having maps to assist users in accessing information. As examples of these capabilities: Users can access the City of Chicago's land data base to identify 245 pages of unoccupied parcels owned by the City, with lot sizes and locations. Users accessing the land data base of the Singapore Land Authority or the State of Berlin's Liegenschaftsfonds[17] can use a map to identify the location of each parcel, then zero in on a particular parcel to see its exact configuration and parcel characteristics, along with the characteristics of adjoining parcels.

2.2 Create a Centralized Process for Identifying Excess or Surplus Public Lands

"Surplus" land or property can be defined as property that is not needed, or not appropriate, for provision of the public service for which the agency owning the property is responsible. In the simplest case, land is vacant and not planned for future service use. In a more complex case, land may presently be in use, but underused or planned to be vacated as part of improvements in service efficiency. Identifying "surplus" land may be thought of as a proactive approach to public land disposition. That is, land is not readied for disposition only in response to demand for it in an alternative use. It is deemed "surplus" or "unwanted for service use" on its own terms, without regard to its market value or value in an alternative use. Internationally, the authority requiring the public land audit has the formal authority to classify public lands as surplus lands. This approach should also be adopted in India.

Once a list of "surplus" land has been identified, market forces and perhaps other agents of government can focus on the most attractive or useful surplus parcels and express demand for them. For example, the Canada Land Company (CLC),[18] an independent crown corporation, played an important role in identification of lands for disposition, although the CLC was not officially responsible for classifying public lands as surplus. Their mandate was to generate value for the tax payer by acquiring and disposing those surplus government lands that had substantial value in an alternative use. Because the government land inventory was publicly available, CLC could identify

[17] See Chapter by Peterson in this publication
[18] See Chapter by McIvor in this publication.

such properties easily and approach the agencies with proposals for particularly attractive lands, while maintaining distance and independence from the formal government process of inventorying public lands.

In developed countries, by far the greatest source of public land disposition over the last two decades has come from shuttered military bases. Military bases in these countries have been closed after independent assessment of their appropriateness given the evolving mission of the armed forces and the cost effectiveness of establishing bases in alternative military locations. They thus incorporate a rigorous standard for identifying "surplus" property, which has potential application for other types of government-owned land. These processes, while enlisting cooperation of the military, depend on independent, higher level authorities to drive the process.

In Canada, for example, bases located in bustling urban areas, once built to defend population centres, had become ill-suited for training, an important peacetime function. Many have now been disposed of and converted to private urban use. The identification of surplus public lands for the central government, including these military lands, took place under guidelines and monitoring established by the Treasury Board.[19] In the US, the Defence Base Realignment and Closure Commission (BRAC) process was designed to circumvent normal Congressional approval through the budget process, recognizing that proposals for case-by-case base closures would be tied up endlessly in Congressional amendments. Under BRAC, the Secretary of Defence periodically recommends a full set of bases for realignment or closure. This recommendation is typically founded on the premise that the US had too many bases for efficient operation, many of which were outmoded or too close to urban centres to be used for military training. The base-closure recommendations of the Defence Department are submitted to a special Base Realignment Commission, appointed by the President. The Commission reviews and can modify the list of bases proposed for closure. BRAC then submits a final recommendation to the President, who forwards it to Congress. Under the terms of BRAC's creation, Congress can only vote 'yes' or 'no' on the entire base closure list; it cannot modify or amend the list. All five rounds of BRAC recommendations, starting in 1989, have been accepted by Congress.

3. Creating Administrative and Financial Incentives for Excess Land Disposition and Sound Asset Management

International experiences suggest that behind all successful programmes of land disposition is a highly pro-active centralized approach. One way of achieving this is to place the onus on government agencies to justify why they should hold *any* land parcels, by requiring them to demonstrate their necessary role in the agency's public service provision.[20] Regardless of whether the land is ultimately disposed of, or not, such an exercise identifies the extent to which land is held as an asset by the government.

[19] The Treasury Board would be roughly equivalent to the Cabinet Secretariat in the Union Government of India.
[20] See the chapter by Peterson.

3.1 Annual Land Audit Using the Principle of Value for Money in Identifying Excess Public Lands

Australia's Commonwealth land policy starts with a clear statement of principle: **land held by government should be viewed as an input into the provision of the public service for which the landholding agency is responsible.** All public landholdings therefore should regularly be reviewed, with the goal of divesting those properties not necessary or cost-effective for service provision. Commonwealth property having no efficient use is to be put on the open market at full value. One of the strongest statements of this principle was made by the representative of the Ministry of Finance and Deregulation at the Parliamentary Inquiry into the Disposal of Defence Properties:

"An ongoing goal of government policy is to reduce its property holdings throughout Australia…The Commonwealth is not a property company. [There] is an opportunity cost of capital and the Commonwealth has determined there are better things for it to do than be a property holding company."

A similar approach, in the form of an annual land audit, could be adopted in India. It should include specific monitoring mechanisms that put the burden of proof upon the agencies holding properties to demonstrate that their land holdings must be retained to fulfil their current service functions. In such an audit, the property-owning agency must report all holdings and demonstrate that it is cost-effective for service delivery to retain ownership of these lands, taking into account alternative ways to provide its services and alternative uses for the land outside of public ownership. The Ministry of Finance could prescribe the financial and economic variables to be used in making the business case, including opportunity costs and discount rates. The *own* versus *sell* land decision could be embedded in a broader policy of obtaining 'value for money' in public property management.[21] In the case of India, a transitional measure could allow for long term land leasing, as used commonly in China, for example.[22] Public lands leases however, have important risks, and should follow rigorous rules as outlined below.

Special Measures for Public Land Leasing

Leases of public lands to private parties should be singled out for particular attention in a Public Land Audit. Throughout the world, public property that is leased to private users tends to be priced well below market rents.[23] India is no exception. As discussed above, some of these transactions have been the subject of public scandals. These transactions, without rigorous oversight and penalties for abuse, open the way for exchanging below-market rents for greater political power, corrupt payments, or other mutually beneficial special arrangements.

[21] Australia's Better Practice Guide on the Strategic and Operational Management of Assets by Public Sector Entities (2010), or the guidelines from Canada provided in the McIvor chapter, could serve as a model for specific guidelines suitable for India.
[22] See the chapter by Peterson.
[23] Peterson, George E. and Olga Kaganova. 2010. *Aligning Regulation of Subnational Land Assets with Subnational Debt Regulation.* World Bank Working Paper.

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Automatic Designation of Lands Leased Below Market Value as Surplus

By the criteria of Value for Money as applied in Australia, the failure to obtain market rents in leasing deals becomes a reason for divestiture of public lands under the Land Audit. Such a principle should be adopted in India.[24] Aggressive use of contractual rights of termination may be required if lessees do not agree to rate adjustments. Even if gradualism is required in phasing out legacy leases below market rates, a revised policy should be very firm in requiring well designed and transparent competition for renewals and new leases of public lands.[25] A firm policy of disposing of lands under leases that do not comply is essential for ensuring adherence to the new policy, since experience has shown that the pressures to backslide in this area are very strong. The current lessees can always participate in the competition for the land at the time of disposition.

Audit of Required Land Use

The Public Land Audit should routinely review any conditions on land use included in leases to private parties. If those conditions are not currently adhered to, any remedies in the lease contract, including lease termination, should be applied rigorously. In many cases, lands have been leased at attractive rates for a wide range of social purposes. Such concessional rates are tantamount to an ongoing subsidy for activities the government wishes to promote. Government can provide direct support for such activities more transparently and oftentimes at less fiscal cost than by concessional land provisions—many of which could be phased out. For example, Australia's policy is never to cede land for sale or by lease to the private sector for concessional rates for some desirable public purpose such as health or education. Instead if such purposes are seen as meriting government support, they should get a direct subsidy. Any land required stays within government and is subject to continual government monitoring of the usefulness of retaining land as a means of achieving the ultimate public purpose. A process of reviewing Value for Money would bring these issues to the fore over time as existing concessional leases are reviewed in the Annual Land Audit. At a minimum, in the immediate term, lessees should demonstrate that they are providing the desired social services as long as the concessional lease is in force.

Long Term Leasing with Annual Payments versus Outright Sale

The experiences in India with long term leases with an annual payment structure has not been very good, especially when such leases have been given for particular types of land-use (e.g., the problems with the disposal of the land with shut-down textile mills). Only leases let out on a competitive basis for a single up-front payment for the lease term should be permitted. Long term leases with a single up-front payment are much like an outright sale, but respond to sensitivities about definitive sale. Leases with annual payments, by contrast, keep the leasing agency in the role of property manager—a role for which they are ill-equipped and which is outside their core service activities. With annual

[24] It may be necessary to seek out a legal strategy to transition away from long term leases at below market rates that have benefitted from favourable court opinions in the past. See the Peterson and Thawakar chapter.

[25] Peterson and Thawakar have documented numerous difficulties with annual lease payments and repeated reforms have not succeeded in eliminating the problems with this type of contract.

leases, it has been difficult to maintain market rates in the face of economic and political pressures from the lessees and rapid inflation in land rents. These shortcomings have shown themselves resistant to reform efforts, and the practice should be phased out as quickly as possible. The government and by extension taxpayers, not lucky private parties, should benefit from land cost increases.

Competitive Allocation of Leases

No leases should be renewed or let out without a competitive process. All lands, whether leased or sold, should be allocated after an open, competitive process, which encourages wide participation. Special transition arrangements may be needed for industrial estates sponsored by government industrial corporations. Industrial estates that do not meet the criteria of Value for Money should be considered for redisposition. Even if all lands are leased out at market rates and the estate is well established, government may wish to realize their gains and sell the estate. If the estates are underutilized or being used for purposes other than originally stipulated, disposition may be considered with a change in land use.

3.2 Annual Land Audit: Applying the Principle of Value for Money in Plans for Acquisition and Allocation of Public Lands

The Public Land Audit should review all plans for acquisition and allocation of future public lands, as well as proposed land use, especially lands proposed for acquisition on behalf of the private sector or for lease to the private sector. This process is essential to ensure that additions to the stock of public lands are necessary for meeting the service functions of the agency. A centralized Public Land Audit will turn up available parcels of excess lands held throughout the government, and thereby facilitate inter agency trades and avoid unnecessary land acquisition. Furthermore, a review of all acquisitions will ensure that any proposals for real estate development to support projects are handled professionally and do not proceed outside of normal budgetary discipline. For example, the National Highway Authority of India (NHAI) often acquires land in excess of what is needed for highway building in order to build a mall near the highway to be rented out as a means of defraying highway development costs. All such proposals should be declared before any acquisition is approved. Additional acquisitions for commercial purposes by decentralized agencies should cease completely. Should land acquisitions be deemed the most cost effective means of achieving the government's goal, they should be left to the specialized real estate agency (discussed below).

Under a value for money approach, the practice of government agencies contributing land directly as the government share in funding a Public Private Partnership (PPP) with pre-identified private sponsors should be curtailed and ultimately cease completely. This practice currently transfers land at undisclosed prices without market evaluation or any competitive test of which sponsor provides the best value to government. Contractual terms are not publicized and it is extremely difficult for government or the public to determine if indeed they have gotten value for money from their in-kind contribution to a PPP. Going forward, the proceeds of competitive land sales could provide ample funds for providing equity contributions to PPPs should the budgetary process for the ministries determine that equity contributions to these PPPs are a high priority.

Excess lands should no longer be held or acquired by ministries or agencies for promoting future unidentified projects. When a high priority project is identified, and it is determined that a particular type of land parcel is essential to its success, this could be handled by the agency to be established (see below) for disposing of and acquiring public lands. Essentially, these rules would not prevent the private sector from moving the government to amalgamate lands on their behalf. These rules would however, by centralizing the process of acquisition in the hands of a core of real estate specialists, help to minimize compulsory acquisitions and ensure that land acquisition for private use follows rigorous and consistent rules designed to protect the interests of those subject to compulsory acquisitions.

The Public Land Audit and identification of excess public lands would also replace the current system of allocating public lands to specific government agencies or private parties through the master planning process currently in place in major cities such as Delhi. Through that process, public lands are effectively alienated through planning provisions, and implementation of the master plan involves allocation, over time, of those lands to public agencies or private users for objectives deemed important for the master plan. Such an approach provides privileged access to certain land use without a competitive process that elicits the true economic value of the land and critical examination in the context of the budgetary process of the implicit subsidy so provided. Such subsidies can be worth large multiples of the annual budgets of the agencies involved and should be scrutinized in the budget process based on their contribution to the service mandate of the agency, weighed against the lost revenues from allocating these lands administratively rather than monetizing them and using the fiscal resources so obtained to meet broad government objectives.

3.3 Rentals for Use of Public Properties, Buildings and Land

As Public Land inventories and Land Audit processes are established, it would become possible to establish a system of rentals for use of public buildings. Australia has a well-established policy of charging public agencies the full market rental rate for their occupancy of government buildings. The policy is overseen by the Property Division of the Ministry of Finance and Deregulation, and administered on the Ministry's behalf by a private-sector property management firm. Public agencies are not required to use public buildings; they are free to search the market for the most cost-effective locations. However, if they occupy public buildings they must pay full market rentals, a policy also pursued in several other countries. The rental value of office buildings, of course, reflects their location and underlying land values. Thus the system provides some incentive to public agencies to economize on public land use—i.e., to only occupy public land that is worth its rental price. Such a system would need a transition phase in India. However, even introducing nominal rental rates that nonetheless reflect differences in market values of the public building they use, would provide an incentive for agencies to manage their use of real estate more effectively.

3.4 Leadership

While administrative mechanisms can create incentives for identifying and disposing of public lands, a key ingredient in making those incentives bite is strong political leadership and support for disciplined land management in pursuit of broader government goals. In Canada, the government had committed to reducing the deficit. More proactive management of excess land assets was seen as a very important step in achieving this goal. In the US, the BRAC process started after the end of the cold war, when there was a political mandate to reap the peace dividend. In Australia, a newly elected government in the 1990's came into power with a mandate for streamlining government. The political imperatives in India will doubtless be unique to the Union Government (or States') needs. Managing its publicly own land assets more effectively can respond to many strategic goals in India: greater transparency, equity, and cost efficiency in access to public resources, increased investments in urgently needed public goods that benefit the population at large, and reducing compulsory acquisitions of private land for public purpose, among others. Whatever the motivation may be, international experience shows that political commitment is a key ingredient in reforms of this sensitivity.

4. Implementation of the Land Audit and Follow-up Actions: The need for Specialized Agencies.

The Cabinet should form a special standing empowered committee reporting to Cabinet to execute the new land policy, mandate the inventories and review assessments of excess lands following the principles of Value for Money to be established. This Committee would also establish rules for disposition of surplus lands identified in the land audit process. In Canada, alienation of small parcels of likely low market value can be disposed of by the agencies themselves, following government procedures for competitive disposition of land. The Committee would reserve the right to review any such dispositions for compliance with competitive procedures. This process could be delegated to a special unit in the Controller and Auditor General's office with competency in this area.

In order to dispose of high value urban lands, a specialized and politically independent agency with high standards for transparency should be established with a clear mandate to dispose of public lands to optimize taxpayer value.[26] This agency should be staffed with real estate professionals, because the functions of this agency are to operate effectively in local real estate markets. This agency must be empowered to:

- identify first and best use for excess land to be disposed;
- negotiate with the local authorities on changes to regulated land use as needed;
- agree on local infrastructure improvements that may be required as the land use changes;
- make decisions for timing of sale of land to avoid disruption to local real estate markets.

A significant part of the monetary and economic benefit of the excess land dispositions are likely to come through a re-negotiation of the land use with local governments, since the existing

[26] Optimizing the value of surplus land is borrowed from the CLC framework. The distinction with maximizing value is that generating financial resources, however important, need not always be the only consideration in disposing of public lands. Explicitly named social or environmental considerations may be brought into consideration when deciding what to do with high value lands. In the case of the CLC, oftentimes, they found these two goals were not in conflict.

government use of such lands is rarely the first and best use of high value urban land. In Canada, creating a crown corporation to take on this task makes these negotiations possible while retaining the federal government's sovereignty with respect to lower levels of government. In Berlin, the Liegenschaftsfonds has similarly been able to work as an effective intermediary between higher-level government, local government, developers, and communities. The institutions operate more transparently than most government agencies, and they operate at one step removed from politics. Their land inventories are open to inspection by the public and by potential purchasers. Their staff are real estate professionals, not civil servants, and they are not subject to transfers requested by politicians as would be in the case of Indian civil servants. They have been able to capture for government the value-added that comes from negotiating zoning and density permits prior to land sale while ensuring that developers undertake land development and bear project execution risks. Arrangements that incorporate these factors would be essential for a specialized public real estate agency in the Indian context.

This agency would dispose of the land following competitive and transparent processes be they auctions or pre-qualified calls for proposals to private parties that would develop the land.[27] This agency should be responsible for identifying real estate opportunities and optimizing value for taxpayers. But the final risks of development should be borne by private entrepreneurs with the experience and expertise to take on such projects. All profits from the company's operations should be remitted to the government, not kept within the company. This company should not become a land bank but it needs flexibility to optimize operations over the real estate cycle. The Empowered Cabinet Committee should have oversight responsibility to ensure that lands are disposed of expeditiously while taking into account the volatile real estate market cycle in India. This could take the form of an annual review of the business plan. Beyond such strategic review, Canada's experience suggests that very strong measures are required to insulate the public real estate agency from the real danger of political interference. Making requests of the CLC with regard to specific transactions can be grounds for dismissal of cabinet ministers or other political figures.

As mentioned above, this specialized agency should also be responsible for all mandatory land acquisitions proposed by government agencies during the Public Land Audit. Obtaining land on behalf of the private sector, and of bundles of a certain size (say 10 ha or more) would automatically have to be undertaken by the agency. The agency's mandate should be to identify and, as necessary, amalgamate the parcels necessary for achieving the service goals of the proposed acquisition of land on behalf of the private sector while ***minimizing*** compulsory acquisition of private lands. The agency proposing the acquisition would pay up front to the specialized real estate agency the full value of the required parcel at the rates stipulated under the relevant mandatory land acquisition rules. This approach ensures that the agencies bear the full costs of the mandatory

[27] If considering pre-qualification for calls for proposals for developing specific land parcels in India, it is important not to draw the qualification criteria too narrowly since the developer community in many places may be highly concentrated, uncompetitive, and prone to collusion to keep prices down. In the case of MMRDA's auctions in Bandra Kurla, successful bidders were often not experienced developers, but the ultimate owners of the buildings. For many developers, their core advantage in the market is obtaining land parcels in highly complex and uncertain land regulation environments. Such developers may not be the most competitive bidders for an open plot with clear title.

acquisitions they propose. To the extent that the specialized real estate agency can reduce the amount of land acquired compulsorily, they can improve their operating results and the profits are returned to government. All lands acquired on behalf of the private sector would be disposed of through either open auctions or competitive bids to avoid passing hidden subsidies to the private beneficiaries of expropriations.

An agency with strong real estate skills could perform the land amalgamation, ensuring that lands are chosen well while proactively seeking out alternatives to mandatory expropriation. Examples such as Magar Patta, which is essentially a creative use of the town planning schemes in Maharashtra, illustrates that land use of large parcels could be changed and converted to urban use while retaining collective ownership. Without requiring any compulsory acquisition, this achieved a dramatic expansion of land available for private sector activities. Likewise the second ring road of Ahmedabad was built without expropriations, but again using the town planning scheme model. This more flexible approach could considerably reduce the social costs of public land acquisitions while also seeking out least cost options for government when land amalgamation is essential to achieving worthy public purposes.

It may be tempting to consider using the Urban Development Authorities (DAs) as a model for the specialized real estate agency. However, their operations and staffing are very much at odds with the model for a professional land disposition agency envisaged here. Indeed their operations may well be leading to unnecessary and inefficient expropriations of private lands, and their financial model generates no useful surplus of revenues for the public good in spite of monopoly rights of acquisition of lands in the areas under their control. In the immediate term, the DAs should submit to the requirements of the proposed land governance framework, including the Annual Land Audit as would all other government agencies. Their requests for land acquisition should be very carefully scrutinized to ensure they are essential for performing their immediate service function. Over the longer term, the mandate and operations of DAs, a holdover from a colonial model, should be considered for fundamental reform.

5. Disposition of Land Sale Proceeds

Determining the best way to dispose of excess public lands should clearly be in the hands of specialists with real estate expertise. On the other hand, the framework for deciding on allocation of the proceeds of these sales or leases is necessarily a matter of public policy since they are public resources just like the land from which they derive.

5.1 The Golden Rule: Proceeds of Asset Disposition should be Dedicated to Creating New Assets

Certain guidelines for the use of proceeds of land disposition are quite clear. Most countries impose a ‘golden rule’. Disposing of land (whether by sale or long term lease) reduces public assets. Funds derived from asset sales accruing to any government agency should be used principally for creating other assets. Some exceptions might be made to allow for reducing long term liabilities, such as pension fund liabilities for defunct public operations that otherwise could not be streamlined or closed down. But given India's long term investment needs and the scarcity of public funds, the emphasis for the medium term should be on creating assets rather than liability restructuring.

Any allocation of proceeds of public lands disposition to the investment program of any government agency should take place in the context of overall budget management to ensure such funds are scrutinized with the same rigour as any other public subsidy. All proceeds from land disposition should be incorporated in five-year capital financing plans. Before receiving central government subsidies for capital investment or subsidies to help finance under-funded pension plans, institutions should be required to estimate proceeds from land disposition and include these as a revenue source that reduces the need for budget subsidy.

5.2 Stakeholder Compensation

A more fundamental question is who in government decides on how the proceeds of land sales are used. Practices differ considerably in this regard.

- Australia's very rigorous approach to this issue requires that agencies holding excess lands bear the cost of disposition while not necessarily receiving compensation for the excess lands.[28] All proceeds of public land sales accrue to the consolidated fund.
- In Canada, the land holding agency is compensated at the assessed market value of the land when sold to the CLC, *before* rezoning or other improvements. This compensation is only paid out upon final sale of CLC land to the private sector, provided the agency proposes an approved use of these compensation funds through the budget process. The CLC pays for any investments to prepare the site for alternative land use, and in this sense the local government can be an important beneficiary. Once the project is complete, local government benefits from the payment of property taxes on much enhanced urban property values. Remaining CLC profits are remitted to the consolidated fund.
- In Berlin, Germany, the Liegenschaftsfonds has been established to dispose of public lands in Berlin, after renegotiating land use with local government, similar to the operations of the CLC. The policy mandate given to it by Parliament was to collaborate with state government agencies to identify surplus state property and dispose of it to support the physical development plans of Berlin. Because the typically more intensive land use places a burden on the local borough within the city, between 10% and 15% of sale proceeds, depending upon the transaction, are allocated to them.
- The Philippines applied detailed earmarking rules enshrined in law for the proceeds of sales of land from old US military bases. Republic Act no. 7227 authorized the sale of land in Metro Manila military compounds formerly used as US military bases. The first land sale, of Fort Bonifacio, realized roughly US$800 million. The law specified that the proceeds were to be used as follows: 50% for Special Economic Zones at other former US military sites; 32.5% was to be used for modernization of military equipment and housing for military personnel; 4% was dedicated to provision of housing for the homeless; 2.5% was allocated

[28] The military has been exempted from the requirement to bear the full costs of land disposition. See Verney op.cit.

to the three municipalities most affected by re-development of Fort Bonifacio; and 10% went to the general budget.

- In Hong Kong[29] proceeds from the disposition of public lands have been the primary source of funding for urban infrastructure. The funding comes from an upfront land premium charged when new long term leases of urban lands (publicly owned) are entered into. Most of the economic value of the land premium derives from the change-of-use planning authorization that accompanies a new land lease. Under Hong Kong's system, revenue from land premium is earmarked to a separate account called the Capital Works Investment Fund (CWIF) also known as the Capital Works Reserve Fund). Expenditures from the Fund can be used only for public works investments—primarily roads, highways, waterworks, and ports—and related land acquisition. Earmarked land premium is the Fund's only source of revenue. It has consistently funded the great majority of public infrastructure investment in Hong Kong. Public works spending in Hong Kong grew by 18% in 2008/09, by 37% in 2009/10, and by 54% in 2010/11. CWIF was able to finance 83% of total public works investment in 2008/09, more than 100% in 2009/10, and 80%+ in 2010/11.

In India, it may be very difficult to take Australia's rigorous approach with the landholding agencies. Past experience shows that agencies cherish their independence and strongly resist initiatives from above. There have been a number of cases where agencies pursue their own prerogatives in land negotiations and prolong negotiations to a point where much value is lost or no agreement is ever reached. Given this context, a model where there is sharing of the benefits among stakeholders is likely to be most effective in India. Given urban land values, and substantial underuse of public lands in high value locations (see Ahmedabad Pilot Public Land Inventory) the surplus to be shared will often be large enough to ensure that a range of interests can be accommodated.

Accordingly, the proceeds of any land transaction should be allocated in two steps. First the key stakeholders, public and private, should receive a share of the transaction, as compensation for disruption, as an incentive to participate in a cooperative solution, and to focus energies first on those lands offering the best value to the taxpayer. Consistent with the golden rule, no public land disposition should go forward if compensation to parties outside government is planned to exceed 25 per cent of total proceeds. After compensation of stakeholders to the transaction, the remainder of the profits on public land disposition could revert to a government investment fund that would then allocate the residual profit following broadly and openly agreed public investment priorities (to be discussed below). It is essential that this investment instrument have the flexibility to manage the funds in a multi-year framework to reduce risks that its spending program becomes captive to the real estate cycle. The Union Government and States have at their disposition instruments, such as sinking funds, to achieve this purpose.

[29] Hong Kong's land premium model was established under the British, with the intent of ensuring self-sustaining infrastructure while maintaining low tax rates to keep Hong Kong a competitive free port. It is important to note that this system is distinct from the project level rail and metro system land value capture that is also used with great success in Hong Kong.

The key stakeholders in a public land transaction, the rationale for compensation, and the approach to calculating compensation are outlined in the table below. These criteria are designed with two key purposes in mind. First, the compensation of various stakeholders should focus the priorities for disposing of excess lands on sites with fewer legacy obligations, formal and informal. These would be simpler transactions with more vacant land that would offer more net benefit from redisposition. Secondly, the form of compensation penalizes agencies that seek to "tie up" excess lands with leases at or below market rates. Combined with the rule that all lands leased out below market rates become automatic candidates for excess land designation and eventual disposition, these criteria ensure that agencies would be penalized over the long term for mismanaging public resources by leasing below market rates.

These compensation principles also discourage disposition of public lands currently occupied primarily informally, especially by slums. There is considerable concern in civil society that slums may be the first candidates for land disposition for a variety of reasons. But if government were to use the criteria in the table below, there would be no benefit to disposing of a fully occupied slum parcel because compensation to the households in the slum would consume the entire proceeds of a sale or lease. Moreover, evidence from the Ahmedabad Pilot Public Land Inventory indicates that: (i) slums occupy a very small share of public lands, (ii) there are plenty of underutilized public land parcels without slums that are much better candidates for land disposition.

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Stakeholders	Reasons for Compensation	Type of Compensation
Original formal owners/users	Compensation for Disruption, encourage cooperation	Percentage of Net proceeds excluding % age of lands leased below market or any lease concluded within one year before first land inventory and costs of paying out on existing leases and compensation for informal occupants
Formal lessees at market rates whose leases must be terminated	Disruption experienced, Potential to Disrupt Disposition	Compensation for Early Termination for Incumbents in place one year prior to first public land inventory based on contractual terms with bonus for participating in Arbitration
Formal lessees at below market rates (all leases to be terminated)	Potential to Disrupt	Contractual Termination Terms with bonus for arbitration
Informal occupants established in place one year prior to identification of site for disposition (typically renters or owners in a grey market)	Compensation for Disruption Avoid choosing sites with large vulnerable populations for disposition	Choice of percentage of gross proceeds equivalent to percentage of land occupied (may be converted to annuity) or relocation package following guidelines currently used for Mumbai Urban Transit Project.
Local governments.	Compensation for disruptions, encourage cooperation and flexibility with regard to land use changes, recognize legacy support to agency and cost to city of hosting large public holdings	Percentage of gross proceeds
State or Union Government	Compensation for Managing the Process	Small Percentage of Gross Proceeds

5.3 Disposition of Remaining Surplus Funds.

Following the Golden Rule, as described above, the surplus available after compensation of the various stakeholders should be placed in an investment fund. This investment instrument needs flexibility to manage the funds in a multi-year framework to cushion the impact of the real estate cycle on the investments of the fund. The Union Government and States have at their disposition instruments, such as sinking funds, to achieve this purpose.

This investment fund should focus on creating long lived assets that are difficult to fund in other ways such as structured borrowings, PPPs, and project level land value capture. Surely some of the most important investments of this kind today in India are for public works such as flood control, storm water drainage, non-tolled road network, sewerage and sanitation network enhancements and extensions, in-house water and sewerage connections, roads and neighbourhood improvements in slums, all of which are investments for the future of an urbanized India. These public goods are in desperately short supply in India's cities, towns, and villages. Indeed there is a very good argument for allocating, in the first instance, a large share of the funds to these basic service improvements in the localities from which the land disposition proceeds derive. Just as the 13th Finance Commission suggested sharing royalties with local bodies to address the externalities of mining, so should the host cities for surplus public land receive a share of the proceeds of land sales. Many of the negative urban externalities such as congestion and air pollution rise in tandem with the economic activity that in turn drives the high property values that will benefit public land sales. Large underutilized public land holdings have driven cities to develop around the leafy precincts of public lands and squeeze into considerably less orderly and poorly serviced neighbourhoods. Funds from the proceeds should go to public works to ensure that basic services and amenities have universal reach even in the poorest informal neighbourhoods in these cities. Likewise, the proceeds from public land disposition should fund the basic trunk and secondary network infrastructure expansions that are desperately needed in otherwise successful and booming cities. More sewerage, flood control and much improved road networks in cities that have hosted large public land holdings make great economic and social sense. Indeed they make sense across the country, as gaps in basic infrastructure services have been shown to be persistent in spite of a fast growing economy, a dramatic expansion of large infrastructure projects supported by PPPs, and expansion of various entitlement programs for food security and education. If the Ahmedabad inventory is indicative, the resources made available from comprehensive public land management reform could fund a very considerable increase in spending on basic infrastructure services countrywide.

On the other hand, infrastructure investments amenable to special project finance, such as metros, airports, toll roads and bridges should not be eligible for funds accruing from excess land sales. Such investments have ample access to other sources of funding, and have benefited disproportionally from government emphasis on such PPPs in the past. They should continue to rely on those sources while public lands serve to finance projects that cannot be funded otherwise, and have, as a consequence, been neglected. Until the basic services needed in urban areas are attended to, public land sale proceeds should not be used to fund affordable housing—an inherently private good which already receives considerable attention. Investments in basic infrastructure services in cities and towns should come first because only government can coordinate their effective delivery, and at this juncture, government needs to do much more. The investment fund can, of course, examine other priorities over time once these needs are met.

Such an approach is consistent with the lessons of international and Indian experience. Earmarking revenues to a special fund can be an effective way to boost spending for priority expenditure purposes. However, it is difficult to sustain an earmarking system in equilibrium. Earmarking can generate "too much" revenue for 'spade ready' projects or too little for large investment needs. Lumpy receipts from public land sales can be especially difficult to plan for. Accordingly, this proposal seeks to focus on a relatively narrow investment priority--eliminating the well documented gaps in basic infrastructure services.[30] Focusing first on investments in those localities where excess public lands are sold or leased creates a natural priority setting that also demonstrates immediate benefits of the new policy to the community and builds public support. For these reasons, the fund should invest in both monitoring capacity against the overall goal of 100 per cent basic service coverage and strong public outreach to keep the benefits of increased investments in the public eye.

Nevertheless, this earmarking arrangement should be viewed as an intermediate-term strategy, designed to finance catch-up investment-such as that proposed for basic infrastructure services. It will outlive its usefulness if successful, and the fund should be created so that it can be wound down or diverted to other strategic investment or liability management needs. However, given the intense involvement of government in land markets and its expansive holdings, the period of divesting excess lands and winding down expansive acquisition of land is likely to last for quite some time. Moreover, while the bulk of excess lands existing today may be disposed of in a ten to twenty year time frame, the need for disciplined and proactive public land management, especially new acquisitions, will not go away.

5.4 Agencies for Executing Investment Programs Funded from Public Land Disposition

A well-managed programme for the disposition of public lands is likely to generate amounts that are large multiples of the money spent for these investments in the past. Special arrangements to ensure that the funds are spent effectively may be desirable to ensure that the increased spending is translated into valuable assets. Given the wide variety of legal and institutional contexts across India's states, it is difficult to recommend a universally appropriate institutional format. Some characteristics can nonetheless be identified.

Independence from government administrative processes that make it difficult to mobilize an effort for a discrete investment program. Some of the most serious impediments are inflexibility in hiring, procurement of goods and works, multi-year budgetary management. Special purpose vehicles have been found to be useful in surmounting such obstacles for projects in India. They can take various forms.

[30] For the most recent work on urban service gaps, please see HPEC.

The natural counterpart to freeing the executing agency from government administrative restrictions should be an exceptionally transparent reporting arrangement for the agency. Indeed, one of the advantages of an independent agency could be a charter that requires more openness than the typical government department. Because of the many sensitive issues involved in infrastructure investments, particularly forced relocation, in addition to handling large amounts of money, it is essential that the general public have easy access not only to evaluations of results such as audited financial reports and project execution audits, but to prospective plans that affect the community. The boards of these agencies should include a range of stakeholders from concerned governments, to politicians from a range of parties to civil society. However, all these board members should be required to work for the broad public interests, not a narrow personal agenda, or be removed.

In India's lively democracy, there is no substitute for building support from across the range of political parties to ensure a medium term mandate for a special agency charged with investing the proceeds of public land dispositions. Experience shows that this involves treading a fine line between political support and political interference. Increasingly Indian democracy is demanding results--not just affinity and special favours-- for political success. This area can be one where politicians demonstrate their abilities in this domain. Discipline in the governance framework can reinforce this approach.

Inventory of Public Lands in Ahmedabad, Gujarat, India

Shirley Ballaney, Marie-Agnes Bertaud, Patricia Clarke Annez, C.K. Koshy , Bindu Nair, Bimal Patel, Vidyadhar Phatak (Consultants) Vasudha Thawakar (World Bank)

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Abstract

This paper pilots an approach to identifying, categorizing and mapping public lands owned by the central, state and local government in the urban developed areas of Ahmedabad, Gujarat, India . This methodology uses information on plot sizes, location and ownership is that is publicly available for all areas covered by town planning schemes. The study goes on to examine the extent of unutilized and underutilized public lands, which excludes all cemeteries, parks and gardens, heritage buildings, slums, utilities, infrastructure lands and industrial estates. Unused lands already earmarked for public purpose were also excluded from the valuation exercise. The potentially marketable lands so identified were valued at both official rates and estimated market rates. The value of potentially marketable excess land is significant—in per capita terms, the high value scenario substantially exceeds the estimate of total infrastructure investment needs for the next twenty years prepared by an expert committee of the Ministry of Urban Development of the Government of India.

ACRONYMS

AMC Ahmedabad Municipal Corporation

AUDA Ahmedabad Urban Development Authority

BRTS Bus Rapid Transit System

CBD Central Business District

FSI Floor Space Index allowable on given plot, Index is calculated as the ratio of built floor area divided by the total plot area.

GIS Geographic Information System

HPEC High Powered Expert Committee

IDF India Development Foundation

TPS Town Planning Scheme

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Inventory of Public Lands in Ahmedabad, Gujarat, India

1 Introduction

The urgent need for substantially augmenting financial resources required for investing in urban infrastructure is well recognized.[31] Monetizing public land assets could contribute a substantial share of funds needed, as international experience has also shown in other countries.[32] The 13th Finance Commission of India has also underlined the importance of ensuring proper use of land held by governments, central, state and local as well as government owned Public Sector Undertakings.[33] The Committee on Fiscal Consolidation has noted that there is considerable potential given the under- utilized prime lands of Public Sector Undertakings, Port Trusts, and Railways etc. For realizing such potential the Committee has considered it as a part of disinvestment and has recommended setting up of a group to work out the policy framework and institutional modalities.[34]

The High Power Expert Committee (HPEC) has also recognized that monetizing underutilized public lands can be a source of generating finances. The Committee has called for judicious and transparent use of the instrument of unlocking land value and has recommended that the following steps be taken before the 'sale of land' is used as an instrument for financing urban infrastructure:

- "A systematic city-wide inventory of land assets must be made to be able to identify core and non-core land assets, and proposing the best use of public land assets must be part of comprehensive planning for the city;
- A transparent and accountable mechanism for sale of public land must be put in place;
- Proceeds from land sales must be used only for capital investment projects/housing for the poor via creation of a 'Land Capital Fund' whose governance and
- operational mechanisms are designed in such a manner as to ensure total transparency; and
- A mechanism for sharing revenues between the public agency owning the land and the infrastructure development agency must be established."[35]

The World Bank and PPIAF, in collaboration with the India Development Foundation (IDF) have agreed to provide support for a consultative process *inter alia* to examine unlocking the value of public lands particularly for financing urban infrastructure in India. In this context it is considered desirable to have an inventory of public lands in Ahmedabad and estimation of the value of potentially marketable lands. The present study – Inventory of Public Lands in Ahmedabad Municipal Corporation is a part of this effort.

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[31] High Power Expert Committee (HPEC): *Report on Indian Urban Infrastructure and Services* March 2011

[32] George Peterson: *Unlocking Land Values to Finance Urban Infrastructure*. The World Bank Public Private Infrastructure Advisory Facility, Washington D.C. 2009

[33] *Report of the 13th Finance Commission 2010-2015, Volume I* December 2009

[34] *Report of the Committee on Fiscal Consolidation, Ministry of Finance, Government of India* www.finmin.nic.in

[35] HPEC *op.cit.*

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2 Methodology, Data Sources and Analysis

2.1 Study Area

For the purposes of this study, we have examined the jurisdiction of the Ahmedabad Municipal Corporation prior to its extension in 2006. We have done this because this area covers the currently developed areas of the city, which are most relevant to the question at hand: that is: understanding the extent, ownership, locations and potential value of public lands in the developed area of this major urban area[36]. Ahmedabad has not been selected because it is especially representative of all urban areas nor is such a city likely to exist. This study is meant to pilot an approach and methodology for shedding light on these important questions which could then be explored in their own right in many cities in India and elsewhere. The study area, in the context of present day jurisdiction of Ahmedabad Municipal Corporation (AMC) and Ahmedabad Urban Development Authority (AUDA) is shown below in Figure 1 and its relationship to the respective jurisdictions are shown in Table 1.

[36] It could also be very useful to study public land holdings in the full extended AMC and also in rural areas. To keep the scope of this pilot intended to demonstrate the use of a specific methodology for inventorying public lands in the absence of a full-fledged government supported land inventory, we limited our analysis to the developed area of the AMC.

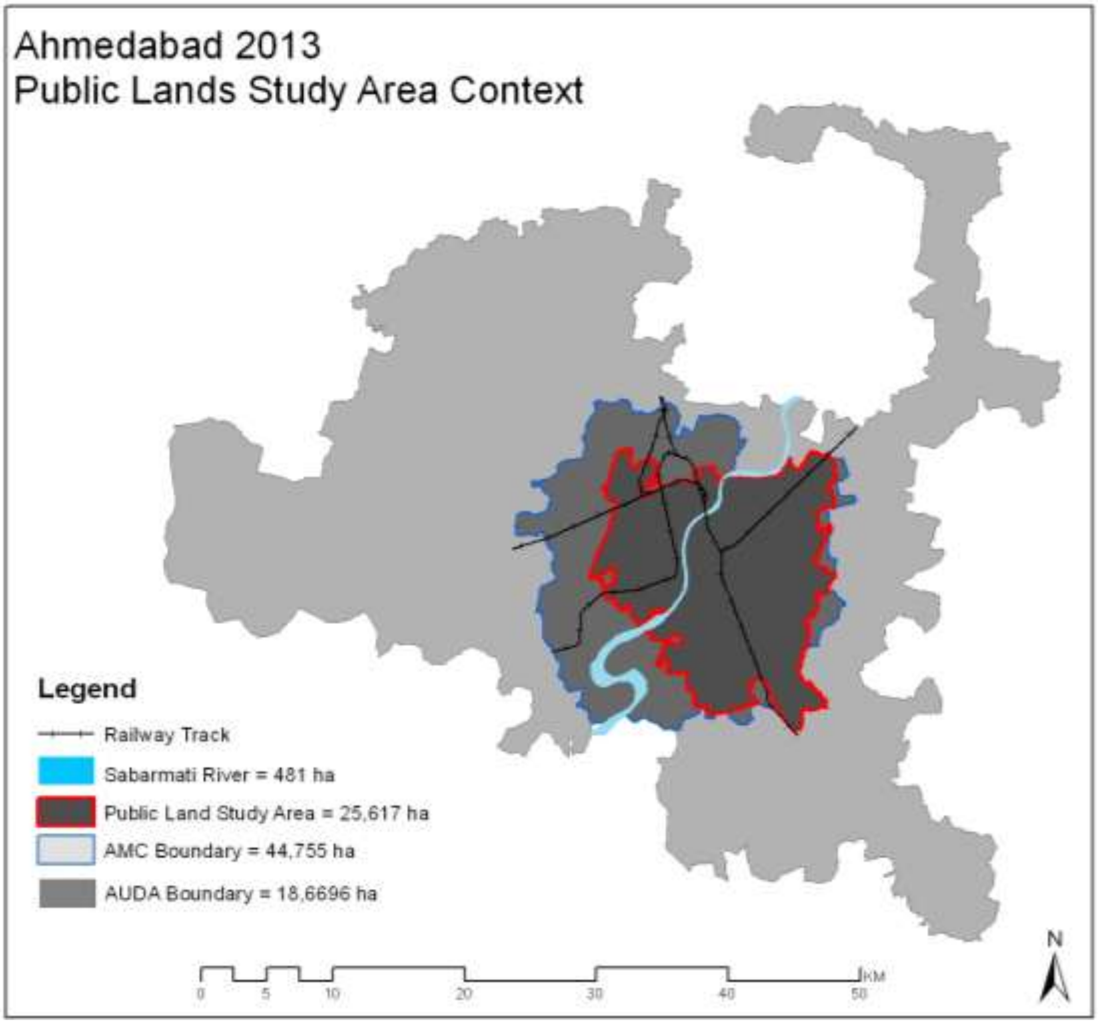

Figure 1: Context of the Study Area

No	Details	Area (Sq. Km)
1	Ahmedabad Urban Development Authority(AUDA)	1866
2	Ahmedabad Municipal Corporation (AMC)	447
3	Study Area	256

Table 1: Extent of the Study Area and its Surroundings

AUDA is responsible for preparing the statutory Development Plan for the area of AMC and its peri urban areas that are likely to urbanize in the near future. It also undertakes Town Planning Schemes (TPS) in areas outside the AMC jurisdiction and would therefore appropriate land in the public domain. As the approach to utilizing public lands piloted in this study would be also relevant in the larger context of the city region, the study area in the context of AUDA is also noted above.

2.2 Preparing GIS Database

This comprehensive study done for Ahmedabad is one of the first to use Geographic Information System (GIS) to make an inventory of Public Lands. Ahmedabad has through a single source of TPS,[37] authentic maps and ownership data of all the Final Plots.[38] Using the technology of Computer Aided Design software (AutoCAD Map 3D) the original paper maps of TPS were digitized.

In a second step these digital maps were overlaid on recent Ahmedabad Google Earth images from 2010. Maps were geo-coded (projection WGS_1984_UTM_Zone_43N) for a correct reading of latitude, longitude. This process permitted to register with more accuracy the exact location of lands owned by the Central Government, State Government and Ahmedabad Municipal Corporation (AMC).

To conduct such analysis the data were extracted from thirteen GIS shape files listed below:

AMC Boundary	Railway	Railway Track
Buffer Ring	Roads	Major Roads
FP Boundary	Sabarmati River	BRTS
Canal	Study Area	Metro Phase 1
Gamtal	TPS Boundary	Metro Phase 2
GIDC Boundary	Walled City	

In Annex II there is the listing of the GIS database "FP Boundary" for the field name abbreviation and their exact contents. Resulting data analysis is presented in succeeding sections.

[37] Ballaney, Shirley: *The Town Planning Mechanism in Gujarat, India,* World Bank Institute Washington DC, 2008.

[38] Town Planning Schemes, as documented in Shirley Ballaney op.cit. and elsewhere are a form of land pooling which has been used in many countries throughout the world.. Town Planning Scheme is a plot reconstitution scheme in which Original plots (OP) are reconstituted into Final Plots (FP) after appropriating land for roads and other public amenities.

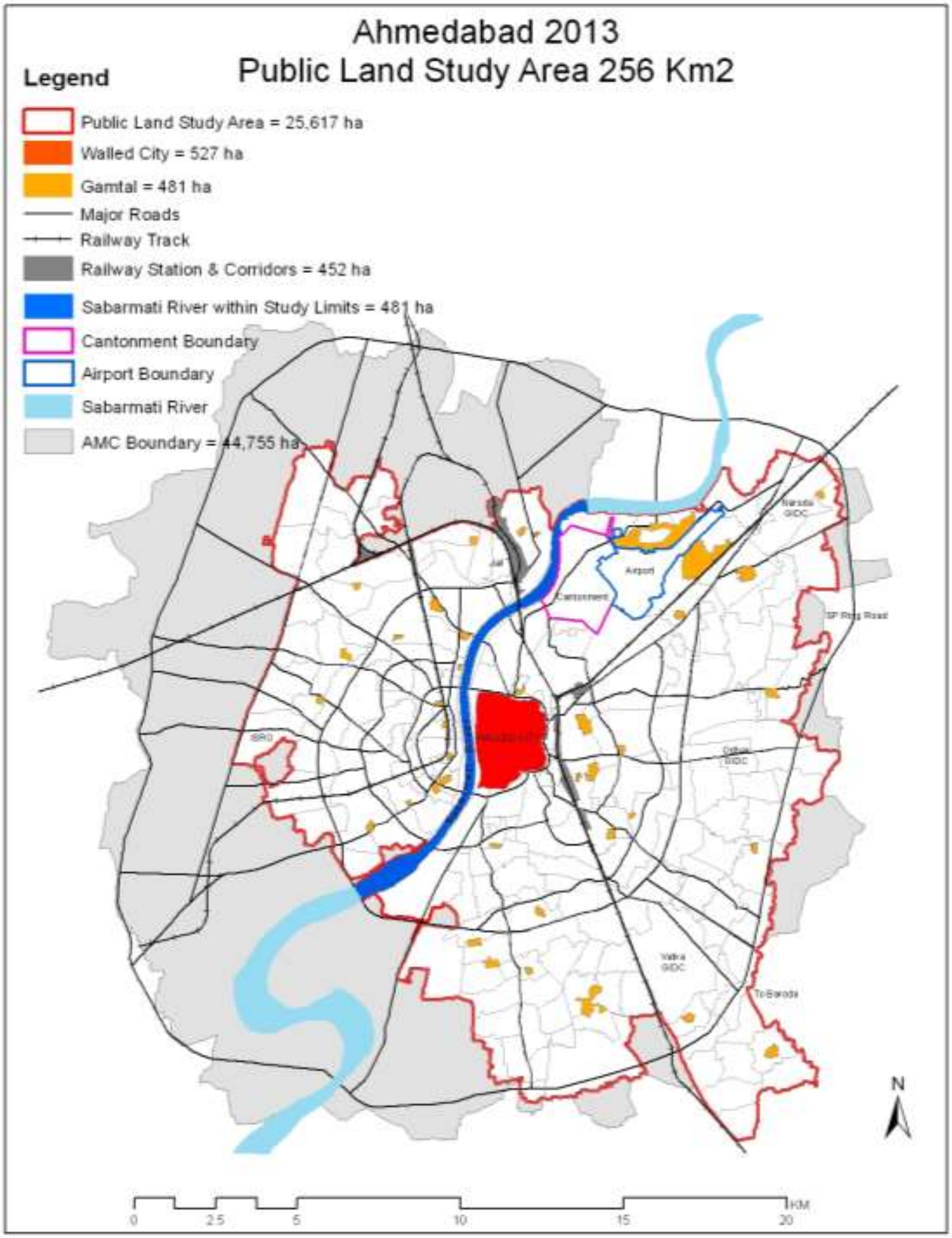

Figure 2: Study Area

2.3 Identifying Public Lands for the Study

Whether a plot of land is public or private cannot be decided by ownership alone. The nature and extent of rights attached to the land also have to be taken into account. Thus there is a continuum of property rights in land ranging from private freehold to unencumbered public land. This is illustrated in Figure 3.

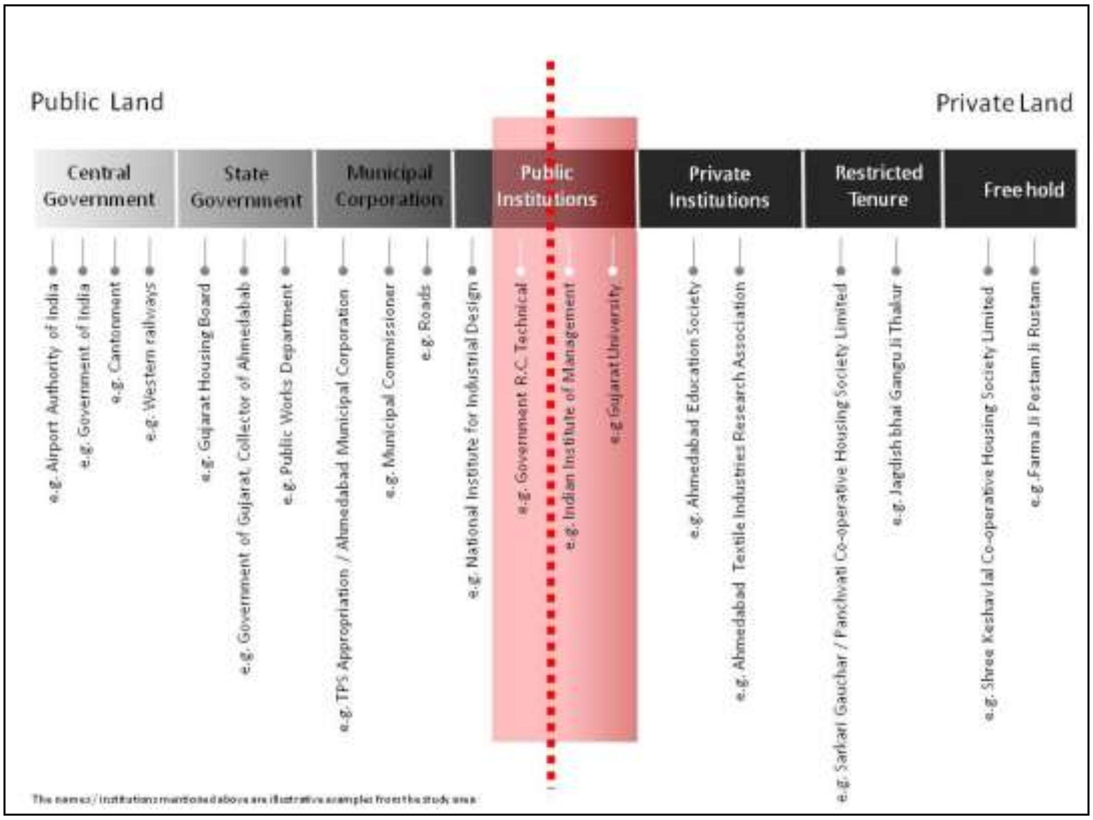

Figure 3: Continuum of Land Rights

For the purpose of the present study a section of this continuum, shown to the left of the red dotted line in Figure 3, is considered as 'public'.

Lands under roads, railways, rivers and water bodies are obviously public. Accordingly, the area of such lands is calculated from the GIS database. In many cities railways have lands that are sub-optimally used. In Ahmedabad as seen from the maps railways have lands narrowly confined along the tracks with some extension at stations. Railway land accounts for only 1.76 % of the study area[39]. (However railways act as barriers that are difficult to cross.) Similarly roads account for only 12 % of

[39] Other cities may have more extensive railway land holdings that may not be fully used as in the case of Ahmedabad. Also even for a city such as Ahmedabad, managing these lands as separate from the city may have costs and cooperative arrangements between city administration and the railways or other public lands could have benefits. Slums on railway lands cannot be provided with basic public health services and it can be very difficult to obtain any type of right of way to cross or overpass rights of way or swap lands to allow road building. These are among the potential costs of fragmented and uncooperative management of public lands. Our mapping and inventorying exercise helps highlight where these conflicts can occur.

the study area, which is rather modest as compared to cities of similar size. (Please see Table 2). The lands under roads, railways, river and water bodies, though public, are not considered for further analysis in this study, particularly since they have little relevance for revenue potential.

In Ahmedabad the Walled City is the original settlement around which the city has gown. In this process the original village settlements – Gamtals have been engulfed by urban expansion. The TPS data identified Gamtals and the Walled City as clusters of land holdings without separately identifying individual holdings. There might be some public lands in Gamtals and Walled City but these have not been covered in this study, due to lack of readily available data and the fact that such public lands are likely to be small and already committed to local community use having very little market potential if any. Walled City and Gamtals that together account for only 3.94 % of the study area are therefore treated as entirely private.

The basic property rights records and of rights over land are maintained by the Revenue Department of the State Government. These are amended once the Town Planning Scheme is sanctioned. Since TPS provide map based records of ownership, in the present study wherever TPS are available they have been used as the source of data for public lands. In non-TPS areas the extracts from the record of rights from the Revenue Department have been used. (These are called 7/12 extracts). Thus public lands and their use in the study area were identified by using following data sources and survey methods:

(a) Public lands indicated on maps and data of TPS,
(b) In case of Non TPS areas cadastral records (called 7/12 extract of record of rights) were used to identify public lands.
(c) The use of such public lands including the public agency that owns the land was identified through field surveys.

These details were then incorporated in the GIS database. Based on the shape files in GIS a geographical distribution of public lands owned by Central Government and State Government is derived and shown Figure 4.

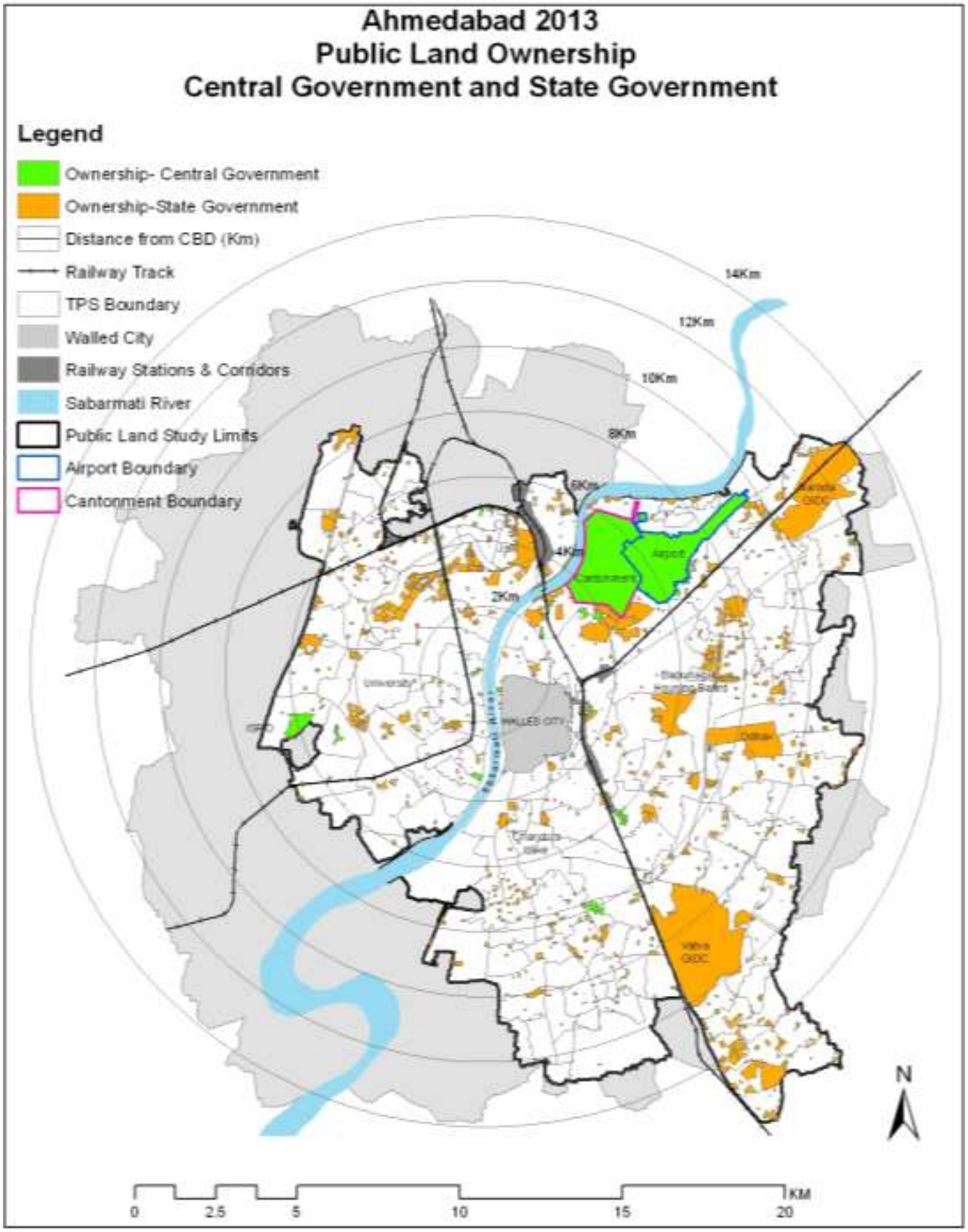

Figure 4: Public Lands Owned by Central and State Governments

Because the Municipal Corporation appropriates land through TPS, the redevelopment of Mill Lands, and the development of lands in the Green Belt, its public land holdings are widely distributed, and in many cases, take the form of small plots. In case of textile mills, the land appropriation only occurs at the time of redevelopment of mill land. The exact location and boundaries of such lands are not known at this stage. These are therefore depicted as circles on the map. The geographical distribution of public lands owned by the Municipal Corporation is shown in Figure 5.

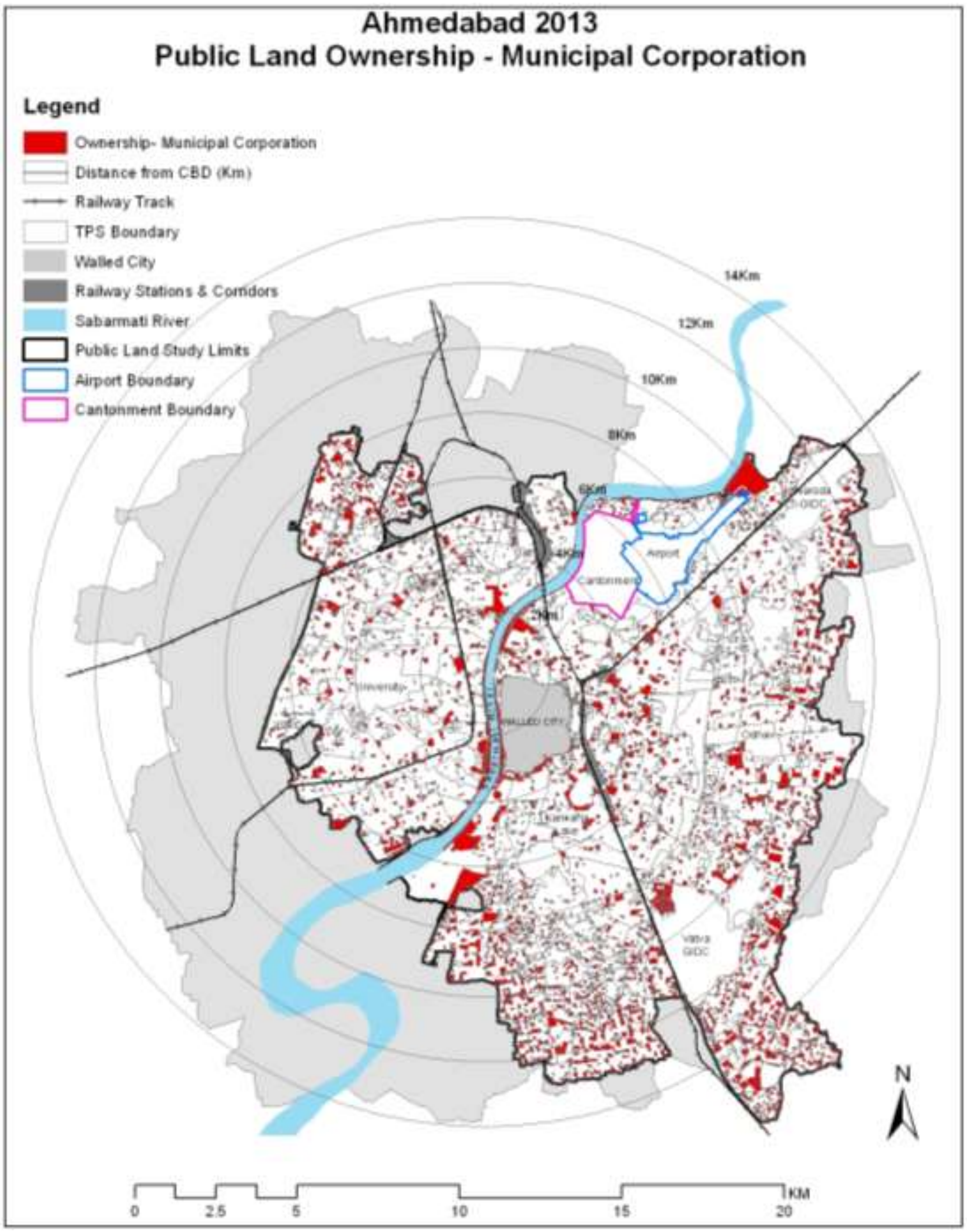

Figure 5: Public Lands Owned by the Municipal Corporation

The breakdown of total lands in Ahmedabad - public and private - in the study area is shown in Table 2

Total Study Area					
Ownership	**No. of Plots**	**Area (Ha)**	**% of Public Land**	**% of Developable Land**	**% of Study Area**
PUBLIC LAND					
Municipal Corporation	4735	3,102.48	28%	15%	12.11%
State Government	1425	2,746.09	24%	13%	10.72%
Central Government	80	1,001.59	9%	5%	3.91%
Sub Total	**6240**	**6,850.16**	**61%**	**32%**	**26.74%**
Roads		3,111.80	28%		12.15%
Sabarmati River		480.47	4%		1.88%
Other Water Bodies		346.64	3%		1.35%
Railways		452.02	4%		1.76%
Sub Total		**4,390.93**	**39%**		**17.14%**
Total Public Land		**11,241.09**	**100%**		**43.88%**
PRIVATE LAND					
Private land parcles		13,317.60		63%	51.99%
Walled City		577.42		3%	2.25%
Gamtals (Village Sites)		481.19		2%	1.88%
Total Private		**14,376.21**		**68%**	**56.12%**
TOTAL STUDY AREA		**25,617.30**			**100.00%**

Table 2: Public and Private Lands in Study Area

The above data is presented in graphical form in Figure 6 below:

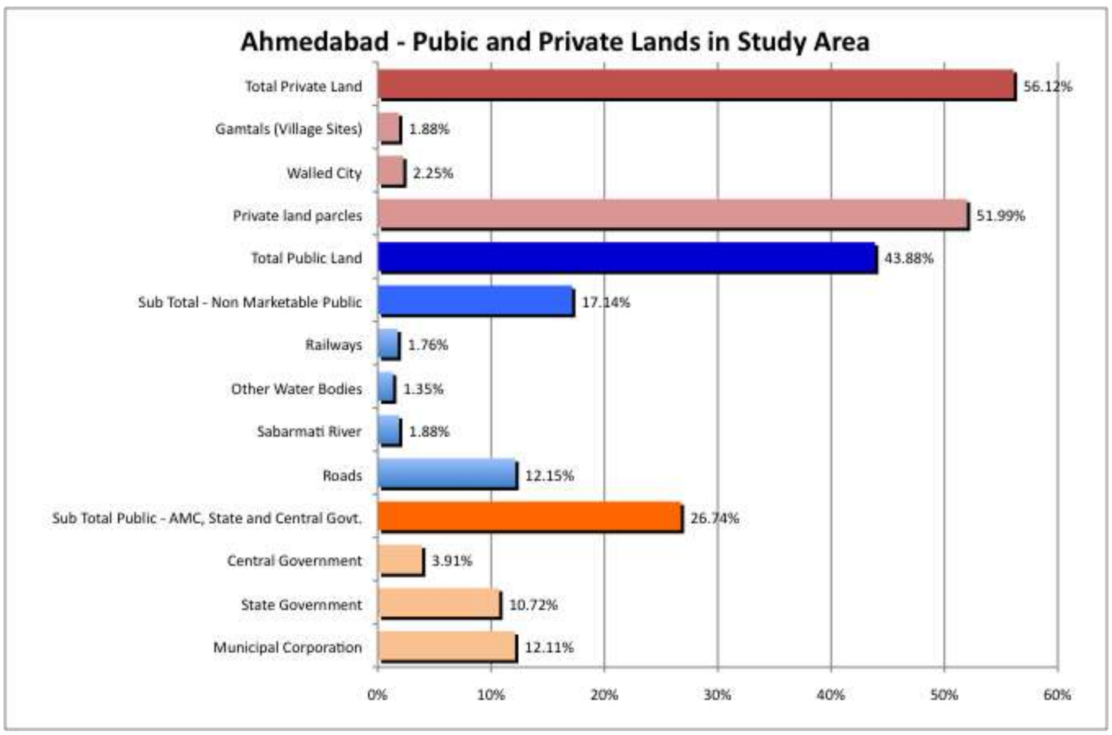

Figure 6: Public and Private Lands in the Study Area

The Public Lands have a total area of 11241 hectares, corresponding to 44% of the land within the study limits. Out of this 4390 (17% of study area) hectares are under roads, railways, river and water bodies. As explained earlier these are excluded from the scope of further analysis. Thus the area of public lands considered hereafter for the further analysis is 6850 hectares. (Table 3 below), this represents 32 per cent of the all developable/developed land within the city, with 68 per cent or14,376 hectares, available for private purposes within the study area.

2.4 Use of Public Lands

The land use of public lands based on the Development Plan, General Development Control Regulations and the Field Surveys was incorporated in the shape files of the GIS database. Figure 7 shows the geographical distribution of public lands by use.

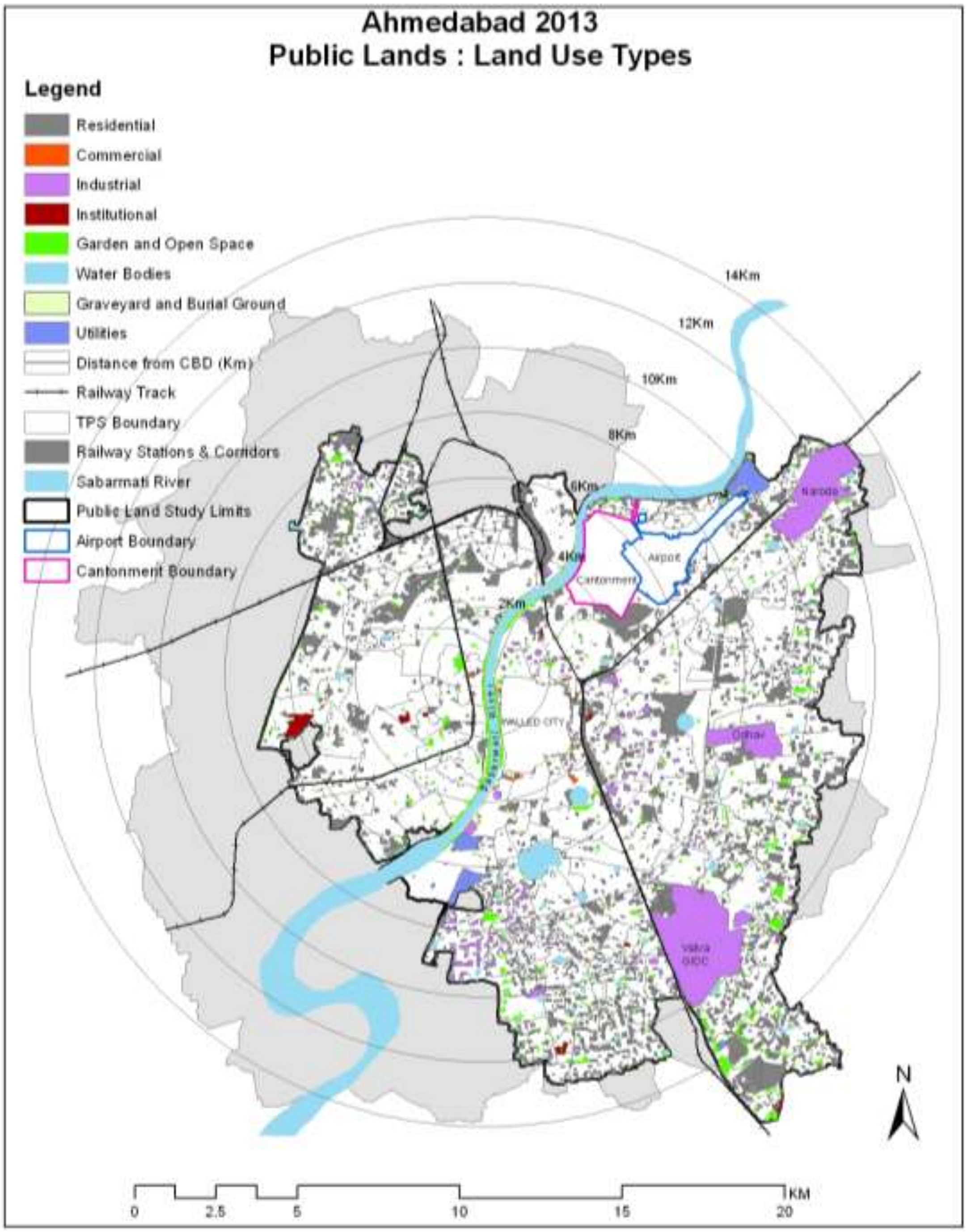

Figure 7: Public Lands - Land Use Types

In Figure 7, the Public Lands have been registered according to different land use types. Most of the large areas classified as "**Residential**" are owned by the Gujarat Housing Board and are located between 3 and 7 kilometers from the city center. Vacant land in this development in the North West of Ahmedabad was part of the former green belt that once limited the expansion of the city. (See Google Earth images presented in Annex I).

Smaller land parcels also classified as "**Residential**" are mainly distributed within the 8km to the 14km circles (distance from Central Business District (CBD)) particularly in the South East of Ahmedabad at proximity to the large industrial estates owned by the State Government and the Municipal Corporation. (See Google Earth images presented in Annex I)

Land use types for Public Lands are listed below in Table 3.

INVENTORY OF PUBLIC LANDS - AHMEDABAD 2013
CLASSIFICATION BY OWNERSHIP AND LAND USE TYPES

Land use Types	Public Lands Ownership						Grand Total Public Lands		% of Total Study Limits
	Municipal Corporation		State Government		Central Government				
	Plot Nb.	Area (ha)	Plot Nb.	Area (ha)	Plot Nb.	Area (ha)	Plot Nb.	Area (ha)	
Residential	2370	1,579.15	1060	1,298.77	60	60.18	3490	2938	42.89%
		53.75%		44.20%		2.05%		100%	
Industry (general+special)	394	291.09	87	1,200.22	3	0.72	484	1492	21.78%
		19.51%		80.44%		0.05%		100%	
Commerce	90	29.63	122	8.78	7	2.89	219	41	0.60%
		71.74%		21.27%		6.99%		100%	
Institution: Education, Health	17	17.16	7	15.69	2	38.34	26	71	1.04%
Research ISRO		24.10%		22.04%		53.86%		100%	
Service	13	13.33	3	3.91	0	0.00	16	17	0.25%
		77.33%		22.67%		0.00%		100%	
Utility: Treatment Plant	10	154.73	1	3.24	0	0.00	11	158	2.31%
		97.95%		2.05%		0.00%		100%	
Park, Open Space+Recreational	1129	601.37	63	47.72	3	0.59	1195	650	9.48%
Agriculture, Forest		92.56%		7.34%		0.09%		100%	
Cemetery	13	14.42	11	5.54	0	0.00	24	20	0.29%
		72.26%		27.74%		0.00%		100%	
Airport	0	0.00	0	0.00	1	402.74	1	402.74	5.88%
		0.00%		0.00%		100.00%		100%	
Cantonment	0	0.00	0	0.00	1	483.91	1	483.91	7.06%
		0.00%		0.00%		100.00%		100%	
Wholesale market	1	0.43	0	0.00	0	0.00	1	0.43	0.01%
		100.00%		0.00%		0.00%		100%	
Other, Multi-Purpose	105	59.23	22	17.24	0	0.00	127	76.47	1.12%
		77.45%		22.55%		0.00%		100%	
NA, No Defined Use	593	341.00	49	146.00	3	12.22	645	499.22	7.29%
		68.31%		29.25%		2.45%		100%	
GRAND TOTAL PUBLIC LANDS	4735	3,102	1425	2,747	80	1,002	6240	6,850	100%
BY OWNERSHIP		45%		40%		15%		100%	

Table 3: Land Use of Public Lands

Land use types **Residential,** represent 42% of the total registered Public Lands. Plots mainly owned by the Municipal Corporation (54%) and State Government (44%) make up this category.

Land use types **Industry (general + special)**, areas originally classified as "General Industry" and "Special Industry", both were added and correspond to 22% of the total public lands. The State Government owns 80% and the Municipal Corporation 20% of such lands.

The former Textile Mills will be redeveloped and 61 ha (20% of these parcels) will be in the possession of the Municipal Corporation for public uses. See Table 4, Figure 8 and map Figure 10 where these areas are represented by a series of circles.

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The Airport and the Cantonment have an area of 403 Ha and 484 Ha respectively, and together account for 11.5% of the public land.

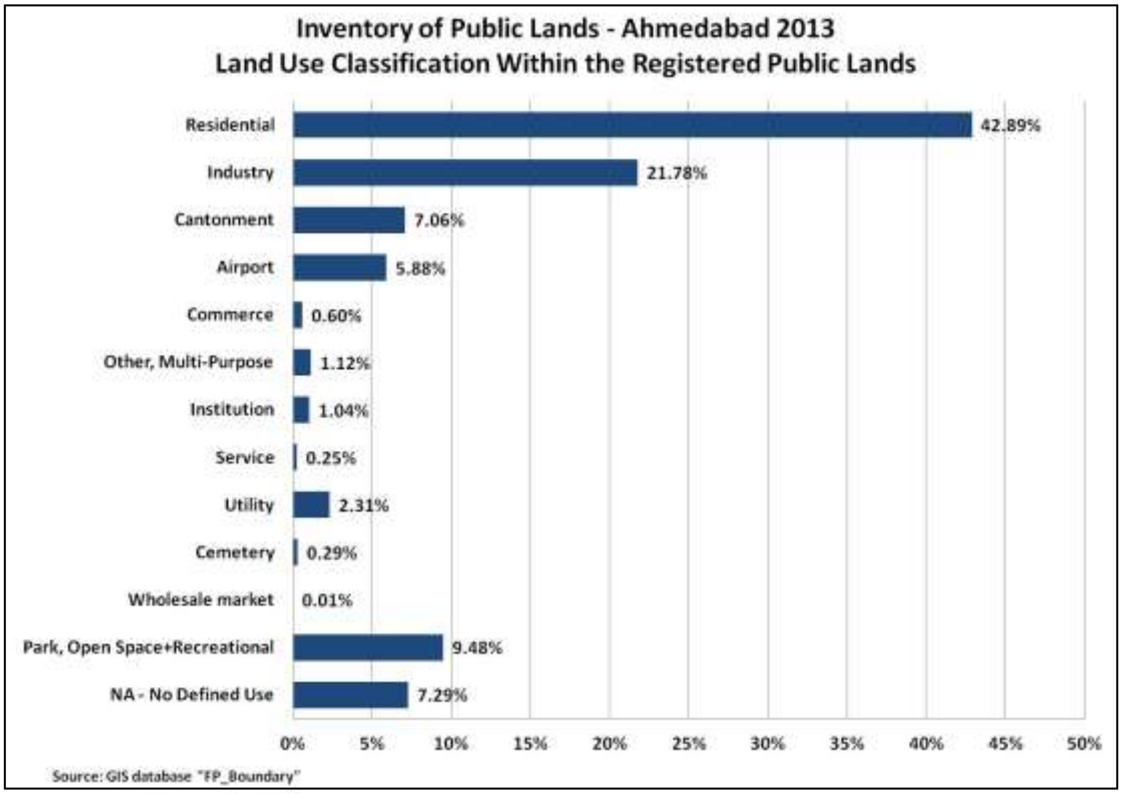

Figure 8: Land Use Classification within the Public Lands

2.5 Identifying Potentially Marketable Public Lands

The use of public lands ranges from infrastructure like roads, which must remain dedicated to this use and hence are not potentially marketable to vacant lands that could be made available for development without any encumbrance. Figure 9 shows such a range.

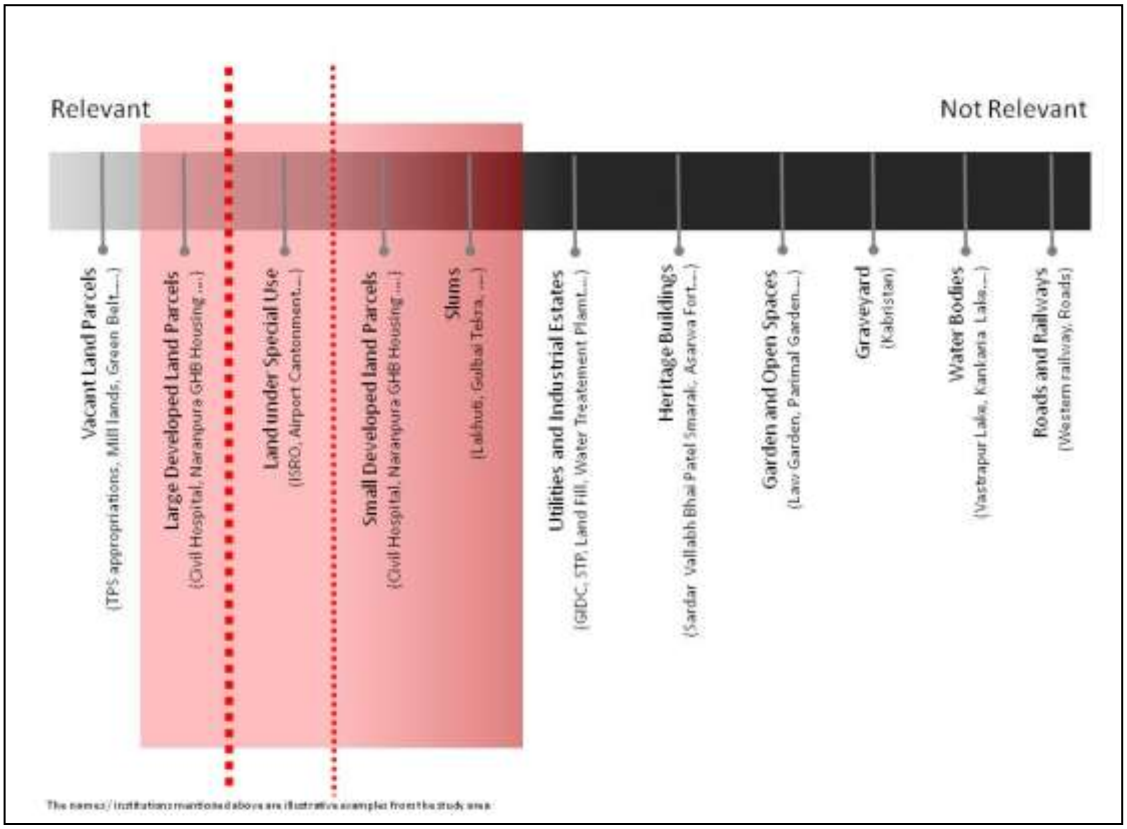

Figure 9: Potentially Marketable Public Lands[40]

Public lands that are used as cemeteries, gardens and open spaces, plots having heritage buildings and plots having functioning utilities obviously are not considered marketable for the purpose of this study. Industrial estates initially owned by the state agency – Gujarat Industrial Development Corporation (GIDC) are now leased to individual factories and therefore not considered potentially marketable for the purpose of this study[41]. It may however be noted that lease rents initially fixed at

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[40] In this study, we used a very conservative methodology for identifying lands with potential to be marketed. We underscore however that the findings should not be interpreted as a recommendation that such lands should be marketed and monetized. That would have to be a decision of the respective government. This study is intended to provide information that would be of use to decision makers about the potential of a strategy to manage public land assets more proactively. Hereafter in the text, all references to marketable land should be understood to mean potentially marketable lands.

[41] A fully fledged examination of the revenue potential for public lands should include an examination of public lands such as these allocated to third parties. Leases could be examined to to determine if they are in line with market rates or if they are in need of adjustment. George Peterson and Vasudha Thawakar "Capturing The Value Of Public Land For Urban Infrastructure: Centrally Controlled Landholdings" forthcoming World Bank, have shown that leases of port lands have not necessarily reflected the market value of the lands leased to private parties, and in some notable cases, they are below market rates by a large margin. In the case of long term leases with annual payments, it has been quite difficult to maintain rates that reflect the market value of land used even for purely

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lower rates could be revised to near market rates to become an important source of revenue. Public lands, which have slums, are not included among the lands that could be potentially marketable. The general Government of India policy regarding slums is to improve them in situ and also transfer property rights to existing slum dwellers.[42] Though it might be possible to realize the value of public land in selected cases by relocating slums, in practice it would not to be desirable. Indeed the slums provide an important share of well-located low-income housing that would be very difficult to replace. Moreover, slums on public lands occupy a very small portion of public lands under study, only 4 per cent. Yet they house close to 400,000 people or 20 per cent of total estimated population in slums and chawls in Ahmedabad.[43]

In Ahmedabad, private lands are appropriated by public agencies in three different ways. These are:

(a) In TPS, besides the land required for roads, open spaces and social amenities, land can be appropriated for housing for 'socially and economically weaker sections' and 'commercial sale' to augment the finances of planning agency.
(b) In the first Development Plan of Ahmedabad, there was a Green Belt in which no development was possible. In the second Development Plan, the Green Belt was brought into the development zone and detailed reservations of land for public purposes were identified and these lands were supposed to have been compulsorily acquired. Realizing that such acquisition is not possible the Development Plan that followed deleted the reservations and opted for including such land in TPS. Until the TPS is completed, private landowners were permitted to develop their land subject to the condition that 50% of the land must be surrendered to the planning agency. Out of this, 20% is considered potentially marketable with 30% required for provision of roads and public services.
(c) General Development Control Regulations have made a special provision for the redevelopment of land of closed textile mills. According to this provision, 20% of the plot area has to be contributed for provision of public amenities / public purpose. The regulation further asserts that land so obtained shall not be used for purposes other than for public uses and public amenities.[44] Under the conservative approach we have used in this study, we did not consider such lands as potentially marketable for assessing revenue potential.

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private purpose. Such an analysis demands a very different methodology. Terminating those leases or selling those lands under lease could also be quite involved. In the spirit of providing a conservative estimate, the value of such lands has been left out of the scope of this study. This does not mean however, that they do not have substantial value whether in Ahmedabad or in other cities.

[42] Policies under the Rajiv Awas Yojana of the Ministry of Housing and Urban Poverty Alleviation, Government of India

[43] Annez et alia (2012) estimate density in slums at 1230 persons per hectare and the total population in slums and chawls as 1,880,300 persons. Accordingly the 315 hectares of identified public slum lands can be estimated to account for roughly 20 per cent of the total slum population in greater Ahmedabad.

[44] Regulation 10.10.1 of the General Development Control Regulations 2002, as amended till 2004, AUDA

2.6 Extent of Potentially Marketable Public Land

The Airport and Cantonment represent large Central Government lands. The total area of the Airport is 403 hectares. Considerable area is used for runway, taxiways, aprons, terminals and other aviation infrastructure. Nevertheless 35 hectares of land in five pockets could be identified as possibly available for monetizing. The Cantonment has a total area of 484 hectares. Out of this 36 Ha are under roads including roads leading to Airport. Of the remaining area, 81 Ha is developed as parks, 93 Ha is vacant and 273 Ha is developed with scattered buildings of ground floor or two story buildings. The total footprint area of the buildings in this area is around 40 Ha. In the absence of information of the activities supported by these buildings and safety requirements if any[45], it is assumed that if reorganized, these existing buildings could be accommodated on 50% of 273 Ha. Thus the total potentially marketable land in the Cantonment is estimated as about 230 Ha. (93+273/2). In addition to this Indian Space Research Organization (ISRO) is also located on 36 Ha of Central Government Land. Given the specialized nature of its activities it is assumed that, for the purpose of this initial pilot study, ISRO has no surplus land that could be monetized. That assumption could be revisited based on an analysis of the ISRO functions and needs. Since this area is well-located, such an analysis could be worthwhile.

In case of other lands, all vacant public lands irrespective of the area of individual plots are considered as potentially marketable. Plots with existing buildings having an area of less than 1 hectare are not considered as marketable. The extent of potentially marketable area in case of large plots, more than 1 hectare in area, having existing buildings was assessed by two alternative methods described below.

It should be noted that among all public lands (6,850 ha), close to 52% are not marketable, 21% are vacant land and 31% are developed with constructions at different levels of consumed FSI. Vacant land including TPS appropriations represents 20.73% of the total public lands and 43% of the total Potentially Marketable Lands. Table 4, Figure 10 and Figure 11 show the extent of potentially marketable and non-marketable areas according to ownership and land categories.

[45] Our method in the study area outside the cantonment involved site visits to validate actual built FSI. As access to the cantonment was not open to the general public, we had to use a rougher method. This estimate could easily be refined with access to the cantonment area.

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INVENTORY OF PUBLIC LANDS - AHMEDABAD
CLASSIFICATION BY OWNERSHIP AND MARKETABILITY

Marketability	Public Land by Ownership			Total Public Lands	
	Municipal Corporation	State Government	Central Government		
	Area (ha)	Area (ha)	Area (ha)	Area (ha)	% of Total
Marketable lands					
Vacant Public Land					
Public land incl. TPS Appropria	1183	234	3	1420	20.73%
	83%	*16%*	*0%*	*100%*	
20% of Green Belt lands	62	0	0	62	0.91%
	100%	*0%*	*0%*	*100%*	
Developed public land					
Obsolete use	15	0	0	15	0.22%
	100%	*0%*	*0%*	*100%*	
Consumed FSI <45%	303	569	44	916	13.37%
	33%	*62%*	*5%*	*100%*	
45%<Consumed FSI <85%	99	324	6	428	6.26%
	23%	*76%*	*1%*	*100%*	
Consumed FSI >85%	36	141	4	181	2.65%
	20%	*78%*	*2%*	*100%*	
Airport - Marketable	0	0	35	35	0.51%
	0%	*0%*	*100%*	*100%*	
Cantonment - Marketable	0	0	230	230	3.35%
	0%	*0%*	*100%*	*100%*	
Total Marketable	**1699**	**1267**	**321**	**3288**	**47.99%**
	52%	*39%*	*10%*	*100%*	
Non Marketable Lands					
Cemeteries	14	6	0	19	0.28%
	71%	*29%*	*0%*	*100%*	
Garden/ Open Spaces	553	19	0	572	8.34%
	97%	*3%*	*0%*	*100%*	
Heritage Building	0	4	5	10	0.14%
	0%	*47%*	*53%*	*100%*	
Slums	217	97	2	315	4.60%
	69%	*31%*	*1%*	*100%*	
Utilities and Industrail Estates	155	1141	0	1295	18.91%
	12%	*88%*	*0%*	*100%*	
Small non-vacant plots <1 ha	404	213	15	631	9.22%
	64%	*34%*	*2%*	*100%*	
20% of Textile Mills' land	61	0	0	61	0.89%
	100%	*0%*	*0%*	*100%*	
Airport - Operational	0	0	368	368	5.37%
	0%	*0%*	*100%*	*100%*	
Cantonment - Operational	0	0	254	254	3.71%
	0%	*0%*	*100%*	*100%*	
Indian Space Reasearch Orga	0	0	36	36	0.53%
	0%	*0%*	*100%*	*100%*	
Total Non-Marketable	**1403**	**1479**	**681**	**3563**	**52.01%**
	64%	*34%*	*2%*	*100%*	
Total Public Land	**3102**	**2746**	**1002**	**6850**	**100.00%**
	64%	*34%*	*2%*	*100%*	

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Table 4: Marketability of Public Lands by Ownership

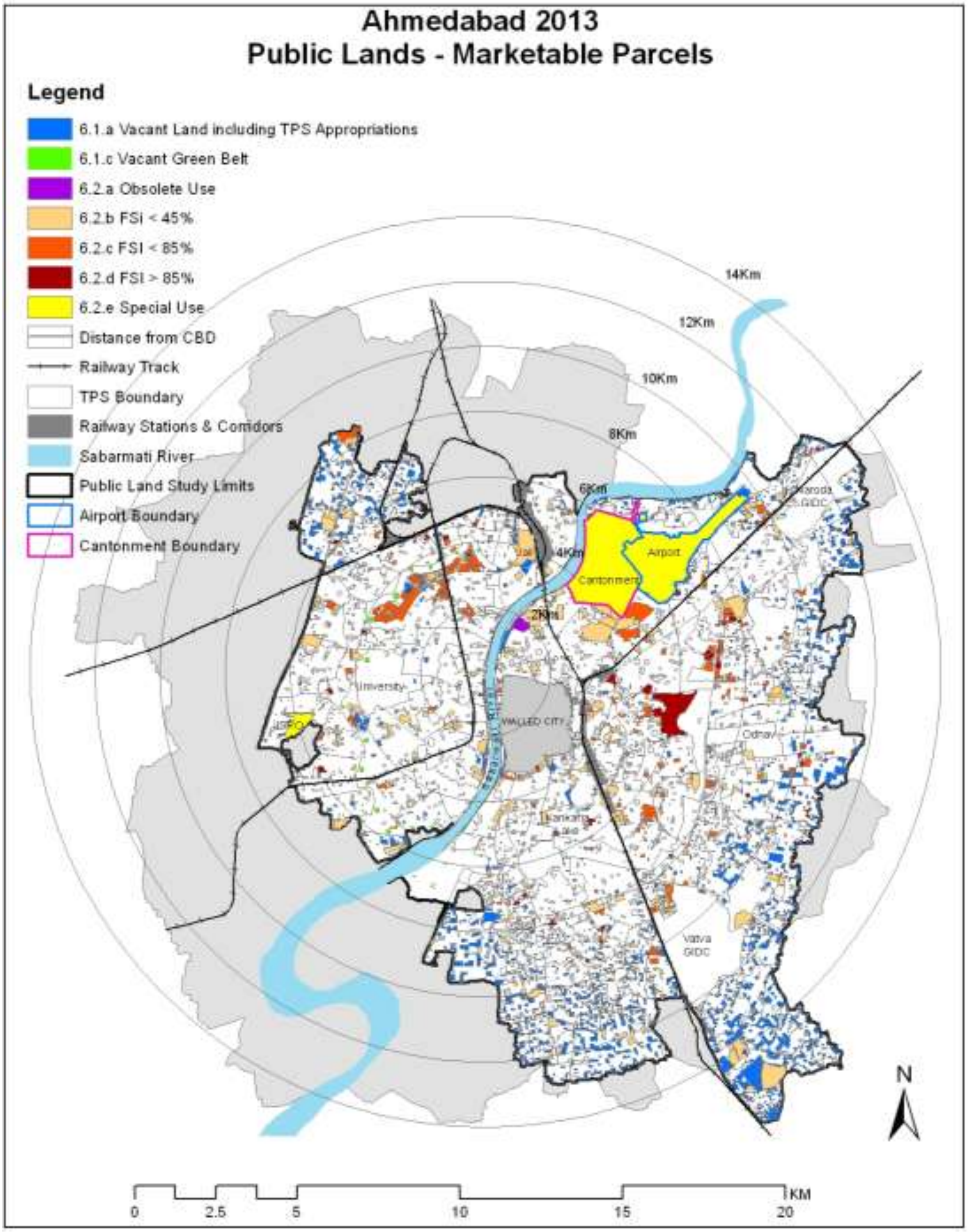

Figure 10: Potentially Marketable Public Lands by Ownership

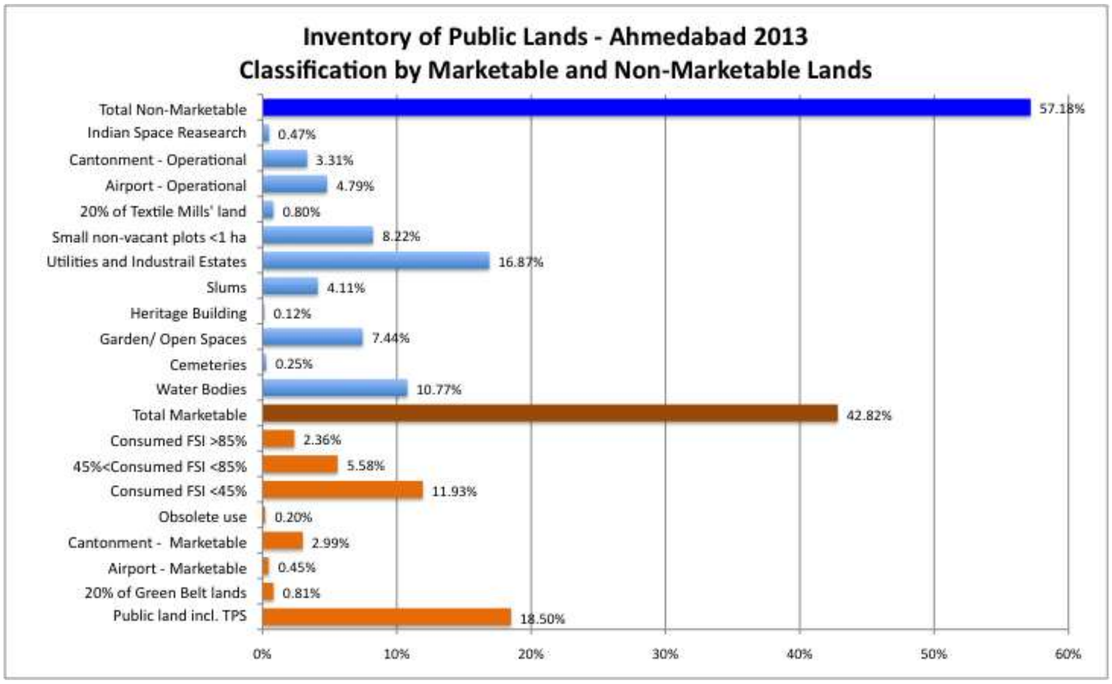
Inventory of Public Lands - Ahmedabad 2013
Classification by Marketable and Non-Marketable Lands
Total Non-Marketable
57.18%
Indian Space Reasearch
0.47%
Cantonment - Operational
3.31%
Airport - Operational
4.79%
20% of Textile Mills' land
0.80%
Small non-vacant plots <1 ha
8.22%
Utilities and Industrail Estates
16.87%
Slums
4.11%
Heritage Building
0.12%
Garden/ Open Spaces
7.44%
Cemeteries
0.25%
Water Bodies
10.77%
Total Marketable
42.82%
Consumed FSI >85%
2.36%
45%<Consumed FSI <85%
5.58%
Consumed FSI <45%
11.93%
Obsolete use
0.20%
Cantonment - Marketable
2.99%
Airport - Marketable
0.45%
20% of Green Belt lands
0.81%
Public land incl. TPS
18.50%
0%
10%
20%
30%
40%
50%
60%

Figure 11: Marketability of Public Lands

2.7 Alternative Methods for Estimating Potentially Marketable Land in Partially Developed Lands

Alternative I - based on unused FSI:

Steps followed in this Alternative are described below:

(a) First the footprints of existing buildings were identified from the satellite imageries and then digitized in CAD.

(b) The number of floors for every building was noted from field surveys.

(c) The footprint multiplied by number of floors gave the floor area of every building and then the total floor area of buildings on the plot. (FA)

(d) This in turn gave the existing FSI in the form of ratio of floor area divided to the plot area (PA). (Existing FSI=FA/PA). However this is not directly comparable to the FSI prescribed in the regulations as certain areas like staircases, lifts, balconies etc. are exempted for FSI computation. For comparison therefore the regulatory FSIs were enhanced by 22% to account for areas otherwise not computed for FSI. (e.g. FSI 1.8 prescribed in regulation was considered equivalent to 2.2 for present study). The plots were then classified according to utilization of FSI. "Low consumption of FSI i.e. less than 45% of FSI", "medium consumption of FSI between 45% and 85% of FSI" and "high consumption over 85% of FSI". Land related to unconsumed FSI was considered as marketable land.

(e) However the value of such land cannot be realized unless the existing buildings are reorganized and reconstructed. The net value of land was therefore arrived at by deducting the cost of reorganizing and reconstructing the existing structures from the value of land related to unconsumed FSI. In cases of high consumption of FSI the net value came to be negative and was treated as zero (or non-marketable)[46].

Alternative 2 - based on residual plot area

In this case the residual plot area is calculated by deducting the building footprint area(s) from the plot area. If the residual plot is more than 50% of the total plot area the residual is considered as potentially marketable land. This scenario is meant to represent the potential for releasing excess lands were there a scope for relaxing what may be excessive plot coverage and setback regulations for certain neighborhoods and land uses. A recent study of Ahmedabad's real estate market has shown that these regulations applying unrealistically and unnecessarily high standards uniformly throughout the city can drive excessive land consumption without necessarily achieving their goals of lowering densities[47]. While it may not be possible or desirable to reconfigure all such plots so identified, the scenario of valuing the excess land in plots over 1 hectare in size with only 50 per

[46] Demolition costs were assumed to be zero since demolition contractors in Ahmedabad can sell the materials recovered from demolition and therefore do the work for no charge. Reconstruction costs were estimated at Rs. 25,000 per square meter.

[47] Annez et alia 2012 op cit.

cent of plot coverage offers some indication of the potential additional land value that could be realized with selective relaxation of what can be excessive regulation.

2.8 Valuation of Potentially Marketable Public Land

The basic source of data for land values are the Jantri rates. These are the values assessed and published by the Government authorities for the purposes of Stamp Duty levied at the time of transaction in land or property. Jantri includes assessed values of (i) vacant land; (ii) built property used for residential use and (iii) built property used for commercial purpose. Out of these, the values for vacant land have been used, as they appear to be the most consistent across different parcels and do not bring in the uncertainty introduced from assessing the value brought about by different types of use. This method leaves out variation that may come about due to differences that may be introduced due to the specific land use and is consistent with our approach of identifying and valuing only public land that is currently not in use or whose use would change.

However, the Jantri rates are known to be lower than the real market values. In order to get an estimate based on the real market values, valuation of three plots in each TPS was obtained from approved assessors. Based on their reports, the difference between the Jantri rate and real market values were calculated as a deviation factor. The estimated market rate is then the Jantri rate multiplied by the deviation factor applied to all plots in a TPS.
The Jantri rates, estimated market values and estimated deviation factors for a sample of five of the TPS covered in the study are presented in Table 5 below.

No.	TPS No. and	FP No	Jantri Rate	Market Rate	Deviation Factor	Multiplier
1	TPS No. 56 - Sola Gota	229	10,000	15,000	1.50	1.51
2	TPS No. 56 - Sola Gota	239	10,000	15,000	1.50	
3	TPS No. 56 - Sola Gota	281	16,500	25,000	1.52	
4	TPS No. 43 - Sola	40	14,000	65,000	4.64	2.84
5	TPS No. 43 - Sola	221/1	9,500	10,000	1.05	
6	TPS No. 43 - Sola	209	16,000	45,000	2.81	
7	TPS No. 28 - Ghatlodia	81	12,500	20,000	1.60	2.40
8	TPS No. 28 - Ghatlodia	68	12,500	20,000	1.60	
9	TPS No. 28 - Ghatlodia	106	12,500	50,000	4.00	
10	TPS No. 29 - Chandlodia	62	14,250	60,000	4.21	2.45
11	TPS No. 29 - Chandlodia	82	12,750	20,000	1.57	
12	TPS No. 29 - Chandlodia	73	12,750	20,000	1.57	
13	TPS No. 30 - Gota	119	15,000	20,000	1.33	1.38
14	TPS No. 30 - Gota	120	15,000	20,000	1.33	
15	TPS No. 30 - Gota	134	13,500	20,000	1.48	

Table 5: Jantri Rates and Market Rate Multipliers

Figure 12 and Figure 13 show how Jantri Rates and Market Rates vary with the distance from the CBD respectively.

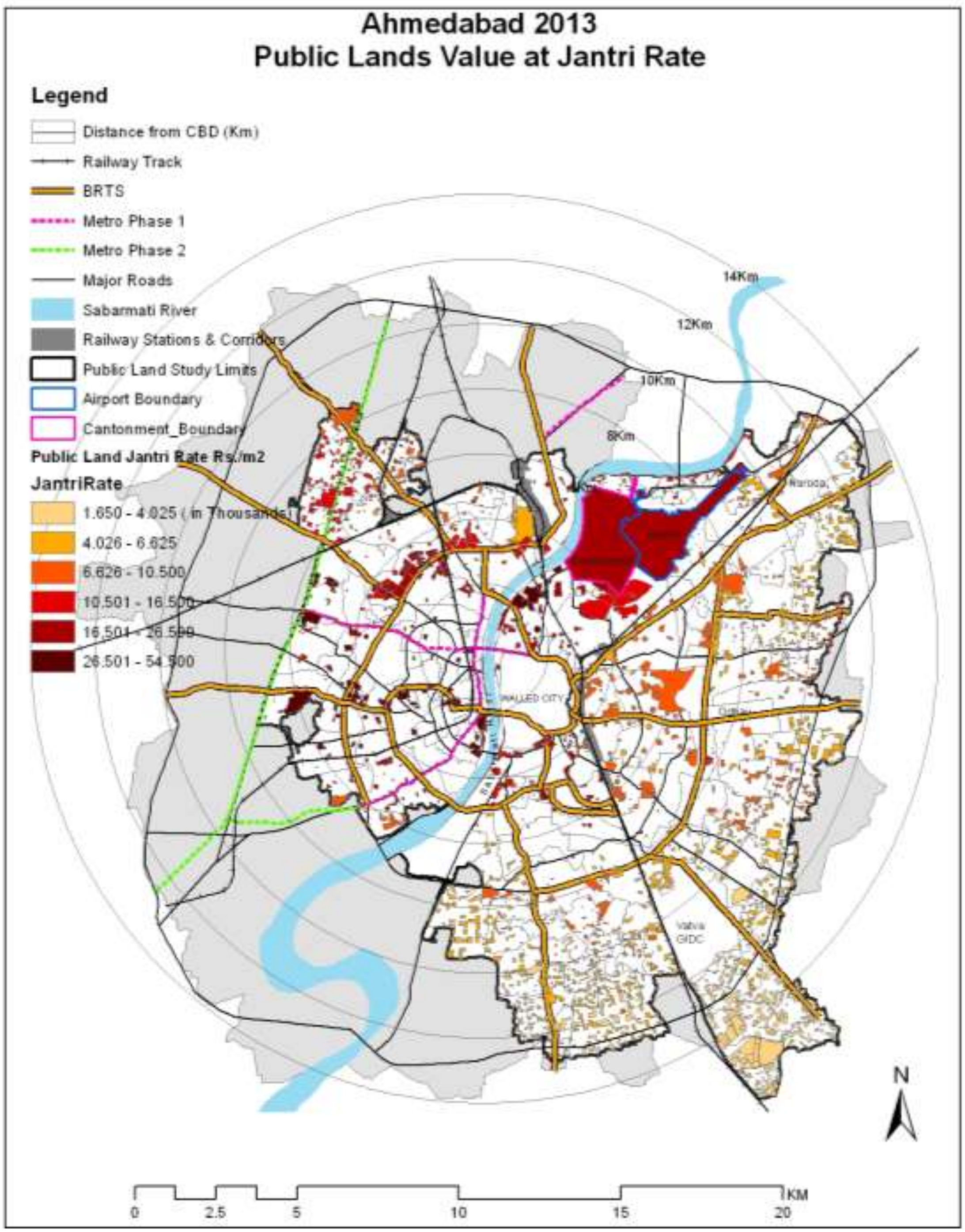

Figure 12: Spatial Variation of Jantri Rates

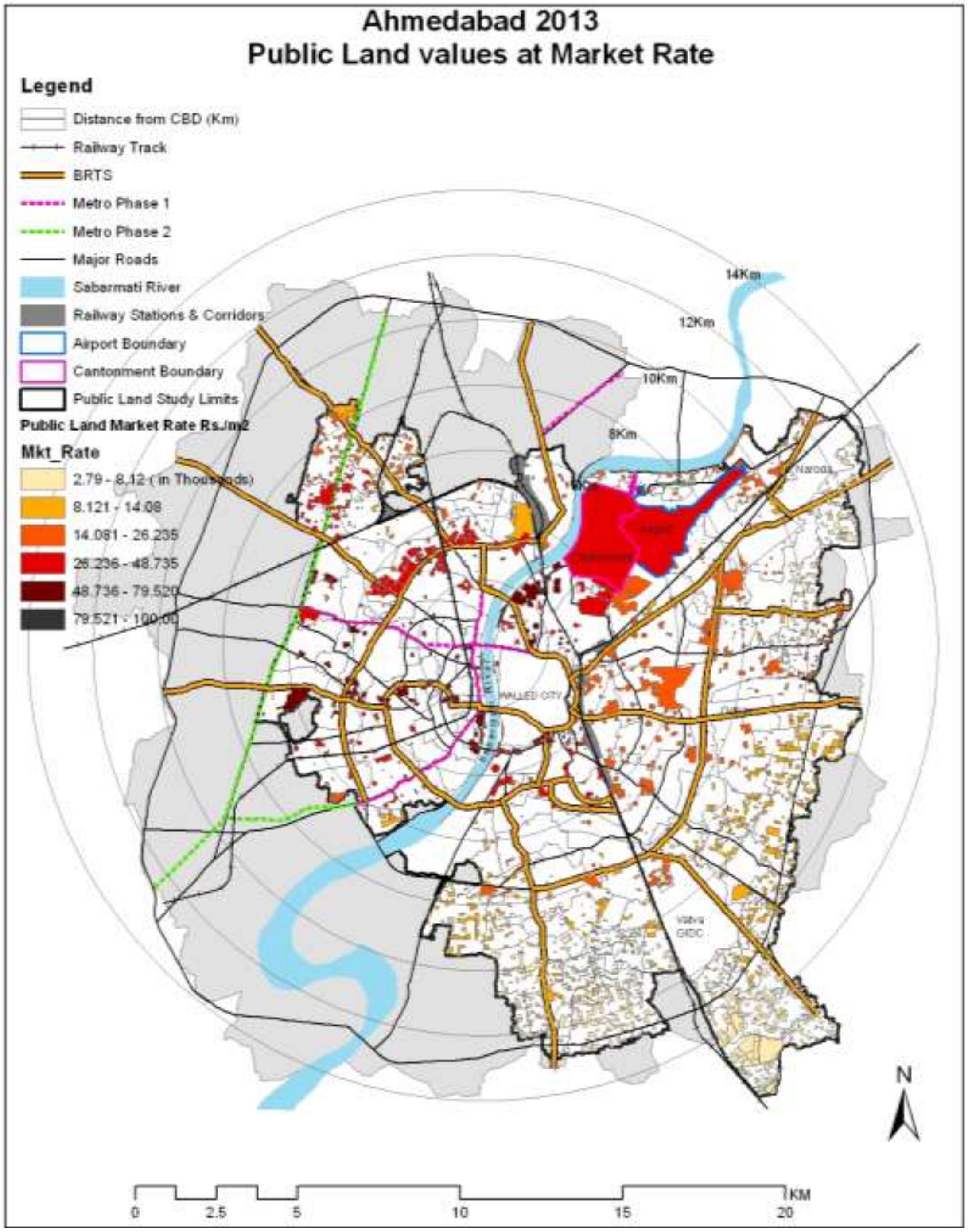

Figure 13: Spatial Variation of Market Rates

The land values using Jantri and Market Rates vary greatly, between Rs. 1650 to Rs.54,500 per square meter (Figure 12 - Jantri Rate) and Rs. 2750 to Rs. 100,000 per square meter (Figure 13 - Market Rate). Both maps show that the most valuable parcels are along the bank of the

Sabarmati River called **"Riverfront"**, where the land was evaluated at Rs. 54,500 per m2 by Jantri rate and Rs. 100,000 per m2 by Market rate.

Other high value parcels are next to the City center (2 to 4 km distance from the CBD) and in the North of Ahmedabad (from 6 to 8 km from the CBD). The market values in these areas vary from Rupees 26,000 to 80,000 per square meter.

The market value of land parcels within the University Campus is close to Rupees 50,000 per square meter

For the Cantonment (484 ha) and the Airport (403 ha) the land market value was estimated at Rupees 40,000 per square meter. These two valuable lands are preventing the extension of the city core in the Northern part of the city. The Cantonment estate, located between kilometer 4 and 6 particularly, is underutilized and may at one point be considered for redevelopment. (See in Annex I a Google Earth image of the area).

Most of the not so valuable lands are in the Eastern and Southern parts of Ahmedabad. The market prices for these parcels vary between Rupees 3,000 to 15,000 per square meter. It should also be noted that in the very South the parcels are smaller in sizes (0.5 to maximum 2.5 hectares). The parcels derive mostly from the TPS land appropriations regulations.

Along the BRTS corridor in the South and Eastern part of Ahmedabad the land values are still in the low range, Rs. 2,800 to 9,000 per m2.

The Metro Lines (Phases 1 and 2), not immediately planned, in the Western part of Ahmedabad, may have some impact on land values in the future. The areas more affected will be the former Greenbelt area localized next the Phase 2 Metro corridor.

The four estimations, Alternative I (a) and (b) and Alternative II (a) and (b), for the valuations of potentially marketable public lands at Jantri and Market Rates are presented below in Table 6 and Table 7.

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INVENTORY OF PUBLIC LANDS - AHMEDABAD					
VALUTION OF MARKETABLE LANDS -ALTERNATIVE I					
Alternative I (a): Unused FSI at Jantri Rates					
Category	Municipal Corporation	State Government	Central Government	Total Rs. in Crores	% of Total
Public land incl. TPS Appropriations	8,082	1,961	34	10,078	49.21%
20% of Green Belt lands	1,378	0	0	1,378	6.73%
Obsolete use	415	0	0	415	2.03%
Consumed FSI <45%	1,023	2,070	231	3,324	16.23%
45%<Consumed FSI <85%	0	0	0	0	0.00%
Consumed FSI >85%	0	0	0	0	0.00%
Airport	0	0	694	694	694
Cantonment	0	0	4,590	4,590	4,590
Total	**10,898**	**4,031**	**5,549**	**20,478**	**100.00%**
% of Total	*53%*	*20%*	*27%*	*100%*	

Alternative I (b): Unused FSI at Market Rates					
Category	Municipal Corporation	State Government	Central Government	Total Rs. in Crores	% of Total
Public land incl. TPS Appropriations	16,110	3,798	66	19,974	45.78%
20% of Green Belt lands	2,142	0	0	2,142	4.91%
Obsolete use	830	0	0	830	1.90%
Consumed FSI <45%	3,372	5,974	755	10,101	23.15%
45%<Consumed FSI <85%	15	1	0	16	0.04%
Consumed FSI >85%	0	0	0	0	0.00%
Aiport	0	0	1,387	1,387	1,387
Cantonment	0	0	9,180	9,180	9,180
Total	**22,469**	**9,773**	**11,388**	**43,630**	**100.00%**
% of Total	*51%*	*22%*	*26%*	*100%*	

Table6: Alternative I - Valuation of Public Land

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INVENTORY OF PUBLIC LANDS - AHMEDABAD					
VALUTION OF POTENTIALLY MARKETABLE LANDS ALTERNATIVE II					
Alternative II (a): Available Land at Jantri Rates					
Category	Municipal Corporation	State Government	Central Government	Total Rs. in Crores	% of Total
Public land incl. TPS Appropriations	8,082	1,961	34	10,078	36.08%
20% of Green Belt lands	1,378	0	0	1,378	4.93%
Obsolete use	297	0	0	297	1.06%
Consumed FSI <45%	2,593	5,436	598	8,626	30.89%
45%<Consumed FSI <85%	544	889	20	1,454	5.20%
Consumed FSI >85%	225	586	4	814	2.91%
Airport	0	0	694	694	2.48%
Cantonment	0	0	4,590	4,590	16.43%
Total	**13,118**	**8,872**	**5,940**	**27,930**	**100.00%**
% of Total	*47%*	*32%*	*21%*	*100%*	
Alternative II (b): Available Land at Market Rates					
Category	Municipal Corporation	State Government	Central Government	Total Rs. in Crores	% of Total
Public land incl. TPS Appropriations	16,110	3,798	66	19,974	36.62%
20% of Green Belt lands	2,142	0	0	2,142	3.93%
Obsolete use	593	0	0	593	1.09%
Consumed FSI <45%	5,327	10,421	1,168	16,916	31.02%
45%<Consumed FSI <85%	1,098	1,644	43	2,785	5.11%
Consumed FSI >85%	371	1,185	6	1,562	2.86%
Aiport	0	0	1,387	1,387	2.54%
Cantonment	0	0	9,180	9,180	9,180
Total	**25,640**	**17,048**	**11,851**	**54,539**	**100.00%**
% of Total	*47%*	*31%*	*22%*	*100%*	

TabTable7: Alternative II – Valuation of Public Lands

***Please note that one crore rupees is equal to 10 million rupees, or about USD 180,000 at the rate of INR 55 per USD**

According to Alternative I (a) valuation of public lands is Rs. 20,478 Crores at Jantri rates. At Market Rates – Alternative I (b) the valuation is Rs. 43,630 Crores. According to Alternative II (a) valuation of public lands is Rs. 27,930 Crores at Jantri rates. At Market Rates – Alternative II (b) the valuation is Rs. 54,539 Crores.

3 Conclusions: Significance of Revenue Potential

The financial resources that could be generated by monetizing public lands range between Rs. 20,000 Crores and Rs. 54000 Crores. (about 3.6 billion and 9.8 billion USD respectively. [48]The population of AMC (the expanded jurisdiction as of 2006) is 5,570,585. This implies per capita availability of fiscal resources amounting to Rs. 36000 to Rs. 97000 (about USD 700 and 1800 respectively)[49]. The amounts involved may be compared to investment requirements for urban infrastructure—a well-recognized government investment priority. HPEC at 2009-10 prices had estimated the per capita investment cost of Rs. 43386 for the entire range of physical urban infrastructure for the next twenty years.[50] The significance of the value of potentially marketable public land, at 82 percent of this requirement in the low case, and more than double this requirement in the high case can readily be appreciated in this context.

AMC in 2005 had prepared a City Development Plan under Jawaharlal Nehru National Urban Renewal Mission (JnNURM) . The capital investment needs projected in the plan for a seven-year period were about Rs.9000 crores. The minimum value of public land is over twice this estimate. Thus study thus clearly demonstrates that monetizing public lands could significantly contribute to investments in infrastructure and other high priority government goals.

4 Conclusions: Further Applications

Unlocking the value of public lands has been recognized as a potentially highly significant source of finance for urban infrastructure. The present study is the first of its kind— systematically inventorying public lands and estimating their value using GIS and land records. The methodology developed in the study could be used in conjunction with planning for land use, transport and financing of infrastructure. The information here on market values, location and ownership types and the significance of public lands on total availability of buildable land could add considerably to the usefulness of current records of land holdings in the hands of various government agencies such as the AMC, the Revenue Department and Central Agencies owning land in the city.

The task required gathering of information, consulting the agencies in charge to obtain existing maps and documents related to Town Planning Schemes and Cadastral Records. Attributes from

[48] Since potentially marketable public lands amount to about 15 per cent of total developable land, releasing all these lands on the market at the same time could depress equilibrium prices and thus lower these estimates. However such a rapid release of lands both unlikely to be feasible and is perfectly avoidable with proper management of these valuable investments.

[49] The per capita measure of availability is conservative in that the population of the expanded AMC is considerably larger than the old AMC which is our study area. Due to the jurisdictional expansion prior to the most recent census in 2011, we do not have recent population data for the old AMC. The numbers are nonetheless very substantial when compared to GDP per capita at factor cost of about USD1200 in 2011-2012 using a USD exchange rate of 55.

[50] HPEC Table 3.2 *op.cit.*

these documents constituted the database needed for the GIS application. This substantial task was conducted over a period of eight months and involved professionals in the fields of urban planning, GIS technicians, cartographers and land assessors. It is important to note that the GIS database was not the end in itself but it helped to analyze and build scenarios to aid the decision makers in framing their policies for public land asset management and future development.

In the present exercise land use zoning and FSI as prescribed in the Development Plan 2002 were taken as given. It could be promising to revisit these aspects with alternative land use scenarios. AUDA has published the Draft Development Plan 2012 for public consultation. Since this happened after most of the technical work was completed, the proposals of the Draft Development Plan could not be taken into account. Once the plan is approved, new valuations could be developed. Furthermore, revising land use and FSI regulations in the context of raising resources for infrastructure investments through monetizing public land after due public consultation and consideration of environmental and social issues could be a sound policy. Oftentimes public lands are identified as surplus precisely because the current use is out of date. The first and best use of the land freed up can be quite different. Especially when a large well located urban parcel is freed up, a multiplicity of objectives, fiscal, environmental and social can be served. Other countries do follow such an approach and McIvor (forthcoming) offers examples of how this has been done in Canadian cities[51].

Although Central Government, State Government and the Ahmedabad Municipal Corporation are identified as the three land owning public agencies, within each of these there are many authorities that are in possession of land and decide use of land. Within Central Government, the Ministry of Defense is involved in case of Cantonment; the Ministry of Civil Aviation is involved in Airport etc. In case of State Government too there are various departments such as Food and Civil Supplies Department in case of warehouses for food grains, the Home Department for police stations and police housing, jails and narcotics stores etc. Each of these authorities possesses these lands without any compulsion or obligation for optimal utilization of land. Consequently data are not readily available to develop well informed policies and programs for monetizing excess land and adapting public use to current needs.

Similar studies deserve to be replicated in other cities. Where cities do not have TPS, the maps and databases could be developed from other sources, such as the basic cadasters. (e.g. village maps, city survey maps and relevant extracts of record of rights). This will have to be followed by creating a mosaic of digitized vector maps corrected with reference to geocoded satellite imageries and then attribute data can be developed in GIS. To accomplish this, a team that is competent in interpreting cadasters and using analytical capabilities of GIS would be necessary. However such a study can be

[51] Gordon McIvor Urban Land Development And The Monetization Of Land Assets In Cities Canada Lands Company: A Canadian Success Story forthcoming World Bank

replicated whenever access to ownership records is available on a consistent basis. Such a requirement should be possible to meet in other cities.

This study fairly conclusively demonstrated that unlocking the value of public land could be a significant fiscal contribution to investment in urban infrastructure. Not only are excess public lands highly valuable, but this study also shows that aggregate public land holdings have a substantial footprint—amounting to 32 per cent of total buildable space even in a city such as Ahmedabad known more for its vibrant private sector than its large government presence.

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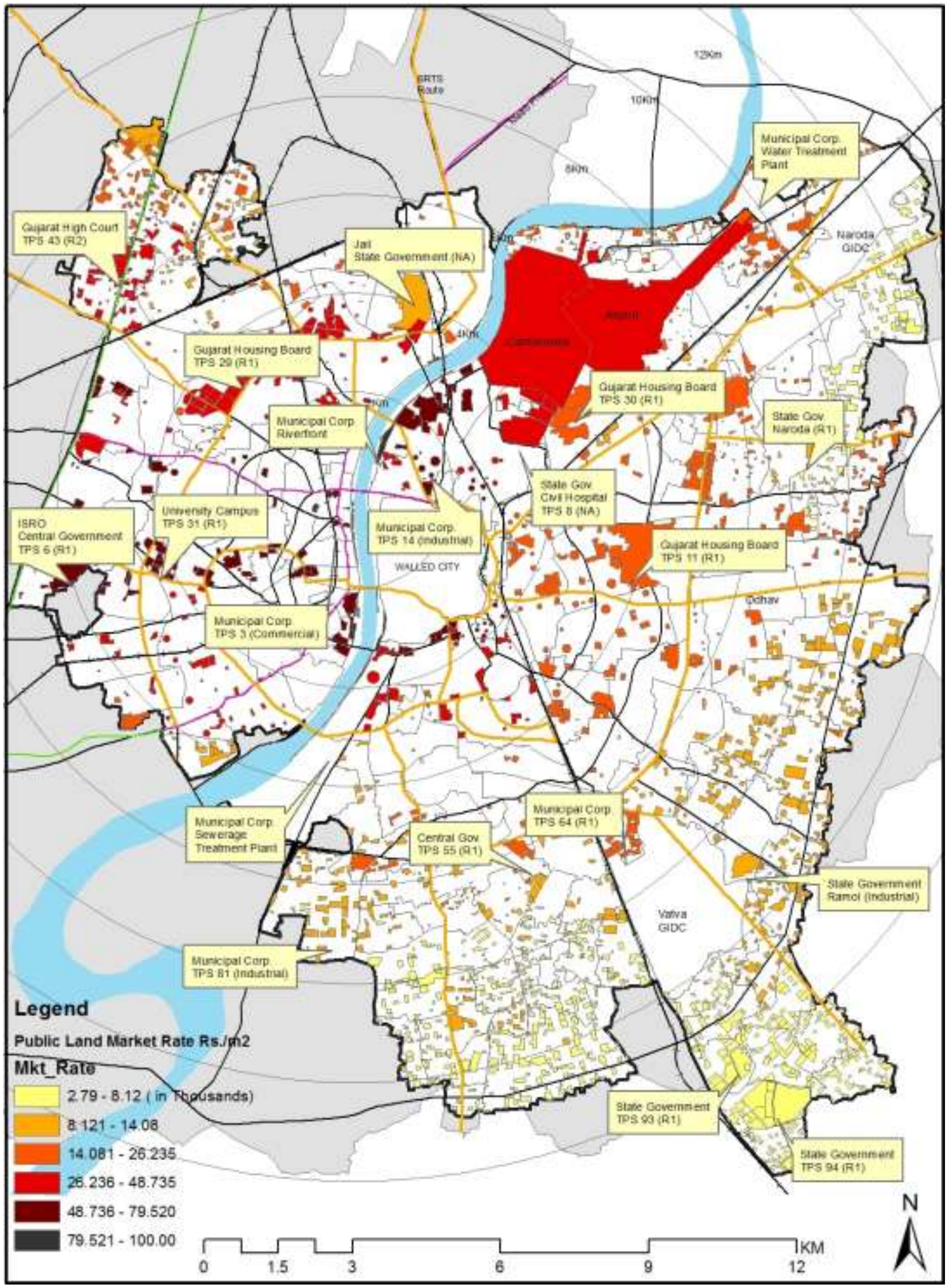
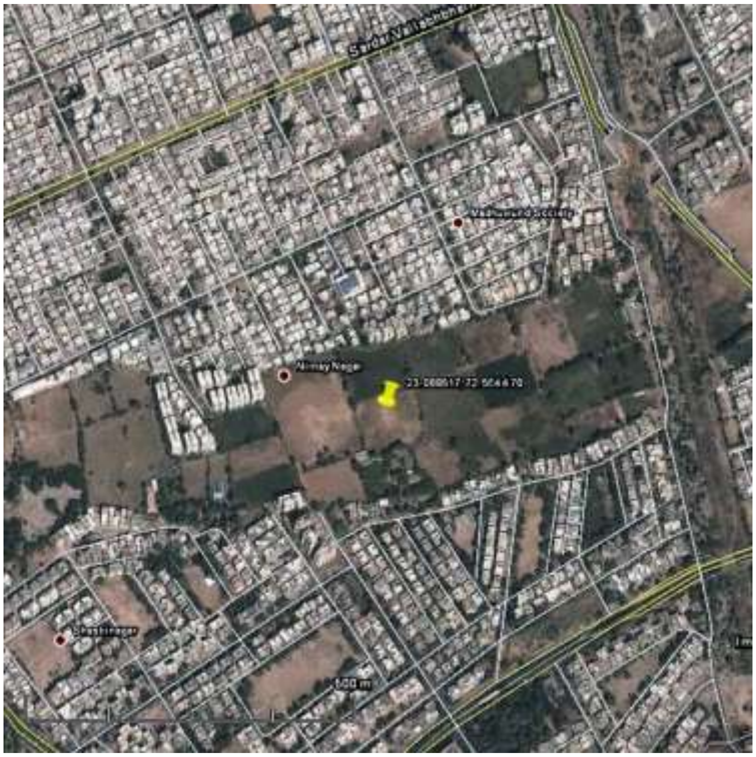
ANNEX I

Public Land Market Rate and Sites Localized in Google Earth



Ahmedabad Sites localization visited in Google Earth (6 of these sites are printed below).



Gujarat Housing Board, Green Belt – TPS 29 (R1) Lat.23.068517 Lon.72.554470

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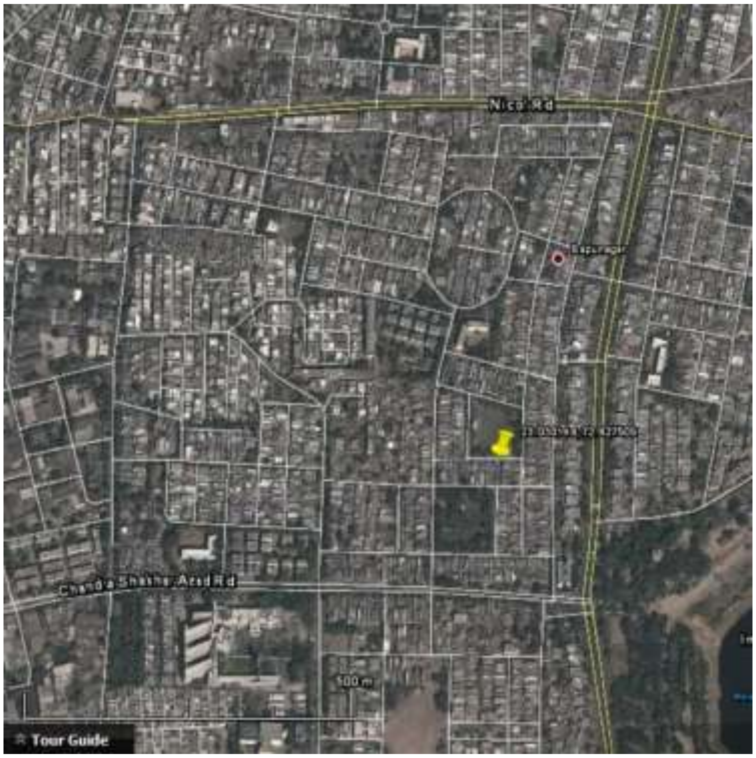

Gujarat Housing Board – TPS 11 (R1) Lat.23.030148 Lon.72.627505

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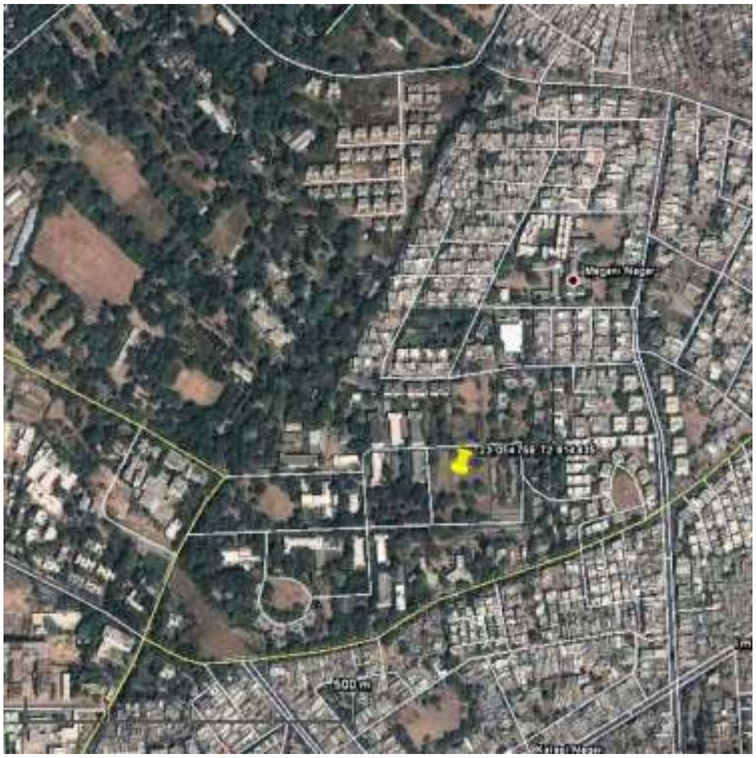
State Government – TPS 43 (R2) Lat. 23.080387 Lon.72.521018



State Government – TPS 66 (R1) Lat.23.054758 Lon.72.614835

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Municipal Corporation – (Riverfront) Lat. 23.051142 Lon.72.578694

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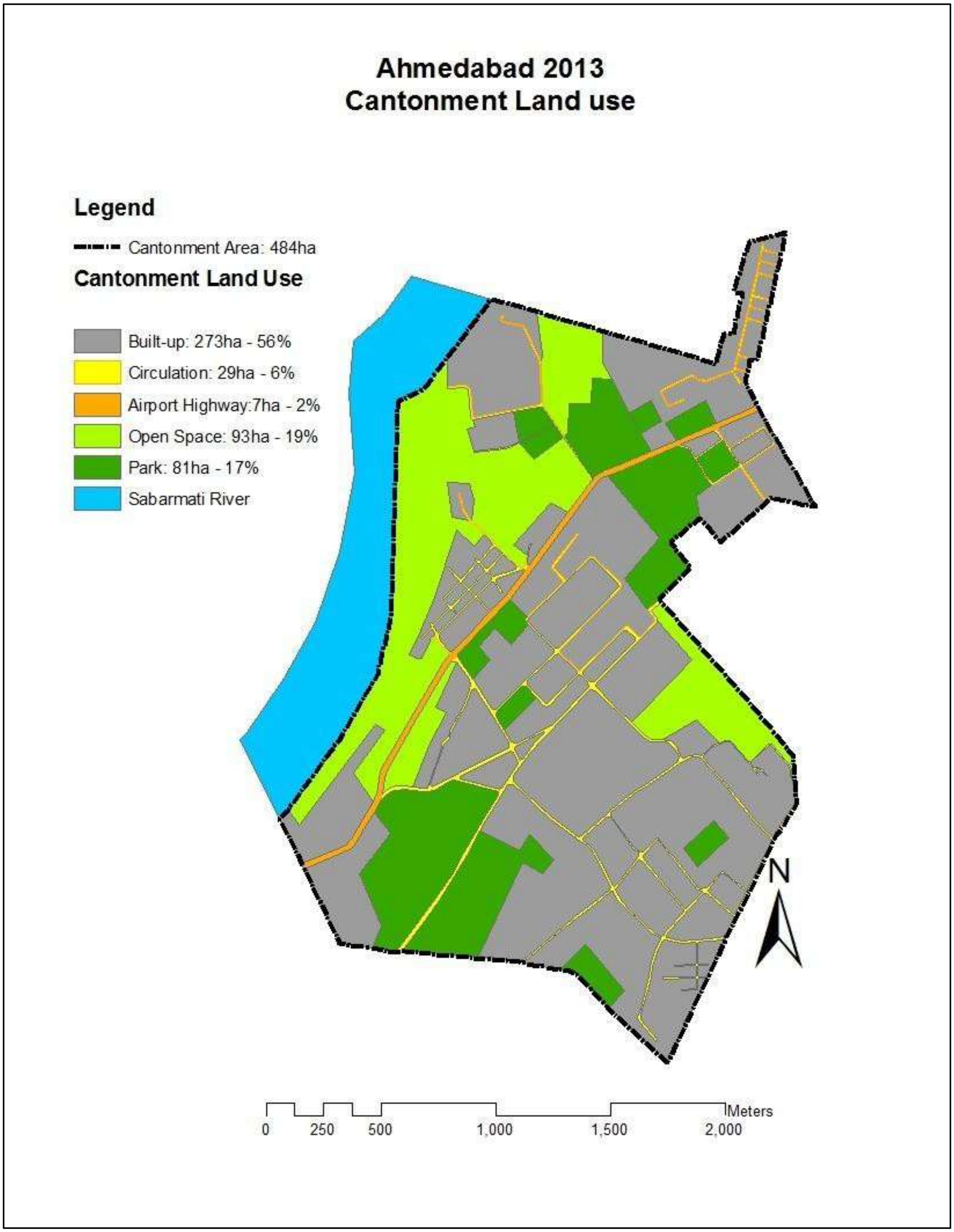
Municipal Corporation – TPS 81 (Industry) Lat.22.959121 Lon.72.569138


Ahmedabad 2013
Cantonment Land use
Legend
Cantonment Area: 484ha
Cantonment Land Use
Built-up: 273ha - 56%
Circulation: 29ha - 6%
Airport Highway:7ha - 2%
Open Space: 93ha - 19%
Park: 81ha - 17%
Sabarmati River
N
0
250
500
1,000
1,500
2,000
Meters

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ANNEX II

GIS SHAPE FILE DATABASE "FP_Boundary" FIELD LISTING

No	Field	Description
1	No.	Unique Serial Number in the database table
2	Unique ID	Unique ID generated in GIS
3	Owner	Name of the owner
4	Ownership	Central Government, State Government, Municipal
5	TPS_Village	TP Scheme No. or Village name in no TPS areas
6	FP_No	Unique Final Plot Number in a given TPS
7	Plot Area	Plot Area in square meter.
8	DP_Zone	Land use zone as indicated in the Development Plan (e.g.
9	Type	**Land use type abbreviations:** RES = Residential COM = Commercial IND = Industrial General & Industrial Special INS = Institutions: Education, Health, University, Research PK = Park, Garden, Open Space, Agriculture, Forest W = Water Body, River, Canal CEM = Cemetery UTL = Utilities, Treatment Plant, Power Station AIR = Airport CAN = Cantonment SER = Market, Bus Stand, Parking, Transport Node WMK = Wholesale market OTH = Multipurpose NA = No Special Assignment
10	Bldg_Footp	Building(s) footprint(s)total area for the specific plot
11	Floor_Area	Total building(s) floor area for the specific plot
12	FSI	Permitted **F**loor **S**pace **I**ndex including an allowance for
13	Exist_FSI	Building total floor area(s) divided by the specific plot area
14	Category	**Category: Non Marketable & Marketable Land** 5.1a = Road & Railway 5.1.b= Water Body 5.1.c= Graveyard 5.1.d= Garden/Open Space 5.1.e= Heritage Parcel 5.1.f = Slums 5.1.g= Utilities/Industrial Estate 6.1.a = Vacant plot 6.2.a = Plot under obsolete use 6.2.b = Plot consuming less than 45% of FSI 6.2.c = Plot consuming 45% to 85% of FSI

		6.2.d = Plot consuming more than 85% of FSI 6.2.e = Plot under special use
15	Jantri_Rate	Jantri land value m2 determined by the government
16	Mkt_Rate	Market land value per m2 assessed as multiple of Jantri
17	Remark	Information concerning the specific plot.
18	Balance FSI	Permitted FSI minus Existing FSI.
19	Balance Floor Area	Balance FSI (difference between permitted FSI and
20	Land Equivalence	Balance floor area divided by permitted FSI.
21	Jantri Value	Balance FSI land evaluated at Jantri rate
22	Market Value	Balance FSI land evaluated at Market rate
23	Residual Land Area	For plot with existing building the residual land area is
24	Jantri Value	"**Residual Area**" more than 70% of the "Plot **Area**"
25	Market Value Alternative 2b	"**Residual Area**" more than 70% of the "Plot **Area**" multiplied by "**Market Rate**"

Note: Cells in gray are for data entered in the GIS database "TP_Boundary". Others are resulting data calculated in an Excel spreadsheet.

CAPTURING THE VALUE OF PUBLIC LAND FOR URBAN INFRASTRUCTURE:

CENTRALLY CONTROLLED LANDHOLDINGS

George E. Peterson

Vasudha Thawakar

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UNITS OF MEASUREMENT AND ACRONYMS

1 hectare = 10,000 sq meters = 2.471 acres

1 sq. km. = 100 hectares = 247.1 acres

US $1.00 = Rs 55 (approx.)

AAI: Airports Authority of India

BMRC: Bangalore Metro Rail Corporation

CAG: Comptroller and Auditor General

CoPT: Cochin Port Trust

CBI: Central Bureau of Investigation

DGDE: Directorate General of Defence Estates

JNPT: Jawaharlal Nehru Port Trust

KPT: Kandla Port Trust

MoD: Ministry of Defence

MMRDA: Mumbai Metropolitan Region Development Authority

NOC: No Objection Certificate (for land development)

PIL: Public Interest Litigation

PPP: Public-Private Partnership

RLDA: Rail Land Development Authority

TAMP: Tariff Authority for Major Ports

I. INTRODUCTION

Government entities in India hold large amounts of public land. Their landholdings include some of the most valuable property in the country. Parts of this patrimony lie vacant or under-utilized. Public sector bodies also own large blocs of land that sometimes stand in the way of efficient completion of urban infrastructure networks.

At the same time, urban India is deficient in basic infrastructure—both network infrastructure needed to support economic growth and urban service infrastructure needed to meet basic household needs like water supply, waste removal, and transportation.

This condition raises fundamental questions. Are some of governments' landholdings "surplus" or not needed for service provision? If so, can their economic value be captured to help finance infrastructure investment? That is, can surplus land assets be "monetized" and converted into badly needed infrastructure? Even in cases where there is no surplus public land, is it possible to re-arrange landholdings so that blocs of public land do not stand in the way of efficient operation of infrastructure systems? That is, can land parcels be traded among public entities and others, in ways that support more efficient urban development?

Objectives of Report

This report aims to document evolving government policies toward pubic land management. It examines how active public entities are in identifying "surplus" lands and attempting to monetize them. Public bodies in India have proved reluctant to surrender landholdings. The report therefore considers practical alternatives that have emerged, such as land trading among public institutions. Land exchange can clear the way for completion of important urban infrastructure projects, without requiring public landowners to declare their property "surplus" and suitable for market disposition.

The report focuses on centrally controlled landholdings. Central institutions are the largest owners of public land. They hold extensive and valuable parcels in major urban areas. Central government policy in managing these lands will be critical in building the next generation of urban infrastructure. The policies that central institutions establish will set precedents for public land management at all other levels of government.

Approach and Organization of the Report

The next section of the report identifies the principal institutions at the central level holding substantial amounts of urban land. It summarizes recent changes in cabinet-level policy affecting the "alienation" of all centrally controlled lands. The policy shifts reveal a tension between delegating land management decisions to the local or sectoral (e.g., railway) level and centralizing all such decisions at cabinet level. Inefficient allocations of land by local branches of central government agencies have driven land decisions toward centralization. The massive delays involved in obtaining cabinet approval for local land transfers have delayed key infrastructure projects and driven policy in the opposite direction, toward de-centralization.

Parts III and IV look at the specific landholdings, "surplus" land, institutional policies, and critical issues involving land and infrastructure investment for the two largest holders of centrally-controlled lands: Indian Railways and Ministry of Defence. Their history reveals ambivalence about identifying and commercializing excess landholdings. Railways created a special institution for commercializing excess lands. It set high targets for revenue realization, but most of the land development projects have been abandoned or postponed.

At one time the Ministry of Defence required the military services to conduct an annual land audit, whose purpose was to identify permanently surplus land. National policy was to sell or lease such land at auction. A 2011 report by the Comptroller and Auditor General found large amounts of Defence land to be "surplus" by the standard that it was not in military use or formally planned for military use. In recent decades, however, the Ministry of Defence (MoD) has taken the position that there is no surplus land. It has instructed the services not to designate land as surplus. Source: Circular No. 11015/2/86, Ministry of Defense

More progress has been made in trading land parcels to facilitate construction of infrastructure projects. Both Railways and Defence have entered into such trades with local authorities.

Part V of the report examines in more detail the port sector. It includes case studies of three Major Port Trusts: those in Cochin (Kochi), Mumbai, and Kandla. The case studies demonstrate the linkage between land-use rationalization and market-based land leasing. Kandla Port Trust, for example, increased its annual rent roll from land leasing by 15,000% (sic!) when it re-valued its lands at market value, as ordered by courts and the Land Policy for Major Ports. The case studies reveal the specific institutional and policy obstacles that have prevented ports from using public commercial lands more efficiently.

The final section of the report assesses choices about the way forward in public land management and infrastructure finance, based on findings of the report.

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II. CABINET-LEVEL LAND POLICY

Central-government land policy has marched back and forth in recent years. Prior to 2011, land-use decisions regarding centrally controlled lands were mostly delegated to the individual landowning institutions and local management—subject always to the de facto right of Cabinet ministers to intervene if the stakes were high enough. Indian Railways created the Rail Lands Development Authority (RLDA) as a statutory body charged with commercial development/lease of excess railway property. Some 106,000 acres of railway lands were turned over to RLDA for commercial exploitation.

Decisions about land use on Defence properties were made by local military commanders in coordination with local officers of the Directorate General of Defence Estates. They could grant No Objection Certificates (NOCs) for development on military property. The local governing boards of Major Port Trusts could lease lands to commercial interests for up to 30 years on their own initiative. Although central policy guidelines said the Port Trusts "normally" should follow competitive procedures and use market values for land leases, the local Trust Board Chairman was allowed to allocate land by nomination at below-market values, as long as this was noted in writing. The Airports Authority of India, as a Class 1 Public Enterprise, was allowed to make financial decisions up to 500 crore (USD 91 million) without higher-level review.

2011 Cabinet "Freeze"

Decentralized decision making about land use came to an abrupt end in March 2011. The Cabinet secretary circulated an order requiring all decisions about "alienation" of public lands to be referred to Cabinet for approval. The order covered land sale, long-term leases, contributions of land to public-private partnerships, and contributions of land to infrastructure concessionaires. Only transfers from one central government department to another were accepted. The immediate causes behind this order were a series of highly publicized land scams, in which local officials and private parties corruptly conspired to capture the value of public lands.[52]

[52] Three cases are illustrative of the high-profile scams involving public land. The Adarsh Cooperative Housing Society case began as a proposal to build a 6-storey building in the Colaba quarter of Mumbai for war veterans and widows of the Kargil War. It morphed into construction of a lavish 31-storey condominium building, occupied by the wealthy and by politicians, bureaucrats, and military officers who acquired their property extra-legally. The residential tower was built on Defence land, after a convoluted series of No Objection Certificates were issued by local Defence authorities. Among those arrested in the case were two former Army major generals, the Commanding General Officer of Maharashtra, IAS officials, Adarsh promoters, and the former Chief Minister of Maharashtra. (The state of Maharashtra is now disputing whether title to the land belonged to the Defence Ministry.) In the Srinagar land scam, No Objection Certificates were granted to civilians to build on 12 acres of prime Defence land near Srinagar Airport in Kashmir. The land in question was valued at 200 (USD 26 million) crore. The scandal involving Kandla Port Trust is described in Part V of this report.

At the time the Cabinet freeze was imposed, it was announced that the Department of Economic Affairs would soon be issuing a comprehensive policy governing all land transactions by centrally controlled public institutions. Meanwhile, no land transactions of significant scale were approved by Cabinet. Land transfer was suspended even in cases where the contract with the private developer had been signed and down payment made.

Prime Minister's 2012 Intervention

In August 2012, the Prime Minister intervened to unlock the land stalemate. The official statement noted that the Prime Minister was acting to speed up implementation of infrastructure projects. However, the order is narrowly crafted. It authorizes ministries or governmental departments to transfer land to Public Sector Units and to companies developing infrastructure projects (i.e., licensees or concessionaires), as long as government procedures and norms are followed.

Public land therefore can be contributed directly for the furtherance of infrastructure projects without case-by-case Cabinet approval. The biggest beneficiary of the policy change should be infrastructure PPPs. The order does not apply to land sales or long-term land leasing unconnected to infrastructure projects. As a practical matter, potentially controversial land transactions will continue to be referred to the relevant Ministry and, where necessary, to Cabinet.

Current Policy Proposals

Better utilization and management of public lands has received significant attention over the past 18 months.

The Chawla Committee report in May 2011 on Allocation of Natural Resources discussed the matter of public lands amongst others. The report points out that the Union Government departments and organizations are the largest landowners in the country. Much of these lands were allocated when the areas were underdeveloped and not needed for development activities, In contrast, many of these land parcels now command a significant premium and deserve a transparent and objective framework of management and utilization. Amongst various recommendations made is the need for a union repository of land records, avoiding alienation of land via inefficient long term leases, clarity in policies and action plans to utilize the funds generated.

The recent report (September 2012) by the Kelkar Committee on Roadmap for Fiscal Consolidation states that the country's fiscal deficit is estimated at a 6.1 percent of GDP which is 1 percent higher than previously estimated. In fact, the fiscal deficit which had seen a decline since FY 2002-2003 has been rising steadily from a low 4 percent post FY 2007-08. Against this background, the Kelkar Committee report urges immediate policy actions and reforms. Amongst other measures is disinvestment of underutilized lands of government institutions like PSU's, railways and port trusts to meet expenditures towards capital assets.

The most recent proposal for public land management comes from the Department of Economic Affairs (DEA). DEA has prepared a Cabinet note on land alienation policy for inter ministerial consultation in October 2012. The Note proposes that revenue proceeds (sale and lease) from non-performing land assets should be used to repay debt or create assets which will generate revenue. The draft policy also outlines procedures for sale of land assessed over Rs 50 crore (USD 9 million) and proposes measures on land lease to reflect market rates better. Over and above, it recommends the creation of a Public Sector Land Management Committee comprising of secretaries to put together a database with updated land records. The records should reflect their market value based on factors like floor area ratio, facility of utility services, development potentials and presence of minerals. It also suggests improving the land's market values by various measures of value creation. These recommendations reflect that the Government of India is beginning to look at its land assets comprehensively and how can these be best utilized to meet the country's growing need for capital infrastructure imperative for economic growth.

However, it must also be noted that many of the Central institutions and agencies have their own legislations on land use. How these will interact with the proposed Land Alienation Policy as noted above remains to be seen.

Who Are the Largest Central-Level Landowners?

Many central government ministries, enterprises, and centrally supervised service providers own public lands. Some of these organizations are well along in the process of monetizing property. The National Textile Corporation, for example, has been auctioning mill lands—initially to pay for pension obligations and other liabilities.

Four central institutions stand out for their land ownership: the Ministry of Defence, which is the country's largest landowner; Indian Railways, which has identified 43,000 hectares of its massive landholdings as unnecessary for railway service; Airports Authority of India, which controls 20,400 hectares of high-value land surrounding major airports; and the 13 Major Port Trusts, which hold around 100,000 hectares of land in all, a significant part of which is located in key urban areas and presently under-utilized.

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III. INDIAN RAILWAYS

Indian Railways is a public enterprise owned by central government and administered through the Ministry of Railways.

By its own tally, India Railways owns 423,000 hectares of land (roughly 1,045,000 acres). Of this total, 378,000 hectares are used, or planned for use, for railway operations, 43,000 hectares are vacant, and 2,240 hectares are encroached.

Strategy for Commercial Development and Land Monetization

Indian Railways was the first central organization to develop an institutional strategy for land monetization. A prime motivation behind the strategy was Railways' large operating deficit and the prospect that demands for central budget support could be reduced if surplus land assets generated competitive economic returns.

In 2006, the Railway Land Development Authority (RLDA) was established as a separate statutory body. The plan was to gradually hand over excess land with commercial potential to RLDA for development, sale, or lease. Newspaper accounts at the time estimated (optimistically) that more than US$100 billion eventually could be realized from monetization of surplus rail lands.

In the first wave of transfer, Indian Railways transferred 138 land parcels covering 1,500 hectares to RLDA. In a typical project, consultants would be retained to identify the value-optimizing land use and appropriate form of ownership. Then a competitive auction would be held to elicit bids.

Implementation of RLDA Strategy

Actual monetization of RLDA properties has lagged badly. As of July 2012 (RLDA website) only one land development project was described as completed, and that project was embroiled in a controversy with Bangalore regarding metro construction (see below). In fact, of the 138 parcels originally transferred to RLDA, 52 have been de-entrusted or proposed for de-entrustment, on the grounds that commercial use is not viable. Planning for another 32 parcels had been suspended, either because of the Cabinet-level freeze or project-level difficulties. Most of the remaining parcels were in some stage of consultancy or proposed for consultancy to identify commercial potential.

One reason for the performance shortfall is market timing. RLDA was created near the top of the urban land market boom. Projections of developer demand made at that time proved overly optimistic. However, the specific circumstances surrounding RLDA's two most highly valued land parcels shed light on the difficulties of translating plans for public sector land monetization into reality.

Sarai Rohilla, Delhi. RLDA's flagship project involved development surrounding Sarai Rohilla railway station in Delhi. The station is 4 kilometers from prestigious Connaught Place. The project called for commercial and residential development of vacant land ar ound the station. In all, 16.5 hectares of land were to be developed, 11 hectares by the developer and the remaining 5.5 hectares by Railways. A competitive auction for a 90-year land lease was held in 2010. The winning development group, Parsvnath Developers, bid 1,651 crore (USD 300 million). It paid 334 crore (USD 60 million) as an upfront down payment.

Then came the Cabinet freeze on public land transfers. The developers were unable to take possession of the land, and still had not done so by summer 2012. They were demanding cancellation of the contract and return of their down payment. Other RLDA projects were likewise caught in the freeze. The precedent set has discouraged interest in RLDA land leases.

RLDA has not revived land lease efforts in the wake of the Prime Minister's relaxation of the rules requiring case-by-case Cabinet approval. Instead, Railways has proposed forming a new corporation that would partner with private sector developers to build Multi Functional Complexes (railway stations with restaurants and enhanced commercial services). Revenue targets for this initiative have been drastically lowered.

Bandra (East) Mumbai. This valuable 4.5 hectare parcel, near the Bandra (East) railway station, has been proposed for commercial development since 2006. Auction reserve prices have been set between Rs 3,700 crore and 4,200 crore (around US$ 670 and 760 million) at different times. However, the property has failed to attract acceptable bids at six successive auctions.

At the height of the land market in Mumbai, Railways issued bid terms that would have required the developer to build two identical office towers, one to be given to Railways for offices free-of-charge, the other to be available for commercial market leasing. The restrictions squeezed profit out of land development. No bids were received.

Subsequently, the dual-tower conditions were dropped. Auction management was turned over to RLDA. Indian Railways worked with the State of Maharashtra to reach agreement that the Floor Space Index (FSI) for the site would be increased from 2 to 4, in order to maximize land value. In return, Railways agreed to allocate two-thirds of land lease proceeds to investment in the suburban rail plan for Greater Mumbai. However, at the last minute a private citizen brought claim in court that the property belonged to the State of Maharashtra, not to Railways. Maharashtra joined the plaintiff in the case, first at the level of revenue collector, later at the level of Minister of Revenue. Attempts to auction the property attracted no bids, as long as title was disputed.

The state revenue minister gave the order in December 2012 adjudicating that the plot belonged to the railways. Market demand for the property, even with clear title, is unknown.

Bandra's experience illustrates the hazards of relying on land sales or land leasing to finance a particular capital budget. The timing of successful land transactions is difficult to predict. Transaction values are dependent upon rapidly changing market conditions and subject to unforeseen risks.

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The Bandra case also carries a positive precedent. Land values often can be enhanced by favorable FSI adjustments. FSI regulations lie within the province of state government. Earmarking the proceeds of central-level land sales for metropolitan infrastructure investment is a step forward for the state in urban infrastructure finance. Tying the two actions together, as in the Bandra case, is a positive step that can be replicated elsewhere—hopefully, in more timely fashion.

Providing Railway Land for Local Urban Infrastructure

Given Indian Railways' massive landholdings, it is common for local infrastructure projects to desire to incorporate Railway property in their design, or to seek access to Railway rights-of-way. Construction of the Bangalore Metro Rail system, for example, has repeatedly bumped up against constraints imposed by Railway land ownership.

In one of these disputes, Bangalore Metro Rail Corporation (BMRC) sought to build an underground station and portions of the Namma Metro corridor on Railway property. Disagreements concerning compensation significantly delayed construction. At issue was the question whether BMRC was acquiring a lease for the entire property or, on part of it, only a right-of-way. The parties also disputed whether the land should be valued at industrial or commercial/residential rates. The property at the time was in industrial use, but would be converted to commercial, residential and station use.

Railways held out for compensation of 219 crore (USD 40 million), while BMRC offered and paid 94 crore (USD 17 million). Negotiations continued for more than a year. At one point Railways called on the Railway Protective Fore to evict BMRC men and machinery working on the property. The whole matter eventually had to be forwarded to the Centre for resolution, with interventions by the Urban Development Ministry and a special Empowered Committee.

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IV. MINISTRY OF DEFENCE

The Ministry of Defence is India's largest landowner. It holds a total of 1,754,000 acres. Of these about 1.6 million acres are out of cantonments. Proposals to rationalize the use of Defence lands are highly sensitive. Most policy discussions treat Defence property as "off limits" when it comes to identifying surplus landholdings.

This view is prudent in the short-run. Identifying surplus property in other central-government institutions is likely to be less controversial and meet with less powerful resistance. However, over the longer term, the perspective changes. Defence holds the largest blocs of urban land. Some of this land is inefficiently located for defence purposes. Some is now used for non-defence activities.

Other countries have included defence property in their assessments of efficient public land use. In fact, Australia, Canada, United Kingdom, United States, and the Philippines all have found that more than 90% of total public land identified as "surplus" and monetized has come from outdated military bases (Peterson 2012). In many cases de-commissioned military bases have become the anchor sites for large-scale, successful urban re-development. India at one time audited Defence lands to identify parcels that were permanently surplus for military use. It therefore is useful, in assessing centrally-controlled lands, to take into account Defence property.

Defence landholdings sometimes stand in the way of completing urban infrastructure networks. Even if Defence property is not to be monetized, it makes sense to explore whether landholdings can be exchanged with other institutions, or other ways can be found to make Defence lands available so that urban infrastructure projects can be completed without compromising defence capabilities.

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Organization of Defence Lands

Legal title to all Defence lands in India is held by the Directorate General of Defence Estates (DCGE). Part of this land—158,000 acres—is contained in 62 military cantonments. Cantonments are separate areas formed around military bases, under military control. Cantonments often have significant civilian populations. They have elements of local self-governance. Civic administration is the responsibility of a Cantonment Board. However, the local military commander traditionally has made important decisions, including those involving land uses.

Private parties and state government can own property within a cantonment. The size of cantonments gives them a significant role in urban development. Delhi cantonment, for example, occupies 43 square kilometers in the heart of the metropolitan region. In 2001, time of the last census, Delhi cantonment had a population of 124,000. Eleven hotels are located within the cantonment, as well as a variety of commercial establishments and upscale housing. Secunderabad cantonment, at the heart of the Hyderabad urban region, covers 40.2 square kilometers (about 10,000 acres); it had a population of 206,000 at the time of the 2001 census.

Secunderabad cantonment illustrates the complexities of cantonment geography. The cantonment does not form a compact bloc. It sprawls over the inner part of the urban region. The cantonment is connected to, and interrupts, water and wastewater networks, roads, rail lines, and other network infrastructure operated by state, metropolitan and urban local bodies. The cantonment has its own master plan. It is not subject to metropolitan land-use planning. Within Secunderabad cantonment, 27.5% of total land area is leased to private parties or government. Some of the land has been encroached.

Defence lands not part of cantonments are administered separately. They cover 1,596,000 acres. By branch of service, total Defence lands are allocated as follows:

Army: 79.7%

Air Force: 8.7%

Navy: 2.1%

Ordnance Factory: 2.9%

Other: 6.6%

Although land title in each instance is held by the Directorate General of Defence Estates, decisions about land use are made by the respective military branches and, when necessary, the Ministry of Defence.

Does Defence Have "Surplus" Land?

Whether Defence has surplus land is a longstanding and controversial issue. A report of the Comptroller and Auditor General ("Performance Audit of Defence Estate Management 2011) concludes that more than 81,000 acres of defence lands are "surplus" in the sense that they are not used, and are not presently planned for future use, as defence activities. The bulk of this land (52,000 acres) is vacant and unutilized. However, some of the urban land is allocated to uses that in the view of the Comptroller and Auditor General (CAG) are unauthorized.

For example, Defence has 97 golf courses covering 8,076 acres of mostly urban land. Golf courses are not authorized uses on A-1 defence lands. To avoid the charge of having surplus "recreational" land, the Army in 2004 re-labeled its golf courses as "Army environmental parks and training areas." The CAG report dryly notes that there is no evidence that the re-labeled golf courses are designed for "maintaining ecological balance."

Some Defence lands are allocated to favored parties under legacy leases at far below market rates. The Agra (Golf) Club occupies 17.68 acres for which it has paid annual rent of Rs 58.92 (USD 1.07) per year since 1992. The racetrack in Pune Cantonment has been leased to Royal Western India Turf Club since 1902. The lease is for 65.15 acres, but over time the Club has expanded onto an additional 24.1 acres of Defence land without sanction.

Other lease arrangements have been the subject of recent scandal. The Adarsh Society scam and the Srinigar Airport scam are two examples of alleged collusion between local military officials, bureaucrats, politicians, and developers. Through a series of maneuvers, Defence land was re-classified as civilian land. No Objection Certificates then were issued to private developers to authorize construction of luxury high-rise buildings.

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In response to these and other controversies regarding land allocation, the Ministry of Defence in 2012 cancelled the authority of local military commanders to make land nominations or issue No Objection Certificates to private parties on their own. All such arrangements now must be submitted to the Ministry of Defense for approval.

History of Defence Land Audits. The formal position of the Ministry of Defence (MoD) is that it has no surplus land. In July 2012 testimony before the Parliamentary Standing Committee on Defence, Ministry officials re-iterated that Defence "has no surplus land." Far from having excess land to share, the officials stated that each of the military branches, as well as the Ministry, would require additional land in the near future. The 52,000 acres of vacant land were described as being kept vacant for "operational reasons" and future use.

MoD's stance that there is no surplus defence land has evolved over time. Between 1977 and 1986, defence lands were subject to annual audit to identify surplus properties that should be disposed. The Undersecretary to the Government in 1977 notified the service Chiefs of Staff and the Director of Military Lands and Cantonments that once per year all land holdings were to be reviewed by Service Headquarters "with a view to determining which are permanently surplus to Defence requirements and which should be disposed of." (Ministry of Defence 1977). The memo went on to state that the general practice for land disposal should be by auction with a market-based reserve price.

In 1986, MoD issued a "Modification of Policy." It stated that "No Defence land shall be declared surplus. If at all any land is given up, it should be only on the basis of exchange." (Ministry of Defence 1986). The Prime Minister's Office Order dated August 22, 1997 states that there will be no alienation of defence land without Cabinet approval. An amendment was issued in 2000 which permitted use of defence land by government sector departments and organizations on short term lease provided there was to be no alienation. The issue of surplus property thus ceased to be an empirical question of whether land was being used or would be used in the future for defence purposes. It became instead a blanket statement of principle that the Ministry of Defence would not surrender land, except possibly by way of exchange. By definition, no land could be "surplus."

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Reforms in Defence Land Management

The CAG report made a series of recommendations to improve management of Defence Estates. In a word, it may be said that MoD has adopted those recommendations that help it identify and retain landholdings. It has rejected recommendations that would identify surplus lands and support their disposition.

To sharpen the focus on economic use of land, the CAG report recommended establishment of an independent Defence Land Management Authority preferably headed by the Minister of Defence. The Authority would prepare a land management plan that included identification of surplus properties and a strategy for capturing the economic value of such properties. No land-use planning across services now exists. Even within each service, master plans exist only at the level of individual cantonments. MoD has not acted on these recommendations.

By contrast, MoD has acted swiftly to improve its record keeping and protect its landholdings. In April 2011, the Director General Defence Estates (DGDE) issued an order that revived the Land Audit.

> Considering the importance of land as a national resource, it has been decided that conduct of land audit will be resumed. The land audit
>
> will be conducted by DGDE covering the following areas:
>
> (i) Updating of land records
> (ii) Survey and demarcation and protection of defence lands by way of erection of boundary pillars
>
> (iii) Computerization (digitalization) of land records
> (iv) Efficient usage on defence lands and effectiveness of encroachment removal actions
> (v) Verify the usage of defence lands as per lease to institutions

In its testimony before Parliament, MoD estimated that some 12,000 acres of its lands are encroached. Disputes over the boundaries of Defence properties are common. Land title sometimes is questioned, given that a number of Defence properties sit on land previously donated to Defence by a state government. Digitalization of land records should help reduce title and boundary conflicts.

Land Exchange to Facilitate Local Infrastructure Projects

MoD has signaled its willingness in principle to "trade" land parcels when its lands stand in the way of completing local infrastructure projects. In-kind exchanges of this type may offer the best opportunity to tap the urban development value of MoD land. However, current procedures for consummating land trades are complicated and time-consuming.

Hyderabad-Secunderabad Metro. Andhra-Pradesh was able to secure two acres of Defence land from the Secunderabad Cantonment to fill out the metro system as designed. Secunderabad Cantonment and Defence Estates cleared the land exchange after an eight-month delay. A letter from the AP Chief Secretary to the Defence Secretary was necessary to finalize the exchange. Two acres of Defence land being used for a riding school and parking were exchanged for 25 acres of state land in the Ranga Reddy district, which could be used as a firing range.

An earlier proposal to widen eight regional roads running through the cantonment was denied on the grounds that it would be a disturbance to military training.

Coimbatore Airport. Coimbatore airport is in the process of being expanded to serve as an international airport. Lengthy negotiations between the Airports Authority of India and the Air Force and Navy had appeared to clear the way for a land exchange that would allow the airport to incorporate 122 acres of vacant Air Force land and 6.4 acres of vacant Navy land.

However, in July 2012 both services announced that they would not transfer land to the airport. The Air Force stated that a Flying Unit would be "coming" in the future. The Navy stated that it needed airport access in case of an emergency. Alternate land sites could not duplicate the advantages of airport access. Navy went so far as to build a six-foot wall around its vacant property to prevent airport use.

This conflict, too, has been referred to the Centre for potential resolution.

V. MAJOR PORT TRUSTS—A CLOSER LOOK

This section examines another set of public agnecies holding significant amounts of centrally controlled public land—Major Port Trusts. Although Major Port Trusts hold less land than Defence or Railways, their land holdings often are located in or near major urban centers. Some of this land is clearly "surplus," in the sense that it is not being used, nor being prepared for use, in port-related activities. Following a discussion of the port sector as a whole, we look at three case studies that shed light on the specifics of how greater economic value can be extracted from centrally controlled public lands.

Organization of the Port Sector

Major Ports. India has 13 Major Ports. Twelve are organized under the Major Ports Trust Act (1963). The 13th Major Port—Ennore—operates as a public limited company fully owned by Central Government. Two of the Major Ports—Kolkata and Haldia—are managed by a single Port Trust. Major Port Trusts report to the central Ministry of Shipping, but are organized so as to be quasi-independent in their operations. Each Port Trust is managed by a Board of Trustees. The amount of discretion that local Boards have, particularly with respect to land use and land leasing, has been the subject of frequent controversy. Until 2012, Board Chairmen had the authority to allocate land to lessees by nomination.

In addition to the Major Ports, there are some 200 state-government and private ports. The Major Ports are no longer necessarily the largest ports. Both the private port sector and minor ports are growing faster.

Condition of Major Ports. Many of the Major Ports are legacy ports having a long history of operation. The Bombay Port Trust was established in 1873; the Calcutta Port Trust was established in 1890. The old ports in many respects are poorly suited for today's international competition. They are over-staffed by such measures as worker-days per container ship handled or

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worker-days per 100 tons of bulk cargo (Rajasekar and Deo, 2011). Dock facilities often are mis-matched with today's mix of cargo, with berths specialized for handling cargo that figured more prominently in shipping decades ago.

Several of the Major Ports are struggling financially. They face steep pension obligations from retired workers,[53] as well as competition both from more modern ports in South Asia (such as Colombo and Singapore) and private ports in India. Many of the ports also appear to have excess land. Their landholdings were determined long ago, without reference to current efficient shipping operations or planned port development.

Landholdings and Land Policy

Landholdings. In total, the Major Ports hold more than 250,000 acres of public land. The largest part of the total consists of tidal land at Kandla Port.

Table 1 shows the breakdown of landholdings by Major Port.

Table 1

Major Port Landholdings

Major Port	Acres	Major Port	Acres
Paradip	534	New Mangalore	2,928
Visakhapatnam	587	Mormugao	6,382
Ennore	1,047	Jawaharlal Nehru	7,576
Mumbai	1,859	Kolkata	3,000

[53] Kolkata Port Trust, for example, has more than 30,000 pensioners, and a pension fund deficit of 3,000 crore.

Chennai	2,035	Haldia (Part of Kolkata Port Trust)	7,000
Tuticorin	2,132	Kandla	220,416
Cochin	2,353	**Total (approx.)**	**257,000**

Source: Individual Port Trusts and Ministry of Shipping

Land Use and Leasing Policy. Policy regarding Major Ports land use and land leasing is established through the Land Policy for Major Ports, 2010, developed by a high-powered inter-ministerial committee and administered by the Shipping Ministry. The 2010 Policy amends the Major Ports Land Policy first established in 2004. The 2010 policy was shaped in part by Supreme Court rulings regarding leasing rates for commercial land leased by Major Ports. As of July 2012 the Policy was further modified by central government instruction to limit local Port Trust Boards' discretion in land allocation.

The principal features of the 2010 Land Policy are: (i) Each Port Trust should inventory its landholdings by current and planned use and by valuation. For valuation purposes, it can use recent comparable sales if available (escalated 2% per year); Ready Reckoner values as established by the appropriate state authority; competitive auction values for comparable land leased or sold by the Trust; or values assigned by a recognized appraiser. (ii) Each Port Trust can enter into lease agreements for up to 30 years on its own. Longer-term leases, up to 99 years, require Centre approval. For long-term leases, the market value of land should be re-assessed every five years. (iii) Land rents, per court order, should be set at 6% of market capital value per year with 2% escalation. Long-term land leases paid through upfront premium should be set at the capital equivalent of this rental stream, applying a 6% per annum discount rate.

In addition, each Port Trust is required (iv) to develop a Land Use Plan, approved by the Trust Board and forwarded to the central government. The plan shows how land will be used for different purposes, including lands not required for port activities. The Land Use Policy states that (v) normally, land used for other than port purposes should be leased through a competitive process at market rates, although the Chairman of the Port Trust Board can make non-competitive land allocations, at lower rates, with written notification. Finally, (vi), renewals of leases should be conducted on the same basis as new leases (i.e., no presumption in favor of existing leaseholders at favored rates).

In practice, a Major Port Trust Board should lease/rent land in one of two ways. It can call for tender-cum auction. This is usually done for parcels of significant value where up-front premium is paid.

Alternatively, a Port Trust can lease land in return for annual rental payments. In this case, the Port Trust prepares its proposed land valuations and rental rates for different types of land, and forwards the proposed rent schedule to the central Tariff Authority for Major Ports (TAMP) for approval. TAMP holds hearings, where objections from current lessees and business interests can be heard. It stipulates further information that must be provided by the Trust Board before its rate schedule can be approved. In the past, the approval procedure has been a time-consuming affair, sometimes requiring as much as a decade for TAMP to be satisfied that appropriate information has been provided in the appropriate format. However, the TAMP review process has been speeded up recently, with TAMP handing down several final orders over the period 2010-2012.

Apart from stipulation on leases and related rentals, the Land Policy for Major Ports, 2010 also directs the preparation of land use plans and computerization of all port land inventory via GIS mapping. All ports have completed these activities. However, the Ministry of Shipping is not actively involved in either the review of the land use plan or the consolidation and management of all major port land inventory as all major ports are governed by respective Port Trust Boards and are semi-autonomous bodies. Thus, though significant data is collected, it is doubtful that is analyzed and managed as a whole for the Ministry.

A Draft Policy Directives for Land Policy by Major Ports, 2012 has been prepared after the Cabinet order of March 2011. Subsequent to the order, a meeting was held by the Committee of Secretaries on alienation of Government land. At this meeting it was decided that the Ministry of Shipping could frame regulations on lease/licenses and these regulations would be put up for Cabinet approval. The Policy Directives, 2012 was a result and re-looked at some of the features of the Land Policy-2010, the key being: (i) license for land in custom bound area would be issued by inviting tenders; (ii) land should be leased through a tender cum auction competitive bidding and the reserve price of such plots shall be the updated SOR; (iii) land can be leased up to a maximum cumulative period of 30 years, over which an approval from the Ministry is required and (iv) other reforms include computerization of entire land management into a GIS based system and publishing of market values assessed on port websites.

The land lease scam of the Kandla Port Trust (see below) could have also been a major driver in the revision of the Land Policy- 2010. The Port Trust is discussed in the case study section. The 2012 Policy thus emphasizes on competitive bidding in every lease case to know the market value. However, it must be noted that Port Trust Boards are empowered to reduce rates below ceiling, allot lands to government departments or private parties on nomination basis and even issue fresh leases to existing lessees without public auction or tender in some cases.

Major Issues. Although the 2010 Land Policy represents a significant step forward in port land management, it has shortcomings that have led to a series of disputes. The Policy laid out what Port Trusts "normally" or "usually" should do. However, it allowed local Boards to deviate from these standards, particularly as regards competitive pricing and land allocation. The Chairman of a local Board was authorized to allocate land by nomination at favorable rates, as long as this was noted in writing. No policy justification was required. The previous (2004) Land Policy allowed even greater local discretion. The case studies reveal several examples of favoritism in land allocation, which, though abusive, were found to be within the letter of then-existing regulations.

This discretionary "hole" in regulations was supposed to be filled by July 2012 instructions from the Centre modifying Major Ports Land Policy. The new policy requires competitive auctioning for long-term land leases and market-based land rentals in all cases except where national authorities specifically authorize below-market pricing. Local Boards and Board Chairmen no longer have the right to make below-market allocations of land on their own nomination. However, at the time of this paper being written, the blanket ban on all land leases and sales by the Prime Minister in March 2011 was still in operation. Hence, apart from sale, all land leases cases of over 11 months were being reviewed at the Center greatly hampering decisions related to port activities. Most lease agreements at present are being renewed on license basis to avoid disruption of port activities.

A second issue has concerned the amount of power that should be given to local Port Trust Boards for long-term "alienation" of public land, either through long-term lease or sale. The 2010 regulations allow Major Port Trust Boards to enter into 30-year land leases on their own. After considerable discussion, this authority has been upheld in the new regulations, as long as the auction route is followed. Longer-term leases, fee simple sales, and other forms of land alienation must be approved by the Centre Cabinet. Local Boards are to make proposals. An empowered committee at the Centre, including the Permanent Secretary, Shipping, then recommends the proposal (as suitably modified) to Cabinet for authorization. This partial re-centralization of decision making about land leasing is consistent with the steps taken in other sectors, such as the Ministry of Defence's suspension of the authority of local military commanders to

A third area of dispute involves application of the new land pricing rules to existing lease contracts. In the case of Kandla Port Trust (see below), the Delhi High Court ruled that the newly approved land rent schedule applied retroactively to 2008-2009 and to then-existing lease agreements, not merely to new leases. In the case of Mumbai Port Trust (also below), the Trust and its lessees disagreed as to whether the new rental policy should be applied to existing leases. So far, the land rents built into legacy leases have not been modified.

The net effect of the evolution in Land Policy for Major Ports remains to be seen. On the surface, it appears that Major Port Trust Boards have been given a clearer mandate to plan for future land use and development of port activities. At the same time, many decisions about identifying and monetizing surplus lands must be referred to the Centre. Actual implementation of policy—at both the local level and the Centre—sometimes appears to deviate from written rules.

CASE STUDY: COCHIN PORT TRUST

Cochin (Kochi) Port is one of the smallest Major Ports. In 2010, it handled the lowest tonnage of any of the Major Ports. It serves an urban region that is relatively small by Indian standards. The city of Kochi has a population of roughly 600,000; the urban agglomeration of which it is the center has a population of some 2.4 million. Port Trust land values are correspondingly modest relative to a Port Trust like Mumbai. Nonetheless, Kochi is the commercial center of Kerala.

Cochin Port Trust was one of the first of the Major Port Trusts to complete the Land Use Planning exercise at the heart of the new Major Port regulations. It issued a draft comprehensive Land Use Plan in March 2012. Earlier, in May 2010 it received final approval from TAMP for a revision of its land rent schedule. Cochin Port Trust (CoPT) therefore provides a good illustration of how the new land-use and land-leasing rules work in practice.

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Land Use Plan: Inventory. CoPT started with an inventory of current land use, joined with an assessment of the special challenges/opportunities associated with that land use. The Land Use Plan of the port states that it aims to use the land resource to maximize cargo handling. Principal findings are summarized in Table 2.

Table 2: Cochin Port Trust Land Inventory and Notes

(Baseline = 2007)

Baseline Land Use	**Hectares**	**Notes**
Used for Port Activities	157.1	Port activities are scattered all over Willingdon Island. Incompatible activities are located next to each other, while complementary activities are separated. There is a mis-match between dock infrastructure and today's cargo mix.
Leased to Other Parties	305.0	Many leased parcels near the active port are not used for port-related business. Land rental rates have not been adjusted since 1996. In all, 250 land parcels are leased to third parties for other than port purposes.
Reserved for Expansion	466.5	Key proposed projects are logistics park (44.8 ha), ship repair yard (18 ha) and Free Trade Warehousing Zone (41.3 ha) in Willingdon Island. A special economic zone is being developed in an area of 285.8 ha. Puthuvypeen.
Surplus	4.05	
TOTAL	932.9	Includes 386 hectares on Willingdon Island plus land in Vallarpadam, Ernakulam Foreshore, Fort Kochi etc.

Source: Cochin Port Trust Draft Land Use Plan (March 2012) and press reports.

Table: The development of the SEZ will be co-developed by M/s. BPCL-KR, Petronet LNG and IOCL. M/s BPCL have been commissioned for the project. A land area of 33.4 ha has been allocated to Petronet for setting up a re-gasification plant which will also consist of a jetty for LNG vessels. IOCL is intended to be commissioned for an LPG import terminal. It will also provide storage facilities of LPG and birthing facilities for LPG ships.

Several aspects of the inventory deserve emphasis. First, the importance of commercial land leasing is apparent, given that the amount of land leased to third parties is almost double the amount devoted to port uses. In its assessment of the leased land, CoPT noted that a large number of the lessees occupying parcels located near the port did not transact port business. They were legacy holders of leases on favorable, historical terms. The Land Use Plan proposed to rationalize land use by re-assigning parcels close to the port to lessees that would help generate port activity. The port proposes to reassign/relocate these activities as leases expire. This is proposed and not done yet.

Second, CoPT found that port activities were scattered all over Willingdon Island, making for inefficient interaction. At the same time, some activities were jumbled together in ways that made the port significantly less efficient than if the activities were separated. In 2007, when the baseline was established, container ships, cruise liners, and bulk cargo ships were all handled at the same basic location. Berths were specialized for handling bulk cargoes that no longer were received in commensurate volumes. As a result, the Land Use Plan became a vehicle for efficiently separating incompatible shipping activity, while combining complementary activities.

Third, it is noteworthy how small a portion of CoPT land was identified as "surplus." The 5.8 hectares of "vacant" land is little over 0.5% of COPT's total land holdings. More than 450 hectares of CoPT's land was essentially vacant but reserved for future expansion. In part, this illustrates the reluctance of the Port, like other public landowners, to identify "excess" land that it could surrender. On the other hand, the inventory of unused land has spurred proposals to make economic use of the vacant parcels. CoPT has developed various plans like economic zones, warehousing facilities and others. It must be noted that most of these uses are proposed with the view to increase the throughput of the port.

Land Use Planning and Strategy. The Land Use Plan attempts to rationalize CoPT's land allocation. The first action, initiated before preparation of the formal Land Use Plan, was to move container ship operations to a new, specialized location. Over 110 hectares of Port Trust Land at Vallarpadam (included in the table) were dedicated for a special economic zone. The container port is to be built in phases and is being operated under a 30-year lease by Dubai Port World. It went into operation in 2011.[54] The old container port on Willingdon Island is to be converted to automated bulk handling.

The land use plan also calls for sharpening the focus on other port activity. In the new land-use plan only 56.7 hectares on Willingdon Island are targeted for port operations. 44.8 hectares are designated as a logistics park to support port activity; an eventual 104 hectares are set aside for a free trade warehousing zone; and 18 hectares for a ship repair yard. In preparation for this re-focusing of land use, CoPT deliberately allowed leases for parcels near the port being used for non-port-related activities to expire. Presently, the Port does not have plans to evict these lessees which shall continue to operate on a license basis after their leases expire. These parties will be moved as alternate lessees for port related activities are identified. The Port has prepared a phased plan for the development of the various proposals in Willingdon Island with commencement of operations from 2013 to 2017.

By 2015, leases of about 25 hectares of land in Willingdon are expected to expire. This constitutes about 45 percent of the port trust's land ownership at the northern end. Current lessees are proposed to be replaced by parties that guaranteed a minimum level of port throughput or minimum level of revenue from port-related business. Parties carrying out unrelated business were to be offered parcels in a new business center to be built in the middle of Willingdon Island, envisioned as a convention center site with office buildings and modern hotels. An airstrip used by the Navy is also located on Willingdon Island. Thus, a significant portion of the south area of the area falls under flying funnel and height restrictions including the Logistics Park. The Port has identified and demarcated different height restrictions for different areas.

Contracts for the warehousing zone will be handled as tenders-cum-auction. The new container trans-shipment port was bid as an international tender-cum-auction. The winner, Dubai Port World, committed to 1,600 crore (USD 291 million) of capital investment plus a 33.3% share of vessel handling revenue paid to CoPT. CoPT recently innovatively auctioned a plot for cement bagging facility at the port. CoPT had initially auctioned a 6 acre plot with condition of 1 MGT of throughput to the port. Due to the large size of throughput required there were few bidders and a premium of Rs 1 crore (USD 180,000) was received. CoPT scrapped the bid and floated a revised tender. The Port now allowed firms to bid for a throughput of 1 MT using a combination of actual

[54] Infrastructure and land are not the only constraints on efficient port operation. The new container port at Vallarpadam was designed as the country's first international trans-shipment port, with support from the central government. However, cabotage restrictions (that prohibit foreign vessels from transporting cargo between ports in India), as well as antiquated customs procedures have so far kept the port from meeting its initial target of 1 million TEUs (twenty foot equivalent container units) per annum (Kerala State Industrial Development Corporation, 2012).

throughput (which could be less than 1 MT) and monetized value of the balance. This allowed firms which could not earlier guarantee a throughput of 1 MT to bid and increased the pool of firms competing for the plot. It resulted in a bid by another firm with a premium of Rs 50 crore (USD 9 million). The firm is a cement firm which does not have immediate plans to export 1 MT of goods but plans to do so incrementally over 30 years by building a cement bagging plant of the required capacity.

In a land exchange that supported key infrastructure development, CoPT in 2004 completed the building of the three Goshree bridges connecting the mainland Ernakulam with the islands of Bolgatty, Vallarpadam and Puthuvypeen. The state government transferred 110 hectares of land in Puthuvypeen to CoPT in exchange of the right to reclaim a land area of 25 hectares along the Ernakulam's waterfront which was owned by CoPT. The proceeds generated from sale of the reclaimed land in Ernakulam was used to build the Goshree bridges and for the development of the area. A portion of the money generated went to the state exchequer. CoPT was able to fund the construction of the bridges and obtain land in Puthuvypeen through this exchange. Moreover, the connectivity enabled CoPT to utilize the land in Vallarpadam to build a container terminal and that in Puthuvypeen to build the LNG terminal and other port infrastructure. The exchange took place via a tripartite agreement between the State Government, Ministry of Shipping and the Cochin Port Trust.

All in all, the Land Use Plan regulations have served to prod re-thinking of Cochin's port operations and land allocation. Old land leases are being allowed to expire, so that the businesses occupying leased land would better support port development and activity. Competition has been introduced into all aspects of Port land leasing.

In the end, full implementation of the Land Use Plan will depend on market conditions. Whether the more ambitious elements of CoPT's plan—including development of a business center in the middle of Willingdon Island and expensive housing and resort development at the southern end of the island—will become reality will depend on developer demand. The first tender-cum-auction for a site in the planned business center—targeted as a "multi-user office center"—attracted no bids over the summer of 2012.

Land Rental Adjustments. Running with CoPT's development of a Land Use Plan was its proposal to the Tariff Authority for Major Ports (TAMP) to adjust existing land rental rates. The old land rent schedule was established in 1996. CoPT submitted a proposal for new rates in 2002. TAMP formally responded in 2006 that the information submitted was not sufficient for TAMP approval. CoPT re-submitted a proposal in 2007. In the meantime, adoption at the national level of the Land Policy for Major Ports clarified guidelines for land leasing, the standard for setting land rents, and the procedures to be followed. In June 2010, TAMP approved the new land rent schedule (TAMP, 2010).

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CoPT did not have a record of comparable land sales or leases. Kerala did not have Ready Reckoner values for the land in question. Therefore CoPT retained an approved appraiser to estimate land values. Following the guidelines established in the national Land Policy for Major Ports, annual rental rates were set at 6% of estimated capital value, with 2% per annum escalation. Lease agreements call for re-estimating base land values every five years.

CoPT had two sets of lease rates under operation in parallel before TAMP approved rates of 2010- lease rates of applicable to all lease agreements prior to January 1, 1996 and those after. The latter pay the lease rates approved by TAMP in June 2010. Thus, CoPT presently still has two rates under operation - lease rates applicable to all lease agreements prior to January 1, 1996 and that approved by TAMP in 2010.

The previous (Till to 1995 and after 1996) lease rates were applied only on the basis of land use – commercial, industrial and residential with no differential for location. The revised rates of 2010 allocates lease rates based both on land use and land location. Table 3 shows the application of the approved increases in land rents. It compares rents for certain classes and locations of land parcels (Willingdon Island and the SEZ Area in Vallarpadam), as well as the total rent roll, before and after adjustment. The increases are large, typically between 7 and 11 times replaced rental levels. They illustrate the returns to be garnered from active land management. However, it is estimated that almost half of the total lease agreements are those falling under the 1995 slab and shall continue to do so till they expire.

Table 3: CoPT Land Rent Adjustments, In Rupees per acre

Class/Location of Parcel	Lease rates applicable prior to 31.12.1995 wef 1.1.1996 (under operation)	Lease rates applicable for agreements and renewals on and post 1.1.1996 (replaced)	Approved by TAMP in June 2010 (under operation)
1. Willingdon Island - Commercial			

- Industrial/warehouse - Residential	109,800 **163,000 46,000	340,000 250,000 170,000	2,223,000 1,778,400 1,667,250
2. Vallarpadam - Commercial - Industrial/warehouse - Residential		340,000 250,000 170,000	3,579,030 28,63,224 -

* 1996 lease rates; ** Average estimated land lease

Source: TAMP (2010). "Lease Rent for Renewal of existing lease and allotment of land on or after 1.1.1996", CoPT

Port Financials: Of the Rs 628.0 crores (USD 114 million) worth assets of the CoPT's capital asset register in March 2012, land amounted to Rs 26.5 crores (USD 4.8 million). The value of the land however is calculated on the basis of the amount spent by the Port for reclamation, up-gradation or expenses incurred towards acquisition of land etc. Thus, the actual (market) value land assets of CoPT would be far higher. Carrying land for book purposes at historical cost far below market value is a common practice for public entities. It can obscure the importance of land as a capital asset and the contribution that commercially oriented land management can make to addressing financial deficits. Cochin Port Trust's net operating income stood at negative Rs 83 crores (USD 15 million) in March 2012. Of the total operating income of Rs 307.1 crores (USD 55 million), over 20% was contributed by estate rentals.

Transparency and Accountability. CoPT was one of the first Major Ports to complete a Land Use Plan under the new regulations. It seized the initiative to obtain TAMP approval of new land rental rates.

CoPT's record on transparency, however, is mixed. The Land Use Plan was available for public scrutiny for a time at CoPT's website. It has since been withdrawn. The Land Use Plan for Cochin Port Trust (May 2012) details various planned uses of large tracts of presently vacant land. CoPT does not make publicly available its schedule of actual land-lease agreements. Thus, it is impossible to determine how much of the TAMP-authorized rent roll is actually collected and how much is being collected at the historical rates of 1995. It is unclear where evicted lessees will be re-located, given that the proposed business center has yet to get off the ground. As mentioned before, the full implementation of the Land Use Plan will depend on market conditions, developer demand and the manner in which expired lessees are dealt with.

CASE STUDY: MUMBAI PORT TRUST

Mumbai Port Trust owns some of the most valuable land in India. Its 808.92 hectares which form about one sixth of the total island city have both great financial value and great urban development potential. The Port Trust owns most of the land along the eastern waterfront of Mumbai, as well as real estate spread from Churchgate to Virar, and up to Titwala, a village 60 km from Mumbai Port.

As a port, Mumbai has been in steady, relative decline for 30 years. In the 1980s, it was India's most active port by volume of cargo handled. It has now slipped to 6th or 7th place among Major Ports. Its capacity for modern shipping is constrained by age-old Lock Gates, which limit the size of vessels that can be accommodated, by low draft, and by antiquated dock infrastructure. The port posted a net deficit of Rs 438 crores (USD 80 million) in the financial year 2010-11, equivalent to negative 39 percent of its operating income.

Three basic choices confront the Port and its landholdings. The status quo can be maintained, with existing land lessees, modest changes to existing rent and lease rates, and some updating of port infrastructure. Or, the port can be expanded onto under-utilized lands, and large investments made in new facilities, in an attempt to revive the port's historic importance to shipping. Or, some of the port's land can be opened to re-development, in a way that creates access to the waterfront, monetizes part of the Port's landholdings, and modernizes land use. This third option would acknowledge that it is impractical to try to restore Mumbai Port to shipping pre-eminence. The modern facilities at Jawaharlal Nehru Port (JNPT) give it a competitive edge.

In fact, JNPT was established to decongest the Mumbai Port. While considering the proposals for the establishment of JNPT, a directive from the Prime Minister's Office (August 8,

1980) said ""the feasilbility report should provide for the release of land and dock areas in existing Bombay Port area for parks, etc". Further, the Ministry of Environment and Forests (MoEF) in its clearance to JNPT in August 1988 noted that "With the operation of Nhava Sheva port as a measure of decongestion of Bombay Port, the traffic in Bombay Port must be gradually reduced by steps to be taken by the Ministry of Surface Transport, Bombay Port Trust and Nhava Sheva Port Trust so that the total general cargo, inclusive of container cargo handled by Bombay Port, comes down within three years to 6.5 MT." Neither of these directions have been heeded.

Land Use Planning: Inventory. Table 4 shows the allocation of Mumbai Port Trust landholdings as of 2008. It is noteworthy that, in the Port's view, less than 0.5% of its land could be deemed "surplus" and available for disposition.

Table 4

Allocation of Landholdings, Mumbai Port Trust

Land Use	Hectares	Notes
Ports activities	423.91	Area includes custom docks, land at Butcher Island, Land used for rods and railway networks and other infrastructure. Also includes operational area encroached by slums.
Estate lettings	276.82	Includes petroleum and oil sectors (2.8%), defence (1%), FCI/PSU/Government agencies

		(4.8%) and other commercial and residential users (91.4%).
Estate let out plots vacated including 31H	79.80	
Vacant land at Titwala	28.39	
Total	**808.92**	

Source: Mumbai Port Trust, December 2012

The Port's land leases range from the iconic Taj Mahal Hotel and Royal Bombay Yacht Club to abandoned textile mills and half-empty warehouses of Cotton Green. The whole of Ballard Estate is a Mumbai Port Trust (MbPT) landholding, as are large tracts of vacant land at Sewri.

The only land specifically identified as available for disposition in 2008 by MbPT consisted of 87 small, miscellaneous plots (averaging just over 4,000 square feet per plot) scattered all over Mumbai and the surrounding area. Although MbPT at the time considered these plots suitable for sale, it appears that Centre approval was not granted for disposition, and sales did not actually take place.

Land Lease by Mumbai Port Trust. MbPT had over 2900 leases across 2466 tenants[55] as of August 1, 2011. Of the large number of lessees, more than a quarter have leases of areas less than 100 square meters as many of these constitute small shops in various markets or individual rooms in buildings owned by MbPT.

The sum total of the recorded lease area is around 273 hectares; an underestimation as about 130 records had no details on lease area. All records can be classified in three broad categories- monthly or fifteen monthly leases, 99 year or long leases and expired leases. The lessees are central governments, state government and private parties. The table below shows lease details of the 273 hectares for which records are available.

[55] Source: List of Tenants, website Mumbai Port Trust as of August 1, 2011

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Table 5

Lease classification of MbPT (hectares)

	Central Govt.	State Govt.	Private Parties	Total
Expired Lease	79.8	3.0	73.5	156.3
Monthly and fifteen monthly	30.8	1.1	45.4	77.4
Long leases	20.4	0.6	19.0	40.0
Total	**131.0**	**4.7**	**138.0**	**273.7**

Source: Website, Mumbai Port Trust

Income from estate: The operating income for estate activity (including rent from land) of the MbPT, one of the richest landowners in the country stood at Rs 107 crores (USD 19.4 million) in 2010-11. It is estimated that MPBT is able to collect about 30 percent of its billed rent. After accounting for operating and other costs the net surplus from estate activity amounted to Rs 18.25 crores (USD 3.3 million) in 2010-11.

Many of the leases of MbPT were created years ago, a number being over a century. The lease rents were revised intermediately in an ad-hoc manner. In 1962, the World Bank had advised MbPT to reassess its lease rates. Further in 1979-80, the Comptroller and Auditor General of India pointed the need to revise its lease rates to be able to secure reasonable revenue. The Board of Trustees of MbPT engaged Kirloskar Consultants Ltd. for the task of estimating market value of the Mumbai Port Trust Lands and advising on a formula to guide the Trust in arriving at a market value in the future. They were assisted by government approved valuers M/s M.N Dange & Associates. The final report was submitted by Kirloskar in December 1980 and was accepted by the Board of Trustees in August 1982. Consequently, the Port Trust issued notices to several lessees terminating the tenancies with the option of continuing subject to the agreement to pay the revised rent in accordance with the reports.

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Data on proposed lease rents for areas is not available. However, a court order[56] cites that the increase in rent proposed by the BPT was "exorbitant. For example, the rate of rent which was Rs.66.44 (USD 1.2) in the year 1948 and which gradually increased to Rs.317.11 (USD 5.7) in the year 1981, was proposed to be revised at Rs.4515.86 (USD 82)." Some of the lessees filed writ petitions against the increase. The petitions were disposed by a single Judge in 1990. As per the ruling, the Port was entitled to increase revenue but it could not "afford to behave like a private landlord indulging into rack-renting by co-relating the rates of rent with market rates." The ruling thus struck down the proposed increased rent bringing to naught the efforts of the Port Trust.

Following this, the MBPT filed an intra-court appeal. A Division Bench directed MBPT to arrive at an alternative set of rate. The new and lower rates proposed by the MBPT have been termed as "compromise proposal" and were accepted by Bench. Over 480 lessees took advantage of the compromise proposal and accordingly began to pay revised rents. However, a few others (notably Jamshed Hormusji Wadia) challenged the compromise proposal, its fairness and validity. The lessee also filed for reduced rent on the land it rents from MBPT on the basis an underground storm water drain which limits the use of the given land. The Supreme Court Judgment (January 13, 2004) accepted that the Port had correctly undertaken the land valuation exercise and as a landlord could rightly increase its rents. However, the Judgment also noted that the MBPT being an instrument of the state within Articles 12 and 14 of the Constitution was bound to be fair with its lessees and could not indulge in rack-renting for profiteering. The Judgment directed the setting up of an Adjudicator for resolving appeals for decreased rents.

There are two key fallouts of the 2004 Supreme Court Judgement. One, many of the lessees which had accepted and begun to the pay revised rents as per the compromise proposal stopped doing so. Many of these cases are under sub-adjudication for further decrease in rents due to various exceptions cited. Second, it poses a dilemma for ports to charge leases of 6 percent of market or ready reckoner as directed by the Major Ports Trusts Land Policy 2010 and on the other hand abide by the Supreme Court's directive of not increasing rents exorbitantly and acting like a private profiteer.

It is evident that large amounts were being appropriated by the practice of sub-tenancy and collection of premiums. It must also be noted that the Mumbai Port Trusts faces large number of litigations regarding tenancy. As on September end 2002, there were 1900 cases pending in various

[56] Civil Appeal N0. 5559 of 2001. Jamshed Hormusji Wadia vs Board of Trustees, Port of Mumbai

courts on the same. Many of the leases which have expired have not been renewed. In many cases, MBPT receives no rent.

Land Use Planning: Strategy. Mumbai Port Trust has not prepared or publicly discussed a Land Use Plan as required by the 2004 and 2010 Land Policy for Major Ports. Instead, choices concerning future development of MbPT lands have tended to escalate directly to Cabinet and state government level. Political and inter-governmental disputes over MbPT landholdings date back more than 30 years.

The modern era of land-use debates can be traced to 1980 when Indira Gandhi approved construction of Jawaharlal Nehru Port (JNPT) at Nhava Sheva, subject to the condition that public land at MbPT would be opened up for park space and other public amenities, once JNPT commenced operations. Part of the rationale for building JNPT was that a new, modern, efficiently designed port in the region would divert traffic from MbPT and help de-congest Mumbai. The commitment to open up portions of the Mumbai Port Trust land area as green space was made in response to sustained campaigning by the Bombay Environmental Action Group to preserve the green belt at Nhava Sheva.[57]

Recently, Mumbai First has advanced a variant of plans for re-development of Port lands. (Hindustan Times 2012). It has argued that because of the more efficient operations of JNPT, shipping demand does not justify investment in a new container terminal by MbPT. Investment resources would be more productive if used to develop an International Finance Centre on Port lands, complemented by public open space.

The State of Maharashtra has advanced other plans. It negotiated with MbPT to use part of its land for re-settlement of up to 100,000 slum dwellers. This proposal was decisively rejected by the Ministry of Shipping.

[57] This history was re-called by the Union Environmental Minister in an April 2010 note to the Shipping Ministry regarding construction of a new container terminal by MbPT. See Times of India (2011). See also the 2002 plan for regeneration of MbPT lands prepared by the Urban Design Research Institute and the Kamla Raheja Institute of Architecture.

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The net effect of decades of back and forth over use of MbPT lands has been de facto adoption of Option 1 outlined above—continuance of the status quo in Port Trust land allocations, coupled with some expansion of Port operations. No Port Trust land has been designated for re-development in commercial or residential use. No land has been allocated for sale or long-term lease to new types of users. No plans for public access to the waterfront or open green space have been adopted. All proposals to date for major changes in land use have been rebuffed by MbPT.

Metropolitan Infrastructure Investment. There is one possible exception to the rule of no change in Port land use. The Mumbai Metropolitan Region Development Authority (MMRDA) is pressing forward with its plan to build the Mumbai Trans Harbour Link as a PPP project. The project would link the island city of Mumbai to the mainland on the East. It requires construction of a 22 km bridge, 16.5 km of which would be over open water.

MMRDA has stated that it is critical to this project to have a 10-20 hectare casting yard at the Sewri end of the bridge. Land there is owned by Mumbai Port Trust. MbPT and the Shipping Ministry have indicated that they would at least be open to possible discussion about leasing land to MMRDA for temporary use for infrastructure construction. However, MbPT has also maintained that the land in question may be essential for container stacking in support of its new container terminal.

It is indicative of the political sensitivities surrounding MbPT land use that, although MMRDA's need for a casting yard at Sewri have been mooted in the press for years, this parcel of land is one of the last pieces to be assembled by MMRDA for the Trans Harbour Link. According to MMRDA, formal discussions over use of the land as a casting yard have not even commenced. In fact, it is unclear who the appropriate partner for such discussions would be—Mumbai Port Trust, Shipping Ministry, Prime Minister, or a combination of these offices.

Land Rents for Commercial and Other Use. MbPT has made clear that, at present, it will not promote commercial redevelopment of its land. It intends to continue leases with long-term tenants. The question then is: What rental rates should tenants pay for land occupancy?

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Until the 1970s, MbPT entered into 99-year leases with lessees. As a result, land rental rates are far below market. As an example, the Taj Mahal Hotel (subsidiary of Tata) pays a land rental of 13 lakh (USD 23,600) rupees per month for all of the land it occupies. Other legacy lessees enjoy comparable discounts to current market values.

A Supreme Court judgment in 2006 held that the land rents of all MbPT commercial properties, which were not being used for port purposes, with paid-up capital of more than one crore (USD 181,000) **,** had to be increased to 6% of land value effective from 2004. The standard fixing land rents at 6% of land value per annum was later incorporated into the Land Policy for Major Ports. The land rent standard applies to all land rentals for other than port purposes. In other cases, courts have held that the new rate schedule increase should apply to all lessees, including those operating under old leases that prescribed lower rates.

MbPT initially took the position that 6% of land value per annum translated into a monthly land rent for Taj Mahal Hotel of 2 crore (USD 363,000) rather than 13 lakh (USD 363,000) - an increase of approximately 1500 percent. Taj Mahal Hotel declined to pay more than 13 lakh, arguing that was the amount required under its existing lease. After some initial public confrontation, the issue fell out of public notice. MbPT refused to respond to inquiries as to how land rental negotiations had been resolved.

However, a Public Interest Litigation (PIL) complaint lodged with the Central Information Commission forced Mumbai Port Trust to reveal in 2011 that it had not increased Taj Mahal land rent at all (Central Information Commission 2011). Moreover, the Port Trust acknowledged that it was not pursuing increases in land rents for any tenants under existing lease agreements. The result is that Mumbai's largest landowner, the Port Trust, is holding land that cannot be re-developed and is earning far below market value when leased to commercial tenants or other organizations for non-port purposes.

Mumbai Port's Land Patrimony. It is not the purpose of this report to judge how Mumbai Port Trust land should be used, nor how land rental rates should be set. However, a long-run Land Use Plan should at least take into account the market value, and potential for development, of Port Trust land. The landholdings represent a valuable asset—a patrimony—that should be managed for the long-term benefit of the Mumbai region and the country.

To place this patrimony in perspective: If only 200 hectares of MbPT's 752.7 hectares of landholdings could, in the long run, be managed for their economic value, the proceeds could help finance an important part of Mumbai's needed infrastructure. A land allocation of this size would allow for retention, at far below market rates, of iconic sites that are a critical part of Mumbai's history and architecture.

However, assume that 200 hectares can be managed, over the long run, according to economic and urban development principles. Given recent land pricing in Mumbai, this patrimony would have a value of roughly 125,000 crore, or in the range of US$25 billion.[58] The financial value of Port land need not dictate decisions about land use. It *does* justify managing Port land as a coherent estate, where genuinely surplus land is identified, and land values can be converted from time to time into critical infrastructure investments.

Transparency. Mumbai Port Trust's land operations are non-transparent. The Port Trust has not prepared a Land Use Plan as required by national policy. At one time the Port Trust posted a schedule of its land leases on its website. This has since been removed. MbPT has resisted public requests for information about its land leasing policy and lease rates. Lease arrangements for Taj Mahal Hotel were released only in response to a PIL demand. In response to the PIL, MbPT declared that it had a "fiduciary duty" to the lessee not to release financial information. The Central Information Commission dismissed this argument.

CASE STUDY: KANDLA PORT TRUST

[58] Land value estimates are based on (i) the August 2012 sale of 17.5 acres of NTC mill lands to Lodha Group and (ii) Railways' reserve price for 45,000 sq meters of land at East Bandra. The Lodha transaction equated to 387.5 crore (USD 70 million) per hectare. The East Bandra reserve price equates to 880 crore (USD 160 million) per hectare. It goes without saying that applying the average of these values to Mumbai Port Trust land represents a very broad approximation.

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Kandla Port is the largest port in India, both in land area (more than 220,000 acres) and in volume of cargo handled. The land originally was given to the port free of cost by the Maharao of Kutch. Of the 220,000 acres, the majority is tidal land.

The significance of Kandla Port Trust (KPT) as a case study lies in its transition from land allocation to favored parties through nomination by the local Board Chairman to competitive land leasing based on market value. The courts, the Tariff Authority for Major Ports (TAMP), the Chief Vigilance Officer for KPT, as well as the Centre for Public Interest Litigation all played a role in this transition.

Salt Pan Lands. About 10% of KPT's landholdings, or 22,000 acres, have been designated as saltpan lands usable for the manufacture of salt. Historically, 16,000 acres of this total had been leased by KPT, primarily to a small group of manufacturers tied together through family connections and the Gandhidham Chamber of Commerce and Industry. Land leases had been routinely renewed when they expired, with very modest adjustments in rent levels. Use of the land for salt manufacture was consistent with a 1956 land use plan.

By 2010, land lease arrangements had become "irregular" in several respects. Leases expiring in 2004-05 had been rolled over for another five-year period on a nomination basis, without competition and without adjustment in rates to conform to the Major Ports Land Policy. National policy called for annual rental rates on lands not used for port activities to be adjusted to 6% of market value. Leases expiring in 2009-10 were renewed to 2011 on the same nomination basis.

Land rentals by this time were a small fraction of competitive rates. The majority of saltpan land was leased by KPT at Rs 144 (USD 2.6) per acre per annum. Moreover, the schedule of rental rates called for land to be leased to large manufacturers at one-third the rate charged to small manufacturers (See Table 5). This arrangement obviously favored the largest manufacturers, one of whom leased 9,166 acres from KPT. Not only were land rents far below market, and skewed toward large manufacturers, but lessees proceeded to mortgage their leased land at much higher values. In one transaction, 3,981 leased acres (nominally leased for only a 5-year period) were mortgaged by the lessee for just under 50 crore (USD 9 million).

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Table 5

Schedule of Kandla Port Trust Land Rental Rates, 2005-2010

Rs. Per Annum per Acre, by Amount of Land Leased

Up to 10 Acres	Above 10, Up to 100	More than 100 Acres
445	272	144

Source: As cited in Delhi High Court decision

Revamping the Land Rent Schedule. The Chief Vigilance Officer of Kandla Port Trust issued a scathing report alleging multiple violations of national policy and law in land allocation (Kandla Port Trust Chief Vigilance Officer, 2009). The report asserted that, contrary to the Major Port Trusts Land Policy, leases to favored parties had been rolled over without competition and without new valuation of the leased land parcels. Land rents were far below market rates. The Chairman of the Port Trust and the Shipping Ministry were accused of conspiring with the families holding legacy leases to keep land rents artificially low. The allegations were picked up by the Centre for Public Interest Litigation, which brought a case against KPT before the Delhi High Court.

As this process was moving forward, a new Chairman was named to the Board of Kandla Port Trust. A recognized appraiser was appointed to re-value the saltpan lands. As there were no comparable transactions or Ready Reckoner values on which to base appraisal, it was decided to lease additional, unused saltpan parcels via competitive auction, so as to establish market value. Leases for ten sample plots, 5 of 50 acres and 5 of 100 acres, were auctioned in 2010 on the basis of upfront premium.

The Delhi High Court decided that this sample was insufficient. It ordered auctioning of an additional 15 parcels, located nearer villages and rail lines. Thirteen of these sample plots in the end were auctioned in 2012, again on the basis of upfront premium for 30-year leases.

The average upfront lease premium for the 2010 and 2012 auctions (the latter adjusted downward to establish 2010 equivalent) was Rs 261,739 (USD 4745) per acre. The court calculated that this translated into a baseline (2010) annual rent of Rs 23,249 (USD 418) per acre.[59] The court also ordered that all saltpan parcels, regardless of size or location, be assessed rent at the same rate. The Tariff Authority for Major Ports (TAMP 2012) subsequently incorporated the court-ordered land rents into its approved rent schedule. Table 6 summarizes the changes in rents per acre for those leases that were adjusted and for the entire saltpan rent roll.

Table 6

Increase in Salt Lands Rent, Kandla Port Trust

Before and After Court and TAMP Orders

Item	Before Adjustment (2010)	After Adjustment (2010)
Average Rent per Acre, per Annum	Rs 169 (USD 3)	Rs 23,249 (USD 420)
Increase, Rent per Acre		11,970%
Rent Roll	27.06 lakh (approx. USD 50,000)	2,186.26 lakh (approx.. USD 380,000)

Source: Delhi High Court (2011), TAMP (2012)

The court ordered that the new land rents be applied retroactively to 2010. They were to be applied to all land leases then in effect regardless of any lease provisions to the contrary. Moreover, the court ordered Kandla Port Trust to evict 42 salt manufacturers whose leases expired in 2011,

[59] The Land Policy for Major Ports stipulates that annual land rents should be set at 6% of capital value, with 2% per annum escalation. It further prescribes use of an 8% discount rate over time. The court calculated that a 30-year rental stream, starting at Rs 23,249 per year and escalated 2% per year, was financially equivalent, with 8% per annum discounting, to an upfront premium of Rs 261,739 for the same 30 year lease. Note that under the Land Policy, lease agreements are subject to revaluation of the capital base every five years. Note, too, that the court's procedure calculated the rental stream equivalent to an auction-value 30-year lease, not the fee simple capital value.

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and to re-lease the land under the new rent schedule. If some of the land with expired leases was needed to establish an SEZ, it could be re-directed to that purpose.

Further Consequences of the Kandla Port Trust Experience. The Delhi High Court's decision has not ended the Kandla dispute. The affected salt manufacturers took their case to a Gujarat district court, the Gujarat High Court, and other legal venues. The Gujarat High Court upheld the Delhi High Court decision.

Criminal charges were investigated by CBI against various parties for collusion in Kandla Port Trust's rent setting. In the end, the criminal charges were dropped or dismissed. The Land Policy for Major Port Trusts of 2010 stated that "normally" and "generally" land leased by Major Ports for non-port-related activities should be leased at market rates, based on capital valuation, and should be re-adjusted every five years without favoritism to existing lessees when their leases expire. However, the Policy also stated that the Chairman could deviate from this policy, including allocating land by nomination at below-market rates, by written notification.

This loophole in market-based rental policy now has been closed. The Centre instructions of July 2012 remove the Chairman's power to make non-competitive land nominations. Either the "general" procedures must be followed, or rentals/leases must be referred to the Centre for determination. This removal of Major Port Trust Chairmen's local discretion over land use parallels the actions taken to restrict military commanders' discretion over land use and land leasing in cantonments.

Transparency. For most of the land-leasing dispute, Kandla Port Trust refused to release information regarding its leases. Even the Chief Vigilance Officer, who also was Deputy Chairman of the KPT Board, could not obtain basic information, such as rental rates or lease terms for land parcels. The Delhi High Court had to order KPT to put on record (i) the names of parcel occupants, (ii) the particulars of leases, (iii) rent being paid, (iv) renewal clauses, and (v) an explanation of why the KPT Board had not followed the leasing rules established by the 2004 Land Policy for Major Ports (Delhi High Court 2009).

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KPT never did offer a public policy rationale to explain its deviation from the national Land Policy standards. It argued only that a clause in the Land Policy for Major Ports gave discretion to Port Board Chairmen to grant new leases on a nomination basis without competition.

Although Kandla Port Trust recently has moved to comply with High Court and TAMP orders, reality on the ground is hard to determine and not reported by KPT. As of summer 2012, salt manufacturers continued to occupy "their" parcels, despite eviction notices. No information is available as to what percentage of the court-ordered rent roll is now being collected.

V. CONCLUSIONS AND WAY FORWARD

1. Centrally-controlled institutions rarely volunteer that they have surplus land. They do not sell land. They are slow to enter into long-term leasing agreements that would capture the economic value of land, while retaining institutional ownership.

Cabinet-level policy now is designed primarily to prevent corrupt or hastily contrived land disposition. Safeguards of this type are needed, in view of the record of abuses in public land management.

However, central-level policy should give equal weight to the economic loss caused by having valuable land assets sit vacant or underutilized for decades. Central-level service providers are not property companies. They should not be property speculators.

Three initiatives would help balance central-level land management.

- A clear statement by Cabinet that urban land is a scarce and valuable resource; that central landholding institutions are expected to identify land required for their present and future service provision; that remaining land is to be classified as "surplus"; and that institutions are expected to prepare and implement plans for monetizing surplus land.
- Creation of a central Land Audit. The Land Audit would monitor institutions' identification of land needed for service delivery and land that is surplus. The Land Audit would require institutions to justify why vacant land, or land that has been identified as underutilized in reports by the Comptroller and Auditor General, should not be classified as "surplus," available for sale, long-term commercial leasing, or contribution to PPP. The Land Audit would be an annual process. Australia's Land Audit could serve as a model for implementation.
- Incorporation of proceeds from land disposition in five-year capital financing plans. Before receiving central government subsidies for capital investment or subsidies to help finance under-funded pension plans, institutions should be required to estimate proceeds from land disposition and include these as a revenue source that reduces the need for budget subsidy.

2. Procedures have begun to be put in place to facilitate provision of public land needed to complete local urban infrastructure projects. These procedures should be strengthened. The time for review should be shortened.

Specifically:

- Land "trades" have emerged as a practical way to solve local authorities' need for land parcels that stand in the way of completing metro lines, widening roads, or extending water supply networks. However, negotiations over land trades require months or years to finalize. Local disputes almost always are referred to the Centre for resolution. The Centre should be better prepared for this process. Empowered Committees should be established in each Ministry that review and authorize proposed land trades.
- The policy announced by the Prime Minister's office in August 2012 aims to unlock centrally controlled land for infrastructure projects. The policy authorizes central institutions to transfer land to other departments of government, to sub-national governmental units, and to public-private partnerships when the land will be used for infrastructure projects. This "authorization" needs to be backed up by incentives. In practice the Cabinet freeze on public land disposition remains in effect. All land use

commitments to third parties for periods exceeding 11 months must be approved by Cabinet. Cabinet has become the centralized choke point holding back public land-use decisions and critical infrastructure projects.

3. Land portfolios are poorly managed. All central landholding institutions have legacy portfolios of land rental/land leasing. Land rental rates typically are far below market rates. Land parcels often still are allocated by nomination or automatic renewal of previous leases rather than by auction or other forms of competition.

This situation is gradually changing. In the port sector, courts and the Tariff Authority for Major Ports have taken the lead in prescribing that, for non-port activities, annual land rental rates should be set at 6% of land's capital value as determined by auction, Ready Reckoner valuations, or values assigned by authorized appraisers. The capital value base for setting rents should be re-evaluated every five years. Implementation of these standards has resulted in rent rolls that should increase by 10 times or more.

The same standards should be applied outside the port sector, for all centrally controlled landholdings that are leased for commercial purposes.

4. Market conditions dictate the timing and price of land sales and long-term land leasing. Land disposition needs to be managed over the real estate cycle. Revenue from upfront land leases cannot be counted on to materialize in a specific year.

This reality has several implications. Major infrastructure projects are several years in gestation. Plans for realizing revenues from land monetization, or contributing public land to infrastructure PPPs, should have a similar timetable. This allows all parties to establish "mid-cycle" land valuations.

Preparations for competitive land auctions need to be completed well in advance. Such critical matters as establishing clear land title, negotiating FSI limits, defining responsibilities for re-settlement of encroached properties all need to be resolved before land sale or upfront land lease. As obvious as these conditions may seem, attempts to capture the economic value of public lands in India have repeatedly run afoul of these pre-conditions.

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5. Public land management is profoundly hindered by a lack of transparency regarding land occupancy, land leases, and land planning.

The single step that could most help rationalize management of public lands is greater transparency and accountability. At present, public land management is shrouded in mystery. The lack of publicly available information permits corrupt land dealings to occur, and hampers efforts to realize the economic value of public land assets.

The websites of public landowners should, but do not, provide all basic information on land operations. At present, such information can be obtained only through Public Interest Litigation and court orders. If anything, voluntary transparency seems to have declined in response to public interest in land operations. Major Port Trusts that formerly had land rental schedules and land use plans posted on their websites, have now removed them.

Central government should mandate transparent reporting. At a minimum, this should include website posting of:

- Draft Land Use Plans, for public comment
- Final Land Use Plans as approved for implementation
- All information on land leases and land rentals, including
  --party holding each land lease

  --location and area of leased parcel

  --economic use of leased parcel

  --length of lease, and date of next renewal

  --rental rate in lease agreement

  --most recently appraised capital value of land parcel

  --source of land valuation (auction, comparables, appraisal etc.)

  --actual rent collection, most recent year, and past-due amounts

All except the last item in this list represent information that Major Port Trusts are required to submit to the Tariff Authority for Major Ports in seeking approval of their land rent schedules.

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BIBLIOGRAPHY AND REFERENCES

- Chawla et al. (May 2011), Government of India, Cabinet Secretariat, Report of The Committee on Allocation of Natural Resources
- Kelkar et al. (September 2012), Report of the Committee on Roadmap for Fiscal Consolidation
- Factiva, various press articles
- Land Use Plan of Cochin Port Trust 2012-2042 (April 2012)
- Administration Report 2010-11, Cochin Port Trust
- Civil Appeal No.5559 of 2001, Jamshed Hormusji Wadia versus Board of Trustees, Port of Mumbai & Anr.
- Tariff Authority for Major Ports (June 2010), Notification No. TAMP/33/2007-COPT
- Various interviews

UNLOCKING LAND VALUES FOR URBAN INFRASTRUCTURE FINANCE:

INTERNATIONAL EXPERIENCE

George E. Peterson

INTRODUCTION

Like many developing countries, India is in the midst of rapid urbanization. Despite a decade and a half of strong economic growth, investment in basic urban infrastructure—water supply, wastewater removal and treatment, roads, and other capital intensive systems having 'public goods' character—has failed to keep pace with urban growth, leaving a critical urban infrastructure deficit.

At the same time, urban land in India is some of the most expensive land in the world. Much of this land is owned by public authorities. Significant parts of it lie vacant, unused for public service provision, an appropriate for conversion to higher-valued economic activity. A composite public-sector balance sheet for India's urban areas would show an asset mix strong on public-sector landholdings but weak on infrastructure. This raises the question: "Can some excess public-sector land be exchanged for infrastructure, in a manner that is politically acceptable and economically efficient? Can public land sales be a realistic source of finance for critically needed urban infrastructure investment?"

PURPOSE AND STRUCTURE OF CHAPTER

This study is intended to contribute to the consultative process underway in India to consider strategies for unlocking public land values to help finance urban infrastructure investment. India has intermittently monetized pieces of publicly owned urban land to help pay for individual infrastructure projects, but it has lacked a consistent policy framework. As a result, it has tapped only a small fraction of financing potential. This chapter looks at the experience of a number of other countries and how they have tackled issues similar to those that have arisen in India. It is hoped that the review and assessment of international experience can be useful in assessing policy options for India as well as for other developing nations that have largely hidden land assets.

International experience does not offer off-the-shelf policy or institutional models that can be adopted 'as is'. We therefore consider the policy context that shaped different land-disposal and earmarking initiatives, and try to provide sufficient detail about the actual workings of institutions, so that readers can judge for themselves whether the core approach is suitable for adoption in India or elsewhere.

Structure of Chapter. There is limited international experience with realizing the financial value of publicly owned land, then directly earmarking the revenue received to finance urban infrastructure investment. Much of the experience that exists comes from China (and Hong Kong), where both the land-owning system and governance regime are much different from India's.

Our approach therefore is to unbundle the components of a 'land for infrastructure' system, and consider international experience relevant to each. The chapter contains four sections:

I. Identifying Public Land Appropriate for Unlocking Value

Public agencies have inherent inertia. They have an interest in maintaining their bureaucratic or political power, including control over land assets. They are unlikely, as a matter of routine, to identify "surplus" land under their control as suitable for disposal, or to seek ways that their land assets could be put to more productive use by other parties. The first section of the paper examines international experience with:

i. Identifying Public Land for Disposition
ii. Regulatory and Financial Incentives that Can Induce Agencies to Regularly Consider the Best Use for Land Assets, including Disposal

II. Specialized Institutions to Help Manage and Dispose of Land Assets

One lesson to be learned from international experience is the important role that specialized, professionally managed institutions can play in unlocking the value of public land through sale, lease, or joint venture development. This section examines in some detail the workings of three such institutions in Germany, Canada, and the United Kingdom. It shows how policy determined at a higher level is translated into effective implementation by such organizations, and the steps that have to be carried out to achieve significant results.

III. Earmarking Revenues for Infrastructure Investment

Earmarking—i.e., dedicating specific revenue streams to particular investment purposes—has been used with varying degrees of success in the infrastructure sector. Earmarking also has been used to dedicate to defined purposes the revenues raised from public land sales, or to allocate public land assets.

The third section of the paper considers the general arguments for and against earmarking, and examines international experience with earmarking as it relates to infrastructure finance and land asset disposal, including:

i. Current Practice for Using Revenues Generated by Public Land Sales
ii. Road Funds
iii. Sovereign Wealth Funds and Other Investment Funds
iv. Earmarking Land Premium for an Infrastructure Fund
v. 'Rail Plus Property' Models for Investing in Metro Rail Systems

IV. Compensation Policy for Public Land Transactions

Infrastructure and economic development are not the only claimants for the economic resources raised by public land disposition. In particular, public land parcels may be occupied, with or without the benefit of formal titling arrangements. The historical justification for public ownership may be clouded by past treaty agreements or by the contractual terms of public acquisition from prior private owners. These parties often claim compensation.

For India, the most significant of such claimants are the occupiers of public lands. The claims of current occupiers/owners are voiced in even stronger terms when the public sector uses eminent domain for mandatory acquisition of land parcels, which then are developed for higher-value use. The fourth section of the chapter examines evolving international practice with regard to compensation for transactions involving public lands.

Throughout, the chapter seeks to illustrate international experience through case examples, which contain sufficient detail to convey an understanding of how a given mechanism or institutional arrangement works in practice. Each section offers the author's reflections on what can be learned from international experience and how it might be applied in India.

WHAT IS AT STAKE FOR INDIA

Public lands in India are held by every level of government: municipal, metropolitan, state, Centre, as well as quasi-independent Trusts and publicly owned companies. The scale and value of landholdings indicate that aligning policy and institutions so as to unlock appropriate land values could make a significant contribution to aggregate urban infrastructure investment.

- India Railways, a public company under the central Railway Ministry, has designated 43,000 hectares of its massive landholdings as unnecessary for railway service. It has estimated the value of this excess land at some US$40 billion.
- The central Airports Authority controls 20,400 hectares of highly valued land surrounding India's airports. State development authorities own additional lands adjacent to recently modernized airports.
- Major Ports Trusts hold more than 100,000 hectares of land, some 6,300 hectares of which is vacant, unneeded for future port operations, and located near key urban areas.
- Defence owns more than 750,000 hectares of public lands. The Performance Audit Report on Defence Management Estates estimates that about 32,800 hectares are excess by current land-requirement norms for military stations. It urges Defence to re-examine its policy of permanently retaining all landholdings.
- When the Mumbai Metropolitan Regional Development Authority (MMRDA) auctioned 13 hectares of Mumbai land in 2006-07, it realized $1.2 billion, which was used primarily to finance projects in the metropolitan regional transport plan. The land-sale receipts were 10 times MMRDA's total capital budget in 2005, and 3.5 times the total value of municipal bonds issued by all local and state authorities in India over the previous decade. Development authorities in Delhi, Hyderabad, and Bangalore have sold land parcels at comparable values.

Despite the fiscal potential, public land disposition in India today is paralyzed. Part of this is due to the market. Land values have declined relative to the 2006-07 peak, requiring public authorities to manage through the real estate cycle. At a more basic level, India lacks both a clear policy for managing public lands and professional institutions that can efficiently implement a public land policy, once adopted.

It is this background that makes it useful to look at how other countries have addressed their public landholdings.

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PART I: IDENTIFYING PUBLIC LAND APPROPRIATE FOR UNLOCKING VALUE

Two initial hurdles confront any strategy to unlock public land values:

i. How do we know what land parcels the different agencies of government, and related parastatals, actually own?
ii. How should it be decided which of these parcels are "surplus" or more appropriate for an alternative use?

The first question is answered by an inventory of publicly owned land. All of the successful examples examined in this report start with a land inventory.

The second question is perhaps more vexing. Rarely, does a government agency volunteer that its landholdings are "surplus" or "excess". Even more rarely does it take steps on its own, without some type of prodding, to ready land it holds for sale or other type of disposition. This is as true of developed countries as it is of developing nations. Nonetheless, there is considerable international experience to be drawn upon in answering the query: how do we go about identifying publicly held land that is appropriate for disposition?

PUBLIC LAND INVENTORIES

The elements of a good land inventory are straightforward. An inventory of public lands should record:

- The location and dimensions of each land parcel
- Legal title, and any restrictions on development
- Current use and future planned use, if part of a public development plan
- Valuation--for parcels of economic significance

More public institutions are moving to compile inventories of land they own, although progress has been patchy. Indicative of this progress is Indonesia Government Regulation Number 6, which requires that every government-owned asset be recorded and inventoried. At the local level, public asset owners are supposed to report this information to the recently created municipal asset manager. The asset manager is designed to be the common point of all asset management for the local government. This arrangement broadly follows asset management models established by Urban Development Investment Companies in China and public asset managers in Korea. The regulation is reported to have improved municipal performance in land inventorying, such that basic information on agency ownership, location, and parcel dimensions is now recorded.

The next step is to make land inventories more accessible and more useful for decision-making. As matters now stand, different agencies tend to maintain records in non-compatible formats, which make it impossible to aggregate public landholdings across agencies for a developmental unit like a municipality or metropolitan region. The United States only recently has introduced legislation, still pending, that would require its various national agencies for the first time to inventory land ownership in a common format.

Meanwhile, the US Government Accountability Office has officially labeled federal land-asset management as a "high-risk" management area beset by information gaps and non-compatible reporting.

Introducing common, intergovernmental norms for recording and inventorying public land assets should be a policy priority for India. An overhaul of reporting practice would be easiest to implement in the context of accounting reforms that require different levels of government to prepare balance sheets as well as budgets and annual financial reports. Land assets would figure on the asset side of agencies' balance sheets. Reporting in this fashion would highlight the large role that publicly owned land could play in public finances. Reform of this type is a large undertaking, so it would probably make most sense to start with a demonstration project in one municipality and corresponding metropolitan area.

At least as important as improving the quality of public land inventories is making them publicly accessible. A publicly accessible inventory of public lands is an essential element in accountability. Any lands being offered for sale or transfer should be flagged for public examination. An "accessible" inventory is not only one that the public has the right to access, but one that is designed to be user-friendly. That implies being able to sort the inventory by different characteristics, such as vacant properties or properties owned by a certain agency, and having maps to assist users in accessing information. As examples of these capabilities: Users can access the City of Chicago's land data base to identify 245 pages of unoccupied parcels owned by the City, with lot sizes and locations. Users accessing the land data base of the Singapore Land Authority or the State of Berlin's Liegenschaftsfonds (see next Section) can use a map to identify the location of each parcel, then zero in on a particular parcel to see its exact configuration and parcel characteristics, along with the characteristics of adjoining parcels.

IDENTIFYING "SURPLUS" LAND

"Surplus" land or property can be defined as property that is not needed, or not appropriate, for provision of the public service for which the agency owning the property is responsible. In the simplest case, land is vacant and not planned for future service use. In a more complex case, land may presently be in use, but planned to be vacated as part of improvements in service efficiency. Identifying "surplus" land may be thought of as a "supply-driven" approach to public land disposition. That is, land is not readied for disposition in response to demand for it in an alternative use. It is deemed "surplus" or "unwanted for service use" on its own terms, without regard to its market value or value in an alternative use. Once a list of "surplus" land has been identified, market forces and perhaps other agents of government can focus on the surplus parcels and express demand for them.

Military Bases—Implementing a Rigorous Standard of Surplus Land. By far the greatest source of public land disposition over the last two decade in developed countries has come from shuttered military bases. Canada has closed all or most of 27 military bases, many in or near major urban areas. The United States has closed more than 350 military installations, selling the land involved on the market or transferring it to local development authorities. More than 90% of the public land disposed of by the federal government in Australia since the mid-1990s has been reclaimed from shuttered military bases. Military bases in these countries have been closed after independent assessment of their appropriateness given the current mission of the armed forces and the cost effectiveness of different military locations. They thus incorporate a rigorous standard for identifying "surplus" property, which has potential application for other types of government-owned land.

Canadian Forces Base Rockcliffe

Canadian Forces Base Rockcliffe consisted of some 375 acres of prime urban land, located a few miles from Parliament Hill in Ottawa, the nation's capital. Beginning in the 1980s and extending into the 1990s, Canada undertook an analysis of the appropriate size of its military and the cost-effectiveness of its military base structure, given the end of the Cold War. It determined that the country had an excessive number of different military bases, which led to higher costs of operation and inefficiencies in training. Some of these bases were very old, under-utilized, and ill-suited for military modernization. A special task force established by Parliament and the Department of Defence recommended realignment of bases and identified specific bases for closure, based solely upon the effectiveness of the base structure for military purposes.

One of the first bases recommended for closure was Canadian Forces Base Rockcliffe in Ottawa. As early as 1989, the Department of Defense's Infrastructure Adjustment Program recommended closure of Rockcliffe as part of an initiative to reduce the total number of bases. The base dated to 1899, when it served as a rifle range, later expanded to include an airfield. Its role was downgraded in the 1970s and 1980s, to the point that it was used largely to provide temporary housing for military personnel posted to Ottawa. The base's location in the middle of the urban area prevented it from being used for broader training purposes.

It was not until budget reductions in the 1990s increased pressure on base realignment that Defence actually scheduled Rockcliffe for closure and disposition. Canada's Treasury Board Secretariat reviewed the recommendation, as it reviews all plans involving "surplus" land. It identified Rockcliffe as a "strategic disposal" because of its potential impact on urban development. Treasury's Steering Committee on Real Property confirmed the strategic disposal. A contract was signed to sell the site to Canada Lands Company. Canada Lands Company (CLC) is a for-profit, independent Crown Corporation that buys strategic surplus properties from the government at market value, and either readies them for sale or develops them in coordination with the private sector (see next Section). In this case, plans called for re-developing the military base as a mixed-use residential and commercial neighborhood, housing a population of 13,000 to 15,000.

As it turned out, consummation of the sale was delayed by litigation threatened by Algonquins of Ontario, based on First Nations occupancy of the site dating back to the early 17th century and terms of treaties signed at the time. Transfer of the military base became entangled in the much broader general issue of First Nation rights to federal and provincial property.

Negotiations resumed in 2008-2010. Final agreement apparently was reached in 2011, incorporating Algonquins in the development process, with CLC as the intermediary institution between government and the private sector and development planner. As of this writing, a formal contract has yet to be signed.

As one of the first sites to be proposed for disposal in this manner—and one of the first sites to be affected by Canada's new recognition of First Nation treaty rights—Rockcliffe's disposition has been a very lengthy process. However, it established the pattern for subsequent disposals. It introduced specialized bodies in different government departments to their roles in executing land disposition. Thirteen other military bases have been successfully transferred from Government to CLC to the private sector.

Base Closures in the United States

The United States Base Realignment Commission (BRAC) offers another perspective on the declaration of surplus military land. The BRAC process specifically recognizes the widespread resistance to base closures and government land disposition. Resistance comes from individual branches of the military that are reluctant to cut back on bases or land holdings, and from local communities opposed to losing the economic activity associated with base operations. Local opposition leads to opposition by members of Congress. For many years, base realignments and closures were stymied by Congressional refusal to approve military budgets that included closure of specific bases protected by local Congressional representatives.

The BRAC process was designed to circumvent normal Congressional approval through the budget process. It was recognized that the base structure needed realignment and modernization, but that proposals for case-by-case base closures would be tied up endlessly in Congressional amendments. Under BRAC, the Secretary of Defense periodically recommends a full set of bases for realignment or closure. In the past, this recommendation was founded on the premise that the US had too many bases for efficient operation, many of which were outmoded or too close to urban centers to be used for military training. Individual bases were targeted for closure purely on the basis of relative cost effectiveness in serving their military and training purposes. The most recent round of base closure recommendations, in 2005, also took into account the strategic decision to co-locate bases from different branches of the military, in order to support greater integration of operations. This resulted in recommending more bases for closure and realignment.

The base-closure recommendations of the Defense Department are submitted to a special Base Realignment Commission, appointed by the President. The Commission reviews and can modify the list of bases proposed for closure. BRAC then submits a final recommendation to the President, who forwards it to Congress. Under the terms of BRAC's creation, Congress can only vote 'yes' or 'no' on the entire base closure list; it cannot modify or amend the list. All five rounds of BRAC recommendations, starting in 1989, have been accepted by Congress.

Valuable urban property has been "unlocked" for alternative use by this process. Proceeds from land sales jumped when competitive auctions became the norm for disposing of valuable sites. For example, the Marine Corps Air Station El Toro, near Irvine, California, was closed in 1999. A 1375 acre portion of the base approved for development was sold via on-line auction in 2005 for $650 million. The remaining land was converted into park land and green space. The developable portion of land at another Marine Corps Air Station in Tustin, California was sold for $208.5 million.

BRAC tries to co-ordinate its land disposition with local government re-development initiatives. Under the law it is allowed to transfer land to local development authorities at less than full market value if this is in the public interest. Using this provision, BRAC has entered into novel financing arrangements. For example, BRAC sold land in Brunswick, Maine and Orlando, Florida for a small upfront fee plus the right to participate in income generated by conversion of the military bases to mixed residential-commercial use and green space. Re-development typically involves an initial round of local investment in road, water, and sewer infrastructure to support more intensive land use. At times, the transfer of military land becomes the stimulus for major urban development initiatives. The most recent base realignment, for example, closed Walter Reed military hospital in Washington, DC, turning over 61 acres of prime urban land to the District of Columbia, which will become the backbone of local re-development planning. By law, all proceeds generated from BRAC land sales are earmarked to the overall BRAC budget to finance base realignment and removal of environmental hazards for land transferred to civilian use.

US procedures for disposing of "excess" military land illustrate two other realities often found in attempts to capture the economic value of publicly owned property. First, the BRAC process is complicated politically and introduces multiple avenues for avoiding market-value transactions. By law, excess military property must be offered first to a hierarchy of potential users, starting with other federal agencies and including local governments that have approved economic development plans involving the property to be released. Housing for the homeless is targeted as a priority use. Land transfers involving these uses are politically negotiated, typically at levels well below market value.

Second, the structure of incentives plays a significant role in the willingness of public landowners to enter into consideration of alternative land uses. Previously, the military commander of a large base had no legal authority to retain revenues generated by putting land parcels to alternative use. Now, military units, and other federal property owners, are able to retain a portion of new revenues. The change in incentive structure has made federal property owners more willing to consider outleasing or other initiatives to capture the economic value of excess land.[60]

Building on the Base Closure Experience to Identify Other Surplus Lands. Canada's initial experiences with selling federal land involved closing military bases. However, a streamlined version of the same procedures, with many of the same institutional participants, has since been used to identify and convey other surplus land. In many respects, these latter transfers have been easier to carry out. They typically involve abandoned federal property, where there is much less pressure to maintain current use and historical title is clear. The federal agencies owning the properties are relieved of maintenance responsibilities; these savings make land transfer more acceptable.

Montreal Port Redevelopment

[60] The author wishes to thank a reviewer, Valerie Santos, for this information.

Montreal's old, centrally located port has not been used as a port for decades. The waterways serving wharfs have been filled in. Port activities have been shifted to a new port with superior access to international shipping. The Ministry of Transport and Infrastructure, with approval of Treasury, declared the original port area "surplus" on the grounds that the land was not needed, and was not being used, for port services. The City of Montreal then entered into discussions with the federal government as to how the old port area could be transformed into a tourism and commercial center that would revitalize the downtown district. In a transaction similar to that proposed for Canadian Forces Base Rockcliffe, the land was sold to a subsidiary of Canada Lands Company for re-development as the central hub in Montreal's redevelopment of the Old City.

In 2007, an adjoining 23 acres owned by the Canadian Post Office were declared surplus and transferred to the project. The old post office had been closed in 2003 and re-located for efficiency reasons. The 600,000 square foot building had remained vacant. In 2007, government transferred the post office land and building to the project company. Subsequently, land surrounding grain storage facilities, owned by the Ministry of Agriculture, and unused since the termination of port activities, was also declared surplus and transferred to expand the re-development project. Land assembly involving surplus properties from several federal agencies has put together a core project area with the potential to transform Old Montreal, as has happened with the Docklands in London, the Victoria and Albert Waterfront in Cape Town, South Africa, or the Inner Harbor in Baltimore of the United States.

The standards for declaring government land and property "surplus" in this case are straightforward. The land parcels were vacant. The buildings were vacant. There were no plans to restore them to service.

CREATING ADMINISTRATIVE AND FINANCIAL INCENTIVES FOR LAND DISPOSITION

In the examples cited thus far, government searches for and identifies landholdings that are "exceptions," in that they are typically vacant, unused for public services, or specifically designated as inappropriate for government retention.

An alternative approach is to place the onus on government agencies to justify why they should hold *any* land parcels, by requiring them to demonstrate their necessary role in the agency's public service provision. Australia provides the clearest example of this approach.

Australia's Land Audit and Property Disposal Policy

Principle. Australia's Commonwealth land policy starts with a clear statement of principle: land held by government should be viewed as an input into the provision of the public service for which the landholding agency is responsible. All public landholdings therefore should regularly be reviewed, with the goal of divesting those properties not necessary or cost-effective for service provision. Commonwealth property having no efficient use is to be sold on the open market at full value.

One of the strongest statements of this principle was made by the representative of the Ministry of Finance and Deregulation at the Parliamentary Inquiry into the Disposal of Defense Properties:

> An ongoing goal of government policy is to reduce its property holdings throughout Australia…The Commonwealth is not a property company. [There] is an opportunity cost of capital and the Commonwealth has determined there are better things for it to do than be a property holding company.

Annual Land Audit. This principle has been translated into practice by a series of regulatory and administrative measures. Central to the process was the establishment of a Commonwealth Land Audit. Each year, all agencies of the Commonwealth government must report to the Ministry of Finance and Deregulation their landholdings *and* provide a written justification of why these landholdings are necessary or efficient to provide the services for which they are responsible. This justification takes the form of a "business case" for land retention.

Business Case for Land Retention. The Ministry of Finance and Deregulation has provided standard guidelines for how the business case should be made. The property-owning agency must demonstrate that it is cost-effective for service delivery to retain land ownership, taking into account alternative ways to provide its services and alternative uses for the land outside of Commonwealth ownership. The Ministry of Finance prescribes the financial and economic variables to be used in making the business case, including opportunity costs and discount rates. The own vs. sale land decision is embedded in a broader policy of obtaining Value for Money in public property management. For example, the Ministry of Finance and Deregulation has prepared and disseminated throughout government a Better Practice Guide on the Strategic and Operational Management of Assets by Public Sector Entities (2010).

Changing Emphasis on Land Disposition. It is interesting to note a change of emphasis that accompanied Labour's ascendance to power in 2005. The Annual Land Audit was retained, as was the statement that "Government's core business excludes property ownership," but added to this statement was the qualifier "unless particular circumstances apply." Labour has continued the policy of requiring that Commonwealth agencies demonstrate a business case in favor of retaining land parcels. However, it has shifted disposal policy, as part of its National Urban Policy, to give priority to releasing surplus Commonwealth land to local governments or non-profit organizations that will use it to increase housing supply or support community development.

In their reports for the Commonwealth Land Audit agencies are now required to report which land parcels fail to meet the business case for retention, and, of these, which are suitable to advance housing or community outcomes. These properties are eligible to be transferred to local authorities or community organizations at less than full market value.

Leasing of Public Land. One topic that receives a good deal of attention in Australia's land audit is the leasing of public property to private parties. Throughout the world, public property that is leased to private users tends to be priced well below market rents. (Peterson and Kaganova 2010). Although part of this pattern can be explained by a lack of focus on market valuations by public owners, the relationship also opens the way for public officials and public agencies to exchange below-market rents for greater political power, corrupt payments, or other mutually beneficial special arrangements.

By the criteria of Value for Money applied in Australia, the failure to obtain market rents in leasing deals becomes a reason for divestiture of public lands under the Land Audit. In fact, there is a general presumption against holding public land for lease to private industrial firms. The practice sets up the potential for rent-seeking officials to enrich themselves and/or pursue political objectives by manipulating lease awards, while keeping land-use decisions out of the marketplace.[61] Of course, similar incentives exist when land is sold by a public agency, but they are more easily controlled by a one-time, transparent public auction.

Charges and Taxes As Incentives to Re-evaluate Public Land Holdings

In principle, the opportunity costs to public agencies of holding valuable land could be brought home to them by a system of charges or taxes levied on the value of land. Both Australia and South Africa have launched initiatives that could expand into this area, though neither has significant impact at present on the decision whether or not to make land available for disposition.

Rental Charges for Public Property. Australia has a well-established policy of charging public agencies the full market rental rate for their occupancy of government buildings. The policy is overseen by the Property Division of the Ministry of Finance and Deregulation, and administered on the Ministry's behalf by a private-sector property management firm. Public agencies are not required to use public buildings; they are free to search the market for the most cost-effective locations. However, if they occupy public buildings they must pay full market rentals, a policy also pursued in several other countries. The rental value of office buildings, of course, reflects their location and underlying land values. Thus the system provides some incentive to public agencies to economize on public land use—i.e., to only occupy public land that is worth its rental price.

Australia has not extended this rental pricing system to vacant landholdings, preferring instead to rely on the Land Audit to recognize market opportunity costs and drive disposal decisions.

Property Taxation of Government Property. South Africa is one of the first countries in the world to pass a Property Tax Law that includes government-owned property in the taxable base. In principle, the need to pay property taxes on government-owned property should provide a pricing incentive to agencies to re-examine the importance of retaining real estate.

[61] In a very interesting study of the differences in the rate of privatization of industrial land across Russian cities and regions, Pyle (2011) finds that, paradoxically, the rates of public land ownership and leasing are highest in those places with the highest urban land values. He argues that public retention of land ownership in these cases maximizes political influence and rent-seeking potential, and that this is the motivation for leasing rather than sale. In fact, when industrial enterprises were privatized, the Moscow Duma passed legislation stipulating that the underlying land plots could only be leased, not sold.

As implemented in South Africa, the law assigns responsibility for property tax administration to the local government level. The law allows local governments to exempt from taxation whatever property they deem appropriate. At the same time, the national legislation re-defined the property tax base as the full value of property (land plus improvements), replacing a system that emphasized land-value taxation.

As a result of these changes, local governments have generally exempted their own property from taxation. They have concentrated taxation on national government property having high value as developed parcels and on property owned by parastatal utility providers. The primary purpose of including public property in the taxable base under the Property Tax Law was to level the playing field between public providers of infrastructure services (like electricity and water) and private providers. It has helped achieve this goal, by eliminating the property tax advantages of public ownership.

There is no evidence to date of significant taxation of government-owned vacant (or underutilized) land, or effective transmission of opportunity costs to government landholders that would incentivize land disposition because of property tax liabilities. However, local governments in South Africa are in the process of adjusting to the new law, and may extend its application to government lands in the future. The principle of subjecting government-owned property to the *same property taxes as privately owned property has long-term potential for discouraging public* sector land and property hoarding.

THE ENTREPRENEURIAL CITY: USING PUBLIC LAND VALUES TO FINANCE URBAN INFRASTRUCTURE INVESTMENT

A policy of disposing of surplus public-sector land is aimed, above all, at increasing the efficiency of public-sector operations. Under certain circumstances (including those now prevailing in India) implementing such a policy may generate enough revenue to contribute significantly to urban infrastructure investment. However, revenue generation is not usually the primary objective. In fact, the BRAC process used in the United States has been criticized precisely because land values are not taken into account in designating military bases for disposal. Camp Pendleton, for example, covers 506 square kilometers of land on the Pacific Ocean in Southern California. The market value of the land has been estimated in the range of 5 to 6 billion dollars. Some critics have argued that the potential for realizing financial resources of this magnitude should be taken into account in making base realignment decisions.

Strategic Land Management. At the other extreme of designating land for sale without regard to financial value is a policy of *strategic land asset management* that looks to unlock public land values specifically to support urban infrastructure investment, and manages government land and infrastructure policy so as to enhance land values. The increase in public land values then can be captured to help finance infrastructure investment.

China is the prime example of this entrepreneurial approach to land-asset management. China's urban infrastructure boom has been fueled by land sales (technically, long-term land leasing). Several estimates find that 60 to 70% of all urban infrastructure investment over the past two decades, excluding national network systems, has been financed from municipal land sales.

In capturing public land values, China benefits from several special institutional arrangements. First, and most importantly, all urban land is "owned" by municipalities. It can be leased to users for 30 to 70 year terms, depending upon land use. Lease payments are made upfront, as in a sale. Second, until recently (see Part IV), municipal governments were able to acquire land at the urban fringe from farmers at prices far below market value in urban use. Farm cooperatives were forbidden to sell land to other parties, while municipalities could use eminent domain to compel sale. Third, municipalities in China enjoy substantial autonomy in managing, selling, or acquiring land assets. They retain all profits from land transactions. This autonomy in asset management stands in marked contrast to central government controls over local tax policy and tax rates. Local governments cannot introduce new taxes or set tax rates. They must share local tax revenues upward with the central government. These constraints have driven municipalities to focus on land management for revenue. It is estimated that in recent years as much as 40-50% of city governments' total budgetary revenues have come from land leasing.

Although these characteristics distinguish China's institutional setting from India's, some of the specific policies pursued in China's urban areas are worthy of consideration elsewhere.

Land Arbitrage at the Urban Fringe. Dependence on land financing has driven municipalities to adopt policies designed to maximize net revenues from land transactions. One device is to reclaim land from low-value urban users, or acquire land at the urban fringe from farmers, at government-defined low prices, then sell the land-leasing rights for development at much higher, market prices. Until recently, municipalities could acquire land from farmers at defined multiples of annual "production value" in farm use. The same land would be leased, after conferring urban development rights and installing basic infrastructure, at far higher prices to urban land developers. Land-value arbitrage of this kind could generate government sale prices that were 10 times higher, or more, than acquisition costs.

Shanghai's Development of the Pudong New Area

One of China's most spectacular development successes is the Pudong New Area developed in the 1990s by Shanghai Municipality with support from the central government. Pudong is a 584 km^2 area now home to Shanghai's international airport, a series of luxury hotels, vast amounts of first-class office space and manufacturing facilities, and a focus of private-sector investment from both Chinese and international investors. Farmers and urban dwellers in the area are reported to have been paid an average of 20,000 RMB per Chinese mu (or roughly $15,000 per acre at the time). Land was re-sold by the municipal government at an average of 300,000 RMB/mu. It has been estimated that the land transactions in Pudong generated a net profit of some US$90 billion for the municipal government. Revenue from land leasing was used primarily to finance infrastructure investment, including construction of bridges connecting Pudong to the rest of Shanghai, and road, water, and wastewater networks to support high-end urbanization. More than 120,000 people had to be re-settled. In a famous quotation, the Mayor of Shanghai stated that land transactions allowed the Municipality to carry out in 10 years urban development on a scale that otherwise would have required 100 years.

Rationalizing Public-Sector Land Use. Expansion of the urban footprint through compulsory acquisition of farmland at below-market rates is not a socially acceptable policy in India. Indeed, widespread opposition has forced the Chinese government to introduce strict curbs on municipal land purchases at the urban fringe and to move toward market-based compensation for farmers.

China's parallel policy of converting low-valued land within the public sector to higher-valued use, however, has broader applicability. Rationalization of public-sector land use has been a key both to China's infrastructure financing and its pattern of urbanization.

It was only in 1988 that China first introduced, on an experimental basis, market-based urban land reform. Until that time, the government allocated all urban land free of any economic or financial charge. As a result, China's cities were a patchwork of extremely inefficient land uses, with state-owned industrial enterprises typically located near the heart of the city. One important source of municipal land "supply" in the Chinese system has been the transplanting of state-owned enterprises from the central city area to industrial development zones outside the urban core.

In China, there are two types of state-owned enterprises. Some large firms are central-government or provincial state-owned enterprises. (The number of central government state-owned enterprises has been reduced to 124.) These report to higher-level governments and are not automatically subject to municipal development plans. Re-location of such enterprises has to be negotiated between higher and lower levels of government and the enterprise itself. A negotiated outcome typically involved provision of free land at an outlying industrial park with high-quality supportive infrastructure, in return for transfer of the enterprise's centrally located land to the munlcipality. The central government transferred the vast majority of state-owned enterprises to municipal control and ownership in the 1980s and 1990s. The re-location of these enterprises is entirely a matter of municipal governments' choice.

The previous locations of state-owned enterprises near the city center were highly inefficient. Transportation to and from the enterprises was highly congested and generated spillover congestion for other urban activities. Most such enterprises were highly polluting, so that their re-location (often accompanied by modernization of facilities with lower pollution levels) was a benefit to urban air and water quality. In their new locations, enterprises enjoy superior transportation access and the localization benefits of high concentrations of complementary activities in the industrial supply chain.

Meanwhile, the land freed up by relocation becomes available through the municipal Land Reserve Center for sale to the highest bidder. The high bidder for centrally located properties typically is the developer of an office center, shopping complex, or upscale residential complex. Municipalities typically set aside some of the land for green space or parks as a value-enhancing amenity. Municipal ownership of the property to be vacated has accelerated municipalities' ability to relocate enterprises and treat large tracts of land as assets to be strategically managed. Freed-up land in the city centers of large cities has sold for as much as $8,000 to $10,000 per square meter. At the same time, allocation of vacated land to new end-users through the market has increased the efficiency of land-use organization.

Transplanting Municipal Offices. Driven by the twin motivations of financial profit and land-use planning, municipal governments have exercised a good deal of imagination in their efforts to rationalize urban development patterns. Starting in the mid-1990s (in the coastal region), municipalities began to recognize another inefficient use of the most valuable, centrally located land: its use as municipal administrative centers. Municipalities (and provincial governments in capital cities) began to move their administrative offices and municipal halls to new suburban or even exurban locations removed from the central city. This strategy has two financial payoffs. First, it frees up more land that the municipal government can sell on the market. The vacated land typically contains many of the most highly valued parcels in the city, since historically urban development has clustered around government administrative offices. Second, by moving to new, undeveloped locations, municipal governments automatically spawn new centers of economic development activity, thus shaping the pattern of urban growth and (not at all incidentally) driving up the value of surrounding vacant land, also owned by the municipal government and available for market leasing.

Case studies of nine interior cities in central and western China, conducted for the Cities Alliance and World Bank "City Development Strategies" program, found that all nine cities either already had moved their administrative centers from the central city to alternative, suburban locations, or were far advanced in their planning and implementation to do so. Several of the old administrative centers already had been transformed into top-of-the-line commercial and office development complexes, laid out around newly cleared downtown park space.

Re-location of state-owned enterprises (SOEs) and municipal administrative centers has not been without problems. A 2012 study by the World Bank found that relocation at sites far from the city center had contributed to urban sprawl and carbon generation. Meanwhile, many of the central- and provincial-owned SOEs have set up real estate development subsidiaries of their own and became property speculators. A study published by the National Bureau of Economic Research (US) found that central-government SOEs accounted for 51% of all land purchased at auction in Beijing in 2010, up from zero in 2003, and that they paid higher prices than private developers for comparable land. The national government in 2011 had to promulgate regulations forbidding central-owned SOEs from engaging in property development, except for the 14 SOEs that have this as their principal mission.

LESSONS FROM INTERNATIONAL EXPERIENCE: PART I

Four lessons stand out from this Part I review of international experience:

Importance of Having a Policy That Encourages Active Management of Public Land Assets and Unlocking of Economic Value.

India does not have a central policy, or provide policy guidance, regarding management of public land assets. It does not encourage examination of public land hoarding, or encourage agencies to explore ways to unlock land values. Worse, at the Centre level, India currently has a policy that freezes any type of alienation of Centre land—whether by sale, leasing, contribution of property to joint venture developments, or pledges of land values to support infrastructure investment. The "freeze" on all public-land activity has been imposed by Cabinet, in order to provide time for development of a Cabinet-level policy governing public land management and public land disposition.

Preparation of such a Cabinet policy would seem to be a top priority. It has the potential not only to unlock Centre-controlled public lands, but to serve as a model for states and urban local bodies. The statement of policy principle can be simple—perhaps along the lines of Australia's statement that the purpose of public land ownership is to enhance public service delivery, and that government is not in business to be a permanent property owner. The policy then could clarify the pre-requisites and safeguards for land disposition and specify the conditions under which decisions about land use will be delegated to individual departments or agencies.

Value of Public Land Inventories.

Informed decisions about the disposition of public lands will require reliable inventories of public land holdings--by owning agency, location, current and planned use, size, and (for significant parcels) approximate market value. No country in the world has moved toward implementation of land disposition policies without first preparing such inventories.

Land inventories accessible to the public and to market participants also are essential for accountability. Parts I and II of this report describe several different approaches to the preparation of public land inventories. They range from straightforward presentation of information about landholdings to the further requirement that the landholding agency provide a justification as to why continued holding of significant land parcels is in the interest of efficient service delivery.

Importance of a Well-Defined Process for Public Land Disposition.

India's record of land disposition involves case-by-case consideration, following rules that are not defined beforehand and are subject at any point to higher-level intervention. The ad hoc nature of these procedures stands in the way of efficient decision-making. Parts I and II of this report describe several different procedures for identifying "surplus" public land or land that could contribute more effectively to public goals if sold or leased. The lesson from international experience is not that a single procedure is appropriate, but that there should be clarity and certainty about the procedure to be followed.

Ironically, India has a significant leg up in preparing land inventories and unlocking public land values, if institutions were allowed to move forward to implementation. The Railway Land Development Authority (RLDA), for example, was established precisely for this purpose. It has completed a basic inventory of Railways' vast land holdings, and identified 305 mostly urban parcels suitable for development either through sale or joint venture. Despite Railways' urgent need for investment financing, RLDA has been prohibited from moving forward by the Cabinet- level freeze on all public land initiatives. Similarly, an inter-agency committee prepared in 2010 a new Land Policy for Major Port Trusts, which required the major ports to prepare inventories of their land holdings and develop plans for land use over the next decade. An important by-product of this exercise is identification of land parcels which are not now used and are not planned to be used for port purposes. Many of these "surplus" land parcels are in major urban areas. They should be examined to determine how the greatest economic and fiscal value can be extracted from them, consistent with good urban planning. However, action to unlock land values for major ports is also frozen by Cabinet-level order. Similar de facto "freezes" on public land disposition or development have been imposed by state governments in several metropolitan areas.

Entrepreneurial Management of Public Lands.

State-owned companies, as well as government agencies, continue to hold valuable blocs of land in Indian cities. Some of these state-owned companies have shriveled in market size, or now own property that they cannot effectively utilize. Re-location of selected SOEs could contribute both to a more efficient urban development pattern and generate sizable resources for public investment.

India, of course, is not China. The legal and institutional rules in India make it far more difficult for public sector planners to influence SOE land use. However, given the potential for very large gains in land values, it should be possible to negotiate company moves in a manner that produces benefits for the company, public sector investment, and urban inhabitants. A policy statement by government that encourages or incentivizes such action would be the first step in this process.

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FURTHER READING FOR PART I

AUSTRALIA

Department of Finance and Deregulation, *Commonwealth Property Disposals Policy,* Feb. 25, 2009 [Updates strategy for land disposition, including priority for housing supply]

Commonwealth Government, *Property Ownership Framework,* July 1, 2005. [Modifies framework to conform to Labour's policy platform]

Department of Finance and Deregulation, Guidelines for Land Audit, *Estimates Memorandum 2005/31 and 2007/28* [provide guidance on how the business case for land retention should be calculated]

Department of Finance and Deregulation, *Commonwealth Property Management Guidelines,* Oct. 2009 [requires all agencies to have a property management plan and provide data on all property that they own or lease.]

Department of Finance and Deregulation, *Better Practice Guide on the Strategic and Operational Management of Assets by Public Sector Entities,* 2010 [guidance on the own vs. divest decision for land assets and other asset management issues]

Commonwealth Government, *Financial Management and Accountability Act,* 1997. [establishes the basic requirement that agencies have "strategic planning, policies and procedures in place to achieve value for money in property management."

Department of Finance and Deregulation, *Register of Surplus Commonwealth Land Potentially Suitable for Housing and Community Outcomes,* Sept. 2011 [most recent register of lands available for housing etc.; 90% consists of Defense properties]

Department of Finance and Deregulation, *Commonwealth Land Audit*, Jan. 2011 [most recent agencies' Land Audit]

CANADA

Canada Lands Company, www.clc.com [current information and past publications]

Canada Lands Company, *Annual Report, 2010-2011.* Published Jan. 2012 [available at above website]

Canada Lands Company, *Corporate Plan Summary, 2010-2011 to 2015-2016.* Published 2011 [available at above website]

Canada Lands Company, *Acquisition of Landmark Site in Ottawa*, May 9, 2011 [available at above website]

National Executive Forum on Public Property, www.publicpropertyforum.ca [convenes senior managers of public land assets and other public property from federal, provincial, and municipal levels, with academics and private sector property managers.]

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UNITED STATES

Defense Base Closure and Realignment Commission: *Final Report to the President*, vols 1 & 2, 2005 [recommendations and rationale for base closures and realignment]

Federal Land Asset Inventory Reform {*FLAIR] Act,* introduced in Senate, 2011. [repeats legislation introduced annually since 2009 to mandate a comprehensive inventory of federal government landholdings and valuations]

Government Accountability Office, *Federal Real Property: Excess and Underutilized Property Is an Ongoing Problem,* Testimony before Subcommittee on Federal Financial Management, Government Infrastructure and International Security, Senate Committee on Homeland Security and Governmental Affairs, 2006. [one of a series of reports by GAO highlighting land asset management as a "high risk" area of federal management.]

CHINA

Nelson Chan, "Land Acquisition Compensation in China: Problems and Answers," International Real Estate Review. [2003, vol 6, No. 1, pp136-152] [reviews past acquisition practices and land value arbitrage]

Deng, Yongheng, Randall Morck, Jing Wu, and Bernard Young. *Monetary and Fiscal Stimuli, Ownership Structure, and Chinese Housing Market.* National Bureau of Economic Research, Working Paper 16871. March 2012. [impact of China's 2008-09 stimulus package on urban land and housing markets, and SOEs' role in property demand]

Peterson, George E., "Land Leasing and Land Sale As an Infrastructure Financing Option," in George E. Peterson and Patricia Clarke Annez, (eds), *Financing Cities: Fiscal Responsibility and Urban Infrastructure in Brazil, China, India, Poland, and South Africa,* World Bank 2007.

Wu, Jing, Joseph Gyourko and Yongheng Deng, *Evaluating Conditions in Major Chinese Housing Markets.* National Bureau of Economic Research. 2010. [Reports increase in land prices and change in structure of property market]

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PART II: SPECIALIZED INSTITUTIONS AND INSTITUTIONAL ARRANGEMENTS FOR DISPOSING OF PUBLIC LANDS

The sale or leasing of public lands is not self-executing. It requires specialized institutions and special institutional arrangements, particularly if land disposition is to be a recurring activity rather than a one-off event, and is to support broader policy goals. In recent years there has been a pronounced trend toward the creation of specialized public land-asset managers. China has mandated the establishment at local level of institutions known generically as Urban Development Investment Companies (UDICs). These hold the investment assets, including land, of the municipality, and make investment decisions regarding land assets. A specialized Land Reserve Center handles land transactions and auctions. The Singapore Land Authority manages Singapore's land development and land leasing. As part of decentralization, Indonesia mandated the creation of local asset managers. Their primary responsibility is to inventory and manage local government land and property assets.

Outside of Asia, similar institutions can be found at all levels of government. The Canada Lands Company has sole responsibility for disposition of surplus federal lands in Canada. A specialized institution was created by the State of Berlin, Germany to dispose of surplus state lands. The Johannesburg (South Africa) Property Company and Ottawa (Canada) Community Lands Development Corporation are two of many examples of local institutions created to manage public real estate assets, including sale of excess lands and development of other properties.

Part II of the report examines in greater detail the way two of these specialized institutions function in managing public land disposition. Both are quasi-independent, professionally managed intermediaries executing government policy. Their working procedures are described against the background of their policy mandates. Although the working arrangements differ considerably, they follow a basic common framework that could be adapted to India's needs.

LIEGENSCHATFSFONDS, BERLIN GERMANY

Background. Berlin is both a city and a state under the German federal system. It covers a small area (only 829 sq. km.), but is the capital region of the country and contains highly valued real estate. As a city, Berlin is divided into 12 local boroughs.

By the year 2000, the intergovernmental assignment of assets necessitated by German re-unification had been completed. As part of the former East Germany, the State of Berlin retained a good deal of publicly owned land. Some of this land was being sold piecemeal by agencies. Occasionally, the Berlin state parliament or the national parliament would intervene in land transactions. There was no overarching strategy or common procedure guiding land disposition. Land transactions also lacked transparency. Only insiders had access to information about the specific characteristics of land parcels or agencies' intention to sell them. More than 30 different offices in the state government served as contact points for approving or delaying land sales.

Berlin did have the advantage of a comprehensive Land Register that identified legal ownership of public properties as well as site dimensions. However, the Land Register was not published for public access, and was not organized so as to link economically connected parcels.

Policy Mandate and Institutional Arrangements. Liegenschaftsfonds was created by an act of the state Parliament in 2001. The policy mandate given it by Parliament was to collaborate with state government agencies to identify surplus state property and dispose of it in an orderly manner that supported the physical development plans of Berlin. The financial goal was to generate revenue from land sales that could be returned to the state treasury. An initial block of lands was transferred to Liegenschaftsfonds (the Fund) as surplus property to be managed for diposition. Procedures were set in place for identifying and transferring further property to the Fund, after an updated inventory was completed.

The general policy context was Parliament's determination that the state government held too much public land. Agencies were required by law to identify parcels not being used for current or planned service provision, and to designate these as surplus properties eligible for disposal.

The Fund is organized as a 100% publicly owned company, with a governance structure similar to private companies in Germany. It has a Supervisory Board appointed by the government. The Supervisory Board is composed of members knowledgeable about real estate and intergovernmental relations.

Two policies built into the Fund's design distinguish its workings. First, the Fund is mandated to sell property at full market value, except when parcels are being allocated for public use. The latter represent less than 5% of total transactions. Second, the potential for conflict between the State government and local boroughs was recognized and addressed from the outset. Most of the properties sold by the Fund are destined for more intensive development, placing infrastructure and service demands on the boroughs where re-development takes place. To protect against overburdening the boroughs, all properties are sold by the Fund are subject to local (borough) planning, density, and zoning restrictions. Further, between 10% and 15% of sale proceeds, depending upon transaction, are allocated to the borough. These funds typically are used by the boroughs to help finance the infrastructure costs associated with more intensive development.

Inventory. The Fund has modernized its land inventory and made it accessible to the public. A user can access by internet a map showing all of the land parcels held by the Fund throughout the State of Berlin. The user then can zero in on individual parcels to find exact site dimensions, site use, details of buildings on the site, and relation to nearby streets, metro, and other public facilities. If the site is being offered for sale, additional information on the sales process is provided.

At the time of the Fund's creation in 2001, of the 892 sq. km. of land in the state, 425 sq. km. were owned by state government. Of these, 368 sq. km. were assigned assets used by government agencies for public service provision or other public purposes. Nineteen sq. km. were categorized as financial assets—i.e. land leased to the private sector under existing contracts. A total of 33 sq. km. (3300 hectares) were designated as surplus property and transferred to the Fund for disposition, primarily by sale to the private sector.

Operations. The continuing operations of the Fund are a dynamic process. The Fund sells or otherwise disposes of properties. Agencies can designate additional surplus lands to the Fund, sometimes after discussions with the Fund regarding optimal land assembly. The Supervisory Board must unanimously approve transfers of new properties into the Fund, in part to avoid potential liabilities from environmental cleanup.

The Fund is an intermediate-term manager of public property. It optimizes the value of land under its control by working with boroughs to gain re-zoning and planning approvals before sale. It manages landholdings through the real estate cycle. During the economic downturn of 2008-09, it did not attempt property sales. Sales resumed in 2010 with Germany's economic rebound.

The Fund has the right to sell property through competitive bidding, direct negotiation, or invitation to tender at minimum purchase price. All properties are sold subject to borough planning and permitting restrictions. The Fund also has the option of leasing properties at annual rates ranging up to 6.5% of market value. The typical lease period is 50 years.

Properties are sold subject to

- Initial approved use. A change of use requires both borough and Fund approval.
- An "added-value levy" clause. Subsequent investment that adds significantly to the value of the property triggers an additional levy paid to the Fund.
- All sales in excess of Euro 3 million, and any sales at below-market value, must be approved by the lower house of Parliament.

Results. Over the ten years, 2001-2010, the Fund entered into 5,423 contracts. It sold land having a sale value of 2.04 billion Euro, and entered into annual leases yielding 25.0 million Euro. The Fund paid 1.749 billion Euro into the state treasury and 227 million Euro to local boroughs to finance supporting infrastructure and public services.

The Fund has succeeded in its mission of transferring surplus state property to the private sector. It has introduced professional management into the land disposition process, while following well-defined procedures for parliamentary oversight. Local boroughs have become active partners in planning the re-use of surplus sites.

CANADA LANDS COMPANY

Background and Institutional Structure. Canada Lands Company originally was established with a single mission: to sell the excess lands owned by the Canadian National Railway on behalf of the federal government. The national railway—a Crown Corporation—had become a money-losing operation for government. In the 1990s, it was decided by government to groom the railway for privatization. As part of this process, the excess lands and property owned by the railway—i.e., property not needed for rail operations—were separated from the railway. Shares in the railway were sold via a market IPO. The sprawling excess lands formerly owned by the railway were transferred to a re-activated company, the Canada Lands Company (CLC) for separate sale. CLC was given a 5-year time frame commencing in 1995 to dispose

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of the land property. Almost all (86%) of the land parcels were sold within the 5-year period, realizing some $500 million for the federal consolidated fund.

The exercise in disposition of excess federal property was deemed sufficiently successful that in 2000 the mandate for CLC was expanded so that it would operate as an intermediary in disposing of surplus federal property across all agencies of government.

CLC is organized as a profit-making, non-agent Crown Corporation. A non-agent Crown Corporation is owned by government, but is not subject to government direction in carrying out its activities. Government can decide to dissolve CLC, but it cannot direct CLC to undertake specific investments, influence its land sales, or intervene in decisions about real estate projects. CLC thus is a professionally managed implementer of government policy. It reports to Parliament through the Department of Public Works.

Part of the background for expanding CLC's mandate was an Auditor General's report that found the then-current practices for selling federal land ineffective and non-transparent. The report criticized land-sale practices for disposing of land "as is" without attempting to enhance its value for development prior to sale, for failing to make use of open, competitive bidding, and consequently for failing to realize value on behalf of federal taxpayers. The Auditor's Report contained examples of buyers' "flipping" properties purchased from government, almost immediately, at multiples of their purchase price.

CLC's mandate in the broadest sense is to professionalize federal land disposition, so as to optimize federal monetary receipts consistent with local economic development and other values. These other values include environmental sustainability and participation of First Nation indigenous groups in development and its benefits.

The mandate for CLC is buttressed by legislation requiring federal agencies in Canada to identify surplus property and transfer it to the private sector or local government. The Financial Administration Act makes it illegal for federal agencies to hold property that is not used for public service or planned for future service use.

Land Inventory and Surplus Designation. Under the Canadian system, federal agencies are required to compile records of their landholdings in a common format. These records then are combined in the Directory of Federal Real Estate. All federally owned property is listed there. The Directory is available for public inspection and use.

Agencies are required by law to identify their surplus properties. Departments' lists of surplus properties go to the Treasury Board Secretariat and Treasury's Steering Committee on Real Property. Property is classified as "strategic" or "routine." "Strategic" refers to property in urban locations that has significant development and financial impact. Surplus strategic property is transferred to CLC for management and disposition. "Routine" property—typically, low-valued rural property—is sold directly by the Department that owns it.

In addition to Department-initiated designations of surplus property, the system uses external prompts to identify surplus land. The Treasury Board issues instructions to Departments regarding criteria that should be met for retaining land. Canada Lands Company also takes a pro-active role in identifying surplus properties. It inspects various federally owned parcels that appear to be unused or under-utilized. It meets with Department and Treasury Board officials to make the case that some of these parcels could be released to the market through CLC.

Mode of Operation. CLC deals only with properties identified by government as surplus and strategic. A unique aspect of CLC's operation is that it is mandated to buy properties from the federal government at market value. It negotiates sale terms with the Department owner and Treasury Board. The government commissions independent land appraisals prior to sale. CLC does its own market analysis.

Given that CLC is the only authorized buyer of federal strategic properties, sale prices in principle could be distorted by the lack of market competition. However, audit results confirm that sale prices approximate those that would be reached in competitive, arm's length transactions—with the exception of the financing arrangements described below.

When CLC buys a property from government, it issues a non-interest bearing promissory note to Treasury in return for the property. The promissory note is paid off as CLC realizes income from sale of the property to the private sector. In addition, CLC pays a profits dividend to the government consolidated fund. CLC has consistently generated profits and paid dividends to government.

CLC views its principal role as a value-creator for the property it receives from government and sells to private parties. Much of this value added derives from master planning of property development, coupled with negotiations with local government to obtain planning approvals and density permits. Planning sovereignty rests with local authorities. They retain the right to approve land-use allocations and zoning. Most of the properties CLC oversees are developed as residential and mixed-use communities. CLC may sell at the stage of development approval, or commission private-sector developers to build out the community and share in final receipts.

Incentives. What are the incentives for federal agencies and local governments to participate in this process? From the federal government side, there is the legal requirement to dispose of surplus property, and to do so exclusively (for strategic property) through CLC. However, the system also contains financial incentives. CLC payments go to the Consolidated Fund, but they are earmarked for the selling agency, provided it proposes an approved use of the funds through the budget process. In addition, agencies are able to shed costs of maintenance and upkeep of unused or under-used properties. The costs of maintaining de-commissioned military bases, in particular, can be very substantial.

For local governments, there are dual incentives. Development projects provide a boost to the local economy. CLC's award-winning community development plans have helped urban areas expand in environmentally responsible fashion. Moreover, CLC's ownership transfers land from federal ownership (where it is exempt from local property and other taxes) to the local property tax rolls. Once in the hands of CLC, even before physical development commences, the property is subject to all local taxes and regulations. These incentives have made local governments willing partners in the federal land disposition process.

Results. CLC to date has purchased from government 13 de-commissioned military bases for re-development, as well as numerous other, smaller parcels. A subsidiary manages the large-scale re-development of Montreal's port area, described in Part I. CLC has operated at a profit, and maintained successful political relations with federal agencies, local governments, and Parliament. It also has been a leader in expanding the criteria by which development success is measured. It has introduced a Balanced Scorecard containing 34 different financial and non-financial targets, with metrics for measuring success on each dimension. These range from specific measures regarding environmental impact to measures of community satisfaction with development projects, and from measures of First Nation participation in the development process to measures of financial return on equity.

LESSONS FROM INTERNATIONAL EXPERIENCE: PART II

It is dangerous to try to draw conclusions for India from the operation of two institutions. However, the basic design of Liegenschaftsfonds and Canada Lands Company suggest factors that should at least be taken into account in implementing a land disposition policy.

Value of Quasi-Independent, Professionally Managed Institutions. Both Liegenschaftsfonds and Canada Lands Company place operations in the hands of real estate professionals one step removed from politics. The institutions operate more transparently than most government agencies. Their land inventories are open to inspection by the public and by potential purchasers. They have been able to work as effective intermediaries between higher-level government, local government, developers, and communities. They have been able to capture for government the value-added that comes from negotiating zoning and density permits prior to land sale.

Above all, both institutions have been able to move ahead expeditiously with land disposition, consistent with the guidelines contained in their mandates. Well-defined rules have protected them from political intervention. Institutions of this type could be considered appropriate at different levels of Indian government: to co-ordinate state land disposition across state agencies, to implement land disposition for a large landholder like a Major Port Trust or Railways, or to operate at the level of an individual city or urban region.

Need for a Political and Policy Mandate. Merely creating an institution and staffing it with qualified real estate professionals does not guarantee successful operations. Of greatest importance are (i) the policy mandate from government, making clear what the organization is to do, and (ii) the political mandate ensuring that it is free to move ahead, with accountability but without interference, in implementing policy. Canada Lands Company, as a non-agent Crown Corporation, enjoys the clearest political mandate of this kind. Canadian law specifically prohibits government or political agents from any involvement with CLC's operations. Berlin's Fund retains tighter government and parliamentary oversight, but it is able to report its operations in a well-defined, orderly manner, while executing its policy mandate.

Identifying Surplus Public Land. One lesson from international experience is that government agencies, on their own, rarely are aggressive in identifying surplus land that can be better used by others. Quasi-independent intermediary organizations like CLC can be helpful in calling attention to under-used landholdings and pressing for their fuller utilization, including by disposition.

Other countries' experience offer additional examples of external prodding to identify surplus lands. Great Britain in 2010-11 launched what it has termed a "Community Right to Reclaim Land." Any individual or community organization can identify apparently abandoned public property or unused public land and file a Public Request to Order Disposal—that is, a request that the land be sold so that it can be brought into use. To make this policy work in practice government has required all central departments to prepare inventories of their landholdings and make these available to the public. Requests for disposal of all but the most sensitive properties are supposed to be handled by departments alongside other planning casework, without the escalation to Ministerial level that has delayed past initiatives of this type. Government estimates that there are some 63,750 hectares of previously developed, now-unused, government-owned land potentially available for reclamation.

In the Indian context, a process that specifically authorizes Public Interest Litigation groups to identify unused public properties and file Public Requests to Order Disposal could accelerate land disposition.

FURTHER READING FOR PART II

Canada Lands Company. *Annual Report, 2010-11*, March 2012. available at www.clc.com

Canada Lands Company. *Corporate Plan Summary, 2010—2011 to 2015-2016*, 2011. available at www.clc.com

Department of Communities and Local Government (UK). *Community Right to Reclaim Land,* issued October, 2011.

Kaganova, Olga. *International Experiences in Government Land Development Companies: What Can Be Learned?* Urban Institute. IDG Working Paper 2011-1. February, 2011.

Liegenschaftsfonds, Berlin. *Reporting on Our Experiences.* Berlin. February 2011.

McIvor, Gordon. "Presentation to Steering Committee on Canada Lands Company." Mumbai, March 2012

Mole, Steven. "Improving Property Asset Management in the Central Civic Estate." 2011. Available at ogc.gov.uk/better_asset_management.asp

PART III: EARMARKING REVENUES FOR INFRASTRUCTURE INVESTMENT

How should the revenues generated by public land sales or land leasing be used? Should they be earmarked for specific types of expenditures or channeled into specialized institutions designed to receive the revenues and invest them?

Purpose and Limitations of Earmarking. Earmarking is a means of automatically directing revenues to a designated expenditure purpose. The general category of "earmarking" covers a number of different arrangements. Revenues may be earmarked for the capital budget and used for any of the expenditure items therein. Earmarked revenues may be tied to very specific types of expenditures or to individual projects. Earmarking rules may split up total revenue receipts and designate specific percentages of the total for different uses.

The purpose of earmarking normally is to boost spending on targeted types of expenditure, or to ensure a certain level of spending for earmarked activities. At a general level, earmarking has been criticized because it takes expenditure decisions out of the hands of elected officials and limits their flexibility to respond to voter preferences. The rigidity of earmarking can be especially problematic in times of fiscal stress, when ministries of finance would prefer to make all spending categories eligible for cutbacks, rather than be constrained by earmarking rules.

Earmarking also has practical limitations. The revenues generated from earmarked revenue sources may exceed, or fall short of, optimal expenditure levels, depending upon economic factors or other circumstances. If spending is constrained by dependence on earmarked revenues, the process may result in less investment than desirable and possibly less investment than would have taken place if projects were financed from general revenues. If earmarked revenues exceed optimal expenditures, the process may result in wasteful or low-productivity investment to use up the available revenue. If earmarked revenues are just part of total budget financing for targeted expenditures, other financing for the expenditure item may be adjusted upward or downward to take account of fluctuations in earmarked revenues. The net impact of earmarking on spending levels then may be minimal.

Part III of this report is divided into six sections. The first section summarizes the rules now in place for using revenues from public land disposition in a number of different countries and states, including those examined in Parts I and II. Just as specialized institutions have emerged for handling public land disposition, so specialized institutions have been created to receive earmarked public revenues and handle their investment. The second and third sections consider whether the models of Road Funds and Sovereign Wealth Funds, respectively, have potential applicability for linking revenues from land sales to urban infrastructure investment. Hong Kong is one of the few places in the world that currently has specialized institutions and specialized rules for connecting the revenue from general land leasing to investment in urban public works. The fourth section examines more closely the workings of Hong Kong's system. In practice, much of the earmarking of land revenues to urban infrastructure investment occurs at the project level, where revenues from land sales are used to help pay for investment in metro construction, roads or other facilities. Project investment increases land values, including the value of publicly owned land. Part of the increment in land values can be captured to help finance investment costs. The fifth section examines the linkage between public land revenues and urban investment at the project level. The final section considers lessons relevant to India from the review of international experience.

CURRENT PRACTICE REGARDING THE USE OF REVENUES GENERATED BY PUBLIC LAND SALES AND LAND LEASING

In a government accounting system that distinguishes between the capital budget and the operating budget, asset sales generally are recognized as a source of capital income. It is becoming more common for regulations to require that revenue generated by the sale of public land or land-use rights be used for purposes covered by the capital budget, or earmarked for some specific sub-set of capital budget activities.

The United Kingdom requires that proceeds from the sale of local public property go into the capital budget, where they can be used to finance new investment or pay down debt. In Serbia, revenues from long-term leasing of land-use and development rights must, by national law, be earmarked for local utilities and used for utility infrastructure investment. In Ethiopia, the new national constitution requires that at least 90 percent of proceeds from local governments' upfront leasing of land-use and development rights be used to finance local infrastructure investment. The State of California (United States) a few years ago passed legislation earmarking the proceeds of all state land and property sales for servicing a special issue of Debt Financing Bonds.

Of the land disposition arrangements discussed in Parts I and II, Berlin's Liegenschaftsfonds deposits revenues from land sales in the state consolidated fund, but earmarks a portion of receipts from each land sale (between 10 and 15 percent) to the local government borough where the site is located, to help finance the local infrastructure investment required to support higher-density development. Canada Lands Company makes payments into the federal consolidated fund. Revenues in turn are earmarked through the budgetary process for the Department selling a land parcel, provided the Department prepares a satisfactory plan for expenditure. In Australia, revenues from federal land sale go into the consolidated fund. However, land assets themselves are preferentially targeted for below-market transfer to local government and community groups for housing and community activities. [A similar preferential targeting of land assets is used in the UK.] Canberra is the only Australian city that retains public ownership of all land. Revenue from land leasing in Canberra is dedicated to the capital budget and used to finance local infrastructure. China does not have legislation dictating how revenues from municipal land leasing are to be used. However, the national government has provided clear instructions that these revenues are to be used to finance local infrastructure.

The Philippines illustrates the application of more detailed earmarking rules. Republic Act no. 7227 authorized the sale of land in Metro Manila military compounds formerly used as US military bases. The first land sale, of Fort Bonifacio, realized roughly US$800 million. Act 7227 specified how revenues realized from the sale of land in military compounds was to be used: 50% was to be invested in infrastructure to develop Special Economic Zones at other former US military sites; 32.5% was to be used for modernization of military equipment and housing for military personnel; 4% was dedicated to provision of housing for the homeless; 2.5% was allocated to the three municipalities within Metro Manila most affected by re-development of Fort Bonifacio; and 10% was to be contributed to the general budget of the national government.

It is difficult to track the ultimate impact of these revenue allocation rules. Revenues are fungible once they enter the budget process. The clearest connection can be established when earmarked land revenues finance the bulk of local infrastructure investment. Analysis of local infrastructure spending in Ethiopia reveals that investment expenditures fluctuate closely in line with receipts from land leasing. The constitutional earmarking of land revenues to infrastructure investment seems to have had the desired effect of significantly increasing local infrastructure spending, especially on road and water systems. Urban infrastructure investment in China has surged in line with revenues from land leasing. It is universally acknowledged that up to now essentially all locally financed infrastructure investment in China's cities has been financed by land leasing, either directly or by using land leasing proceeds to service bank borrowing and municipal bonds.

There has been considerable controversy in the Philippines as to whether the earmarking provisions of Act 7227 have been applied appropriately. Funds from land sale go into the consolidated fund and are allocated as part of the government budget process. Exact tracking of the use of funds from land sales is impossible. However, all of the expenditure purposes identified in Act 7227 have been supported, indicating that earmarking rules have had an impact on expenditures, at least at a broad level.

On occasion, earmarking rules have had perverse effects. The Little Hoover Commission of the State of California concluded that the rules dedicating all revenues from agency property sales to debt service in the consolidated fund had the effect of discouraging agencies from identifying surplus properties. It recommended that agencies identifying surplus property share in the proceeds of sale, as an incentive to active participation in property disposition. As matters now stand, the Commission found, agencies do not even fully report their property holdings to the state inventory system, out of fear that their properties will be identified as surplus and sold without any benefit to the agency.

SPECIALIZED FUNDS FOR MANAGING EARMARKED REVENUES: ROAD FUNDS

Earmarking links specified revenues to specified expenditure purposes. This linkage can be managed through the general budget process. However, as noted in the previous section, it is difficult to track the actual use of earmarked revenues within a fungible budget process. To provide more transparency, and to tighten the connection between designated revenue and designated expenditure, countries often have established specialized Funds for receiving and disbursing earmarked revenues. Only a few of these Funds attempt to tie revenues from public land disposition to local infrastructure investment. However, many of the Funds operate more broadly within the infrastructure sector. Their experience may offer lessons for the design of Funds dedicated to managing revenues generated by land sales.

Road Funds are the most common type of dedicated infrastructure fund. Many countries have instituted Road Funds at various points in their development. Road Funds generally seek to finance road and highway investment from earmarked revenue sources that serve as proxies for user fees. Some of these funds have been abandoned; some have been maintained. The summary below captures key elements of international experience.

Road Funds: International Structure and Experience

Developed Countries

United Kingdom: The UK established a Road Board (later Road Fund) in 1910, funded by dedicated vehicle excise duties. The original intent was to have earmarked revenues fully fund road investment. The legislation provided that no other claims were to be made on the Exchequer for road construction. Initially, the earmarked revenues led to a surge in road investment. However, the Road Fund was never fully utilized for road works. It regularly returned a surplus that was contributed to the general budget. Earmarking of revenues to the Road Fund was formally terminated in 1936, when vehicle excise duties became payable to the general budget account The Road Fund then was financed from general budgetary allocations. The Road Fund eventually was dissolved, in favor of funding sub-national road investment via government grants.

France: A special fund for road investment, *Le Fond Special d'Invertissement Routier,* was established in 1951. It was financed by dedication of 22% of fuel tax receipts. The revenue stream was intended to match expenditures on road investment. Initially, the Fund financed a substantial increase in road and highway expenditures. However, in the face of budget deficits, increasing portions of the fund's revenue were diverted to the general budget. The fund was terminated in 1981. A special fund for large investment projects, *Le Fond Special de Grands Travaux,* was operated from 1982-86, financed by a hike in fuel taxes. However, the road and highway portion of funding was offset by reductions in support from the general budget.

United States: The Highway Trust Fund is the source of federal financing for roads, highways, and bridges. It is supported by earmarked gasoline taxes. The initial impact of the Fund was to substantially boost highway spending. However, the gasoline tax rate has not been increased since 1993, while uses of the Trust Fund have been extended to mass transit and pedestrian projects, as well as hundreds of special projects written into budget bills by members of Congress. As a result, funding for highways is now generally regarded as inadequate. Capital investment in roads and highways in the US declined from 3% of GDP in the early 1960s to 1.1% in 2007, despite the earmarking provisions. In fact, the US experience illustrates many of the problems associated with a fixed revenue source imposed at a fixed rate. Revenues from fuel taxes are projected to decline in the future, as automakers adjust to fuel economy standards and high gas prices lead to cutbacks in miles driven. In recent years Highway Trust Fund revenues, which previously paid for all federal highway support, have had to be supplemented by financing from the general budget.

Japan: Japan established a Road Improvement Special Account in 1954 as part of the effort to rebuild infrastructure after World War II. It was funded by a dedicated fuel tax and later a tax on registration of vehicles. Tax rates were increased to finance the investment levels called for in the five-year investment plan. During the 1990s, general budget resources were used to augment spending on highway construction, beyond dedicated revenue levels, as part of a stimulus package intended to re-ignite the economy. In 2008 the Road Fund was integrated with five other special infrastructure funds, diluting its earmarking.

Developing Countries

Latin America: Most Latin American countries have at one time established Road Funds or Road Maintenance Funds, supported by dedicated fuel taxes. The funds often were created with support from international donor agencies, and had provisions that were supposed to protect them from general budget claims. However, none of these funds has survived. All have been folded into the general budget under fiscal pressure. Some of the funds, as in Colombia, financed earmarked intergovernmental transfers, which in turn were used by municpalities to back borrowing for local road works. When the earmarked transfers were eliminated, many municipalities defaulted on their debts.

Asia: A variety of Road Funds exist in Asia. International organizations have perceived a bias in favor of new construction over maintenance, which they believe could be corrected by Road Funds. In 2003 the Asian Development Bank recommended the establishment of off-budget Road Maintenance Funds as separate institutions, under the governance of Boards of experts. The recommendation was made on the grounds that politicians neglect maintenance and that maintenance spending therefore should be removed from the political realm. The experts sitting on the Boards of Road Maintenance Funds were supposed to have authority to raise dedicated fuel tax and vehicle registration tax rates to the levels needed to adequately fund road maintenance. However, no country has adopted such a system.

Impact of Dedicated Road Funding. What impact has earmarking of revenues via Road Funds had on road investments? In his comparative analysis of Road Financing, Yamaguchi found that the level of national revenue generated from fuel taxes was positively associated (with a lag) with national investment in roads and highways in the United States and Japan, where these revenues are earmarked to Road Funds. In France and Germany, two countries that do not have Road Funds or other forms of earmarking for highway spending, there was no relation between national fuel receipts and national highway investment. He concludes that historically Road Funds have performed at least a portion of their earmarked purpose: broadly linking expenditures to levels of earmarked revenues. Whether this linkage remains desirable in an era of declining fuel tax receipts is a separate question.

As our brief review of Road Funds suggests, introduction of these Funds led initially to boosts in road and highway spending. After a period of operation, the majority of Road Funds were folded back into the general budget, often in response to overall fiscal pressures. This experience suggests that specialized infrastructure funds may best be viewed as intermediate-term devices for increasing expenditures for targeted investment purposes. This is likely to be especially true for Funds financed from public land sales. Public land appropriate for sale is limited. Revenue receipts from this process are not recurring revenues, but asset sales that cannot be replicated indefinitely. It therefore is appropriate to design an institution to receive earmarked revenues that is intended from the outset to have a limited life.

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India's Experience

India's experience with its Central Road Fund parallels international experience, though the Central Road Fund still is in the stage of increasing revenues and targeted expenditures. The Fund, originally created in 1930, was revived from long-term dormancy in 2000 when the government decided to make road investment a national priority. A special cess on petrol and high speed diesel was imposed and dedicated to

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the Road Fund. Originally, the cess was imposed at R 1 per liter. After two increases, it now stands at Rs. 2 per liter. In 2009-10, the last year for which final data are available, the dedicated revenues generated 16,591 crore for the road sector, almost triple collections in 2004-05.

The Central Road Fund is essentially an accounting device within the central budget. The Fund has no institutional management or ability to contract road expenditures. It has, however, served its purpose of increasing central spending on roads. Dedicated cess revenues finance essentially all of the central government's spending on rural roads and grants to states for road financing.[62] They have allowed the government to sustain spending on national highway development in the face of sharp cutbacks in international donor grants and loans, as shown below. This is especially true since the flow of future cess revenues is used to back the borrowing that helps finance current capital expenditure.

Table 1
Sources of Financing for National Highway Authority (%)

Source	2005-06	2009-10
Dedicated Fuel Cess	40.0%	81.4%
Donor Grants & Loans	33.8%	3.7%
Borrowing	15.6%	12.7%
General Budget Suppo	8.6%	2.2%

Source: Receipt Budget, Government of India, 2011-12

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SPECIALIZED FUNDS FOR MANAGING EARMARKED REVENUES: SOVEREIGN WEALTH FUNDS

Sovereign Wealth Funds offer another model for managing earmarked revenues. Interest has multiplied of late in using Sovereign Wealth Funds as vehicles for financing infrastructure investment. The heightened interest reflects both the perceived underinvestment in infrastructure projects and the precarious nature of bank lending, historically the principal source of infrastructure finance in Europe and Asia.

In November, 2011, for example, George Osborne, Chancellor of the Exchequer of the United Kingdom, stated in a public speech that Britain's Private Finance Initiative was essentially dead in the water as a source of future infrastructure finance. Bank lending for infrastructure was being cut back. Public policy limited aggregate new borrowing, based both on banks' weak capitalization and the already high levels of debt in the public sector. The banking sector, said Osborne, could not provide the funds that would be needed for

[62] Cess revenues are allocated as follows: Of the first Rs1.5 per liter, 50% of cess revenue from high speed diesel is allocated to rural road development. The remainder (i.e., 50% of the cess on high speed diesel and all of the cess on petrol) is divided 57.5% for the National Highway Authority, 12.5% for construction of roads over/under bridges and rail crossings, and 30% for grants to states for state roads. An additional R0.5 per liter, imposed in 2005, is allocated in its entirety to the National Highway Authority and the National Highway Development Programme.

new infrastructure investment and to roll over outstanding infrastructure loans. A new model of infrastructure finance was needed that would draw more extensively on pooled equity.[63]

Sovereign Wealth Funds are an example of this 'new model' that may have relevance for earmarking revenues from land sales for infrastructure investment.

Growth of Sovereign Wealth Funds. Sovereign wealth funds have become one of the fastest-growing forms of institutional finance over the last decade. At least 19 new sovereign wealth funds (SWFs) have been established since 2005. Total assets are estimated by the Sovereign Wealth Fund Institute at $4.8 trillion. Infrastructure is a growing target of SWF investment. Sixty-one percent of SWFs reported investing in infrastructure as an asset class in 2010, as opposed to 47% in 2009.

In terms of their funding, SWFs fall into two broad categories. One group draws upon dedicated revenues from natural resource exploitation, especially from oil and gas or mineral extraction. The majority of SWFs are of this type. They range from Abu Dhabi's SWF—long the world's largest—or Kuwait's, both based on oil revenues, to Chile's Social and Economic Stabilization Fund, based on revenues from copper mining, to sub-national funds like Alberta (Canada's) Heritage Savings Trust Fund.

SWFs in the second category are funded by excess foreign exchange reserves. The largest of these are China's two Investment Corporations, but the SWFs of Singapore and South Korea are also funded by foreign exchange reserves.

Norway's Sovereign Wealth Fund

Norway's Oil Fund (now formally titled Government Pension Fund—Global) illustrates the workings of a natural resource-based SWF. The Oil Fund reportedly has become the world's largest SWF, having a value of $570 billion as of June 30, 2011. (Abu Dhabi's SWF does not publish its valuation, but is estimated to be in the same range). The rationale behind Norway's Oil Fund and its earmarking of oil revenues have potential application to the design of an institution drawing upon the proceeds of land sales.

Norway's fund was created because it was recognized that the discovery of North Sea oil would provide a large but temporary inflow of wealth. The Fund is designed to receive earmarked oil revenues, invest the revenues, and provide a source of income for public finance in support of future generations when oil and gas resources have been exhausted.

[63] On Nov. 29, 2011 Osborne formally unveiled the "new platform" for infrastructure finance in Britain. It targeted a pool of 20 billion pounds to be raised from pension funds, backed by an agreement in principle with the National Association of Pension Funds to invest more heavily in infrastructure. The day before, Nov. 28, the CEO of China Investment Corporation (China's Sovereign Wealth Fund) published an op-ed article in the Financial Times indicating China's "keen" willingness to invest in British infrastructure if local managers shared in the risk.

Earmarked Revenues. Part of the income stream into the Oil Fund comes from leases of exploration and production rights from undersea land owned by the State of Norway, and thus analogous to other types of publicly owned land. The Fund also receives revenues from taxes on oil and gas production, from directly owned state interests in producing fields, and from dividends paid by oil companies in which the State has a large ownership interest.

Earmarked Outflows. The primary financial obligation that the Fund is designed to help finance is the burden of future public pension payments and other social expenditures required by an aging society. Overall, the Fund aims to smooth out the benefits of the one-time exploitation of Norway's oil wealth, so that future generations benefit from it. With this goal, the Fund invests all of its revenues. It is estimated to hold 1% of all publicly traded equities in the world and 1.8% of European traded equities. The Fund currently pays out a 4% annual distribution to Norway's consolidated budget, similar to the payments that an Endowment Fund would make.

Norway's Oil Fund is an example of passive asset management. A growing number of SWF's have a more "strategic" investment policy. These SWFs invest to support national or regional economic growth. Investments range from acquisition of overseas natural-resource supplies needed for future growth to investment in domestic infrastructure. The China Investment Corporation, Singapore's Temasek and Malaysia's SWF stand out in this respect.

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Alberta's Heritage Fund

The Heritage Savings Trust Fund (Heritage Fund) of the Province of Alberta (Canada) exemplifies a provincial-level, strategically managed SWF. It illustrates the potential and risks of such a Fund. The Heritage Fund was established in 1976 as a vehicle for translating the province's oil and gas resources into permanent public wealth. The Fund initially was earmarked 30% of the revenues that Alberta received from leasing province-owned land to oil and gas companies. Its sources of revenue therefore closely resemble those that would come from leasing or sale of urban lands.

During much of the 1980s and 1990s, the Heritage Fund pursued an active investment policy intended to promote Alberta's long-term growth. It became a primary source of capital project financing. The Fund invested more than C$500 million in major irrigation projects designed to strengthen Alberta's agricultural sector. The Fund financed construction of a large Grain Terminal. It invested in Syncrude (Alberta's major oil sands producer) and Alberta pulp mills. It purchased bonds of provincial Crown corporations, including $1.0 billion of debentures issued by the Alberta Agricultural Development Corporation.

The Fund's operations became a source of controversy. For one thing, the magnitude of annual earmarked revenues escalated far beyond levels anticipated at the time of the Fund's creation. The value of oil and gas rights on provincial land skyrocketed, leading to ever-higher receipts from the Fund's 30% earmarked share of lease revenues. Moreover, both the public and provincial parliament felt that the Fund's investment spending was out of control. The Fund had no longer-term strategic investment plan. It tended to operate independently of parliamentary oversight in making investment decisions. The result was a seemingly scattered array of investment projects, some of them expensive failures, that ate up the entirety of incoming revenue.

In 1987, parliament revoked the earmarking of further lease revenues to the Heritage Fund. As the Fund continued to invest in capital projects, its corpus was drawn down. In 1997, the Fund was re-organized as a passive endowment fund. It no longer invests in strategic projects, but invests in public equity and debt markets. Income earned by the Fund is paid into Alberta's consolidated governmental account, after withholding an amount to offset inflation. As of Sept. 30, 2011, the Heritage Fund's valuation was C$14.7 billion.

Sovereign Wealth Funds are one form of wealth pooling that could be used for investment in infrastructure.[64] Other types of pooled equity funds also can be used to target infrastructure investment. Prominent among these are public pension funds. The Province of Ontario's (Canada) teachers and municipal employee pension funds have become worldwide leaders in local infrastructure investment. They have invested in British water supply and distribution systems, Australian toll roads, and won the contract to operate the Channel tunnel rail link for 30 years. The State of California announced in 2011 that its public pension funds would seek to invest $800 million in state infrastructure projects to boost the state's economic competitiveness. The Governor of the State of New York is attempting to put together a consortium of state and city pension systems to finance re-construction of the Tappan Zee Bridge north of New York City, and hopes to use this as precedent for a continuing pooled infrastructure fund.

In October 2011, India's Industry Ministry issued a discussion paper calling for creation of a Sovereign Wealth Fund to invest in infrastructure needed to support India's industrial development. The proposal was supported in principle by some members of the National Planning Commission. As the proposal was outlined, the Fund would operate as a strategic investor, much like the Alberta Heritage Fund. However, instead of financing itself from earmarked revenues, it would have been financed by an initial allocation of India's "excess" foreign reserves.

EARMARKING LAND PREMIUM FOR AN INFRASTRUCTURE FUND

China and Hong Kong have been international leaders in dedicating land revenues to urban infrastructure finance. Mainland China, in fact, adopted its infrastructure financing model based on Hong Kong's experience. The workings of Hong Kong's system therefore are instructive in assessing the benefits and problems that stem from earmarking land revenues for public works on a grand scale.

Hong Kong's Land Finance System. Hong Kong's land finance system is a legacy of British colonial rule. The British wanted Hong Kong to be self-financing, but also to be a free port and have low income tax rates. The solution was to finance government in large part through land rents. Government owns the land. It leases parcels to users (now typically for 50 years, renewable in practice), and charges ground rent.

[64] Abu Dhabi's Public Investment Authority is a large investor in a transaction in which Chicago leased its 36,000 parking meters for 75 years in return for an upfront payment in excess of $1 billion.

The land finance that funds public capital investment, however, does not come from these recurring rents. Rather, it comes from the upfront land premium charged when new leases are entered into. Most of the economic value of the land premium derives from the change-of-use planning authorization that accompanies a new land lease. Land is made available for sale at densities and uses that conform to government's design for urban development. A large part of the value of development rights is captured by the public sector upfront in the form of land premium charged to developers.

Under Hong Kong's system, revenue from land premium is earmarked to a separate account called the Capital Works Investment Fund (also known as the Capital Works Reserve Fund). Expenditures from the Fund can be used only for public works investments—primarily roads, highways, waterworks, and ports—and related land acquisition. Earmarked land premium is the Fund's only source of revenue.

Hong Kong's Capital Works Investment Fund

As a funding source for infrastructure investment, the Capital Works Investment Fund (CWIF) has performed well over time. It has consistently funded the great majority of public infrastructure investment in Hong Kong. Public works spending in Hong Kong grew by 18% in 2008/09, by 37% in 2009/10, and by 54% in 2010/11. CWIF was able to finance 83% of total public works investment in 2008/09, more than 100% in 2009/10, and 80%+ in 2010/11.

The reliance on land revenues for financing exposes Hong Kong's public finances to the volatility of property markets. Government's release of land for sale and development is timed in part to take advantage of favorable demand conditions. Between 2001 and 2003, Hong Kong suspended all sales of land for commercial use due to lack of demand and precipitously falling land prices in the wake of the Asian financial crisis.

The Capital Works Investment Fund is designed to smooth out steep fluctuations in earmarked revenue receipts. The Fund accumulates a surplus during years when the real estate market is strong, and spends down its reserves or issues debt against future land premium income in weak years.

Structure of the Fund. The Capital Works Investment Fund is solely a revenue and accounting arrangement. It has no employees or institutional incorporation of its own. As a financing operation, it is fully transparent. Projected revenues from land premium for the current year, as well as carry-forward reserves from the past, are spelled out in an Annex to the government budget. An accompanying statement explains which land parcels are planned for release to the market during the year. Actual revenue performance for the previous year is compared to budgeted amounts.

On the expenditure side, budgeted public works investments are listed by category and major project. Also identified are the officers of government that are authorized to approve CWIF drawdowns for each investment item—e.g., the Chief Civil Engineer or relevant Housing director. Expenditure heads cannot be exceeded without budget amendment.

Policy Issues. Although financially successful, the CWIF and the earmarked land premiums that fund it have stirred controversy in Hong Kong. First, it is charged by some that the earmarked revenue sources (budgeted at HK$65 billion, or roughly US$8.3 billion, for 2011/12) lead to excessive revenue generation and excessive investment in public works to support urban expansion. The fixation on capital works is alleged to result in low-productivity over-investment in infrastructure, and the accumulation of excess reserves derived from land premiums. Reflective of this backlash, the Hong Kong government reduced its capital- spending budget in 2011, For the first time it returned to citizens in the form of cash payments some of the reserves held by CWIF.

Criticism also has been leveled at the ties between government and 'tycoon land developers.' Land releases by the government involve such large and expensive parcels that only large developers can afford to participate in market auctions. For example, in 2011/12, the Government's Land Sale Programme calls for release of only 16 land parcels for residential development and release of land planned for commercial development in large-scale packages. Government and 'tycoon developers' are thought to have a shared interest in slow release of public land, in order to sustain high land prices and high governmental land premiums. The profits generated by land developers contribute heavily to Hong Kong's income inequality, which by some measures is the greatest in the world.

EARMARKING LAND REVENUES FOR INFRASTRUCTURE FINANCE AT THE PROJECT LEVEL: METRO SYSTEMS

A good part of international experience with earmarking land revenues for infrastructure investment occurs at the project level. Transportation projects in particular are good candidates for this type of project financing. The construction of roads, bridges, and metro systems creates access benefits. These benefits are capitalized into land values. When the land benefiting from a transportation project is privately owned, part of the increment in land values can be taxed away by government to help pay for the project. Variants of land-value taxation long have been used by public authorities as an instrument of infrastructure finance.

When the land benefiting from project investment is publicly owned, the process of cost recovery is even more straightforward. Project investment increases the value of publicly owned land. This land can be sold, and the proceeds earmarked to finance project expenses. Alternatively, a public authority can borrow to finance project construction, then use proceeds from the sale of value-enhanced land to repay its debt. Land-value creation plus earmarking of revenues from land sales to pay for project investment have provided the primary source of financing for urban infrastructure in Chinese cities.

The land-value impact of transportation projects is particularly pronounced in the case of metro rail systems. This has led to efforts to fully fund the capital costs of metro systems from appreciation in public land values.

Hong Kong's Metro System: the "Rail Plus Property" Model

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Hong Kong's metro system is one of the most intensively used metro systems in the world, carrying 4.6 million passengers per weekday. The existing system was built on what Hong Kong calls the Rail Plus Property model. The capital costs of the system have been financed almost entirely through the process of capturing gains in land values. These gains are caused by a combination of metro's construction and the high-density development rights that government allocates for development around metro stations.

Mass Transit Railway Corporation. The central player in Hong Kong's metro development is the Mass Transit Railway Corporation, or MTR. MTR originally was a public enterprise. It now is a partially privatized company, trading on the Hong Kong stock exchange, with majority ownership in the hands of the Hong Kong government. MTR not only is responsible for the greater part of Hong Kong's public transit system, but has built (and is continuing to build) metro lines in Hangzhou, Shenzhen, and Beijing in mainland China. It also operates, on a concession basis, metro lines in Melbourne and Stockholm, as well as rail lines in the United Kingdom.

In building Hong Kong's metro system, MTR has relied on its ability to capture the increment in land and development value caused by metro stations and grants of development rights. Land is not granted free to MTR. Rather, the government sells to MTR long-term Land Use Rights based on market value in current use, prior to metro construction. The government simultaneously allocates high-density development rights to MTR around station nodes. Metro routes are planned by government in collaboration with MTR. Stations are located at nodes designated by government planners for higher density development. The Town Planning Board has final authorization regarding site development plans.

The combination of metro access and planning approval for densification produces much higher land prices. MTR either sells the enhanced Land Use Rights to developers, or develops properties in partnership with developers, retaining ownership. MTR builds the metro line and purchases equipment for its operation without further charge to the government.

As a result of this process, MTR has become a large property owner and a key player in Hong Kong's development. At the end of 2010, it owned 12 shopping malls with 225,000 square meters of retail space, 18 of the 20 floors of the International Finance Centre with 41,090 square meters of office space, as well as several large land parcels in different stages of development. MTR managed more than 81,000 housing units, most on land whose development rights had been sold to developers by MTR.

The importance of property profits to construction and operation of Hong Kong's metro system under this model can be seen from the summary in Table 2 of MTR revenues and profits. It refers to MTR's operations in Hong Kong, excluding overseas operations. In both 2007 and 2010 profits from property accounted for all of MTR's profits. The aim of rail operations is to break even on passenger fees. Property profits take the form of realized gains on sale of land use rights and developed property, profits from rental operations on property for which MTR retains ownership, and the "mark-to-market" gains in the value of MTR's land and property holdings.

Table 2
MTR Sources of Revenue and Profit

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(Millions of HK Dollars)

Item	2007	2010
Revenue from Rail Operations	7,115	12,459
Total Profit before Taxes	18,265	14,762
*Profit from Property Development	8,304	4,034
*Profit from Property Rental & Management	3,575	6,915
*Profit from Increase in Fair Value of Property Asset	6,609	4,074

Policy Issues. From an infrastructure perspective, the attraction of the Rail Plus Property model is that the rail system gets built quickly, without cash expenditure by the government. The location of rail lines and rail stations gives shape to the density patterns that town planners want to promote.

The model, however, has a top-down character that recently has been challenged. Local communities have demanded a greater voice in the location of new lines that will go through their communities, and in density decisions. MTR's 2010 Sustainability Report acknowledges that the company has had to adjust to an "increasingly assertive Hong Kong society that seeks to participate in and direct public policy." Public participation in land-use decisions has reduced the ability of government and MTR to plan metro lines and development near metro stops around the principle of maximizing land-value gains.

Difficulties in implementing the Rail Plus Property model in some locations have led MTR and the government to diversify their financing approach. While some of the lines now under construction continue to use the Rail Plus Property model, others are being financed by government and managed by MTR on a concession basis. One line has been funded in part by a government grant to MTR. The grant was necessary to supplement the profits that can be generated from land development, now that development is subject to stricter limitations.

The Rail Plus Property model essentially builds an operating metro rail system in exchange for land development rights. The model has precedent outside of Hong Kong. It was used to finance Tokyo's underground system and, more than a century ago, portions of New York City's subway system.

India's Experience. Over the past several years, India has experimented with different models for financing metro rail construction, including variants of the Rail Plus Property model. The metro system in Hyderabad originally was to be built in this way. The signed contract called for the developer to build and operate the rail system without charge to the government. The contract even called for the developer to make a capital contribution to government— a negative capital grant. In return, the contractor was to receive land development rights along the rail corridor. However, the agreement collapsed with the property market in 2008 along with the failure of the developer. Hyderabad has retained elements of land development in its present financing model, but has encountered obstacles in acquiring title to private properties along the proposed rail route.

Bangalore has compiled experience with another approach to taking advantage of publicly owned land. It designed its metro rail system to traverse, as far as possible, government property. It has been reported that 74.3 percent of the total land used for Bangalore's metro (the first segment of which was opened for operation in October 2011) comes from 57 government parcels, including parcels owned by Defence. Most of these parcels were vacant. Compensation for public land was fixed at guidance value as notified by government—a much lower price than paid in acquisitions of privately held land. As a result, the 74.3 percent of total land acquired from public entities accounts for only 33.6 percent of total land acquisition costs. At least one large commercial center will be built on excess government land to generate property profits.

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LESSONS FROM INTERNATIONAL EXPERIENCE: PART III

Part III has covered a wide variety of institutional experience. The principal lessons from this review are:

Advantages and Limitations of Earmarking. Earmarking revenues can be an effective way to boost spending for priority expenditure purposes. However, it is difficult to sustain an earmarking system in equilibrium. Earmarking can generate "too much" revenue—in the sense that the governmental system is not equipped to invest efficiently the inflow of funds. When this happens, revenue either accumulates unspent in the receiving Fund or the Fund invests in low-productivity projects in order to expend revenue receipts. Both results can be observed internationally and in India. At the other extreme, the earmarking system can generate "too little" revenue—in the sense that the revenue received is able to finance only a small portion of desired investments, or is received in an unpredictable manner that makes it difficult to draw up investment plans. Lumpy receipts from public land sales can be especially difficult to plan for.

These considerations suggest, first, that earmarking should be viewed as an intermediate-term strategy, designed to finance catch-up investment. The strategy is likely to be most effective if it starts with a series of well-defined, prioritized investment projects that cannot be financed from ordinary revenues. Incoming earmarked revenues from land sales could then be applied to incremental projects in their prioritized order. This strategy could be applied within a single institution like Railways or by state government across an array of urban infrastructure investment projects.

What Type of Institution Should Receive and Disburse Earmarked Revenues? Under present arrangements, revenues from land sales typically flow either into the government consolidated fund, where they may carry an earmarking label, or into a special Fund. A specialized Fund may operate solely to receive and disburse monies, or it may also be responsible for investment prioritization.

Of these choices, a specialized Fund limited to receiving and disbursing monies seems preferable in most instances. Once revenues flow into a consolidated fund, they tend to lose their earmarking characteristics. This is true even if, in a legal sense, the revenues received are assigned to the correct expenditure line item. In a consolidated fund, all monies are fungible. Earmarking at best can ensure that expenditures for the earmarked purpose reach the earmark threshold. There is no further accountability.

Investment prioritization is not an appropriate responsibility to delegate to a professionally managed, quasi-independent institution. It is one of the core functions of government. Government may choose to contract with various institutions for implementation of project investments. However, combining the functions of revenue receipt/disbursement with investment prioritization/implementation in a single quasi-independent institution invites the creation of power centers outside of government.

The Capital Works Investment Fund of Hong Kong exemplifies the single-purpose Fund. Its job is to ensure that earmarked revenues go into a lockbox, are withdrawn only for approved and budgeted investment purposes, as authorized by the designated government officer, and that withdrawals do not exceed budgeted amounts.

Transparency of Operations. Public trust in land-based financing requires transparency in operations. Incoming revenues from earmarking, as well as the allocation of earmarked revenues to investment

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projects, should be a matter of public record and reported in transparent fashion. The Sovereign Wealth Fund Institute has devised a 10-point Transparency Index that serves as a standard for SWFs and other Funds. Among other things, the Transparency Index rates Funds based on:

(i) Clear reporting of sources of revenue and disbursements
(ii) Timely publication of Annual Reports
(iii) Independent audits, up-to-date and available for public inspection
(iv) Clear statement of operating strategy, moving forward
(v) Clear statement of institutional organization, including lines of control between the Fund and higher-level institutions and between the Fund and subsidiaries
(vi) Identification of management structure, individual officers, and their responsibilities
(vii) Availability of a website, easily accessible, up-to-date and containing all of above information

Land-Based Financing of Metros. It is notable that Hong Kong's Mass Transit Railway Corporation is moving away from 100% financing of metro construction through capture of public land value appreciation. Such a model not only requires that the public sector own essentially all of the land around railway lines, but that authorities be able to plan density development so as to maximize the capture of land-value gains. These conditions are unlikely to be satisfied in India. It therefore is appropriate to lower the target for land-financing of metro construction, while retaining the principle.

Designing metro systems so that they traverse publicly owned land, to the extent possible, is a first step. Working out arrangements with different public sector landowners, so that land can be acquired for the least cost possible, is a second step. Capitalizing on opportunities to create and capture land-value gains is the third step. Metro construction has the potential for creating such large gains in land values that government should be able to capture a significant portion of construction costs through land sales or land development.

ADDITIONAL READING FOR PART III

GENERAL

Peterson, George E. and Olga Kaganova. 2010. *Aligning Regulation of Subnational Land Assets with Subnational Debt Regulation.* World Bank Working Paper.

Peterson, George E. 2009. *Unlocking Land Values to Finance Urban Infrastructure.* World Bank and PPIAF.

ROAD FUNDS

Asian Development Bank. 2003. *Road Funds and Road Maintenance.* Manila. [Analyzes underfunding of maintenance and recommends institutionally separate, off-budget Road Funds]

I • D • F

Congressional Budget Office. 2011. *The Budget and Economic Outlook: Fiscal Years 2011 to 2021.* Washington, DC. [Projects fuel tax receipts and under-funding of Highway Trust Fund]

Government of India, Ministry of Road Transport and Highways. 2011. *Guidelines for Investment in Road Sector.*

Government of India. 2011 and 2010. *Economic Survey 2011-2012, Economic Survey 2010-2011.* [Chapter of 'Energy, Infrastructure and Communications discusses road spending and revenue/spending from Central Road Fund.]

Government of India, Ministry of Finance, Department of Economic Affairs. 2009. *Position Paper of Roads Sector in India.* [Financing strategies, role of PPPs.]

Roth, Gabriel. 2010, *Federal Highway Funds.* Cato Institute. Washington, DC. [Criticizes non-highway spending from Highway Trust Fund.]

U.S. Highway Trust Fund. "Solvent through Sept. 2012." 2011 (Jan.) Testimony of Secretary Ray Lahood before Congress.

World Bank. 2008 (Dec.) *Assessment of Road Funds in Southeast Asia Region.*

Yamaguchi, Katsuhiro. 2008. *Funding System and Road Transport: International Comparative Analysis.* Discussion Paper E-08-003, Graduate School of Public Policy, University of Tokyo.

SOVEREIGN WEALTH FUNDS

Government Pension Fund—Global, Annual Report 2010. 2011. Oslo.

Heritage Savings Fund, Alberta. 2011 Annual and Quarterly Reports at www.finance.alberta.ca/business/ahstf

Hudson, Michael. 2011 (March). "What Does Norway Get Out of It Oil Fund, If Not More Strategic Investment?" Working Paper No. 657, Levy Institute of Economics, Bard College.

Sovereign Wealth Fund Institute. *2011.* www.swfinstitute.org [Summary descriptions of all Sovereign Wealth Funds, ratings by asset values, transparency index, discussion of growing interest in infrastructure investments]

HONG KONG CAPITAL WORKS INVESTMENT FUND

Capital Works Reserve Fund. *Memorandum Annex to Hong Kong Budget. 2011* at www.budget.gov.hk [provides full financials, method of operation, investment priorities]

Capital Works Reserve Fund. 2011. *Audit Commission Report.*

Brown, Stephen and Christine Loh. 2004. *The Political Economy of Land.* Civic Exchange. Hong Kong. [critical of ties between government and big developers]

Poon, Alice. 2011 (Oct.) *Hong Kong's Land Policy: A Recipe for Social Trouble.* [Argues that government land policy drives up land prices and housing costs]

HONG KONG'S MASS TRANSIT RAILWAY [MTR] and OTHER TRANSPORTATION

MTR Corporation Limited. 2011 and 2010. *Annual Report 2010, Annual Report 2009* [full discussion of financials, expansion projects in Hong Kong and sources of financing, discussion of overseas projects, especially China, with less detail on sources of financing.] At www.mtr.com.kh/eng

MTR Corporation Limited. 2011. *Sustainability Report 2010.* At www.mtr.com.hk/eng

Transportation Research Board. 2011. *Leveraging Land Development Returns to Finance Transportation Improvements.* Washington, DC

Harvey, Steve and Ken Powell. 2007. *Tax District Financing: A Guide to Funding Infrastructure through Land-Serviced Bonds,* National Association of Homebuilders. Washington, DC.

Borrero, Ochoa; Esperanza Duran, Jorge Hernandez, and Magda Montana. 2011. *Evaluating the Practice of Betterment Levies in Colombia: the Experience of Bogota and Manizales.* Working Paper. Lincoln Institute of Land Policy. Cambridge, MA

PART IV: COMPENSATION IN PUBLIC LAND TRANSACTIONS

Compensation has emerged as one of the most controversial aspects of monetizing public lands. "Compensation" is most commonly addressed in the context of compulsory land acquisition by government. When a government exercises its right of eminent domain, it acquires land in private ownership for a "public purpose," as defined by the law[65]. "Interested parties" affected by the acquisition have a right to claim compensation. The interested party may have a full interest, as in the case of an owner holding land title, a partial interest, as in the case of a tenant, or a not fully defined interest, as in the case of a de facto occupier. Compensation policy determines how the different interested parties will be compensated and the rules that protect against government abuse of power in compulsory land acquisition.

Our focus in Part IV is not the acquisition by government of title to new land parcels. As elsewhere in this volume, we are concerned with land already owned by government or by a public agency. The action in

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65 The scope of "public purpose" is illustrated by India's Land Acquisition Act. Under the Act, the "public purposes" justifying compulsory land acquisition include, among others: (i) planned development of land from public funds in pursuance of government policy, (ii) acquisition by a corporation owned or controlled by government, (iii) acquisitions for the purpose of carrying out any educational, housing, health or slum clearance initiative, and (iv) any other development scheme sponsored by the state.

question is government's sale, lease, or re-development of th land. Nonetheless, there may be other interested parties with compensation claims. These include de facto occupiers of public lands. They also include parties who have existing Land Use Rights or contractual lease rights under the law. Even though government owns land title, it needs to re-acquire Land Use Rights, or clear the property of occupants, before it can sell unrestricted title to a developer or re-develop properties on its own. The compensation claims of affected parties stands in the way of swift land disposition.

In a broader sense, we can recognize still other interested parties that may have claims on compensation in public land sales. Some of these parties are public entities. Their claims were discussed earlier in the context of earmarking. Local governments that have to provide infrastructure to service the high-density development resulting from federal or state land sales are one interested party. The individual land-owning agency is an interested party, when government undertakes to sell or re-develop its land. The earmarking rules discussed earlier can be seen as forms of compensation for these interests. A system that allocates part of the proceeds of federal land sales to affected local governments, or shares proceeds between general government and the individual land-owning agency implicitly recognizes the different parties' claims to compensation.

In the end, there is a trade-off between compensation payments and the magnitude of funds available from public land sales for infrastructure investment. Throughout this volume, we have seen examples where increased compensation payments (or project re-design in the face of compensation claims) have reduced the net gain that governments can realize from land sales. As the head of Vietnam's Institute for Research on Urban and Infrastructure Development pointed out, after that country's reforms, more than half the cost of urban infrastructure projects in Vietnam now consists of compensation payments and re-settlement costs. This has slowed down infrastructure projects, as compared to earlier periods when government and developers could remove the occupants of urban land parcels, with scant regard for compensation or due process.

Relevance of International Experience. Part IV examines recent changes in compensation policy in Hong Kong and mainland China, two places that have made the most aggressive use of land transactions in financing urban infrastructure. The details of compensation policy in these locations may or may not have application in India. However, they illustrate two important points. First, a strong shift is taking place throughout Asia toward more vigorous protection of occupiers' land-use rights. Compensation policy everywhere is likely to further restrict governments' ability to extract net gains from re-development or sale of occupied public lands. This reality, in turn, should help define a realistic agenda for moving forward with a strategy to unlock land values for urban infrastructure finance.

Second, although compensation policy in mainland China and Hong Kong should in no way be viewed as a model for India, the fact that both places are attempting to spell out in full legal terms what their compensation policy is deserves attention. India has yet to define the compensation rights of occupiers of public lands, except on a case-by-case basis.

Compensation policy continues to evolve. It therefore is useful to remind ourselves of the desired end point of this process: a relatively stable and predictable set of rules that has social acceptance for adequately compensating parties that are dispossessed, while allowing government to capture a share of the value of land that it owns for purposes of infrastructure investment. Another way of stating the objective is: to identify ways that all of the stakeholders in public land disposition can be made better off, and to establish procedures that make it easier to repeat the process in the future.

COMPENSATION FOR OCCUPANTS OF RECLAIMED PUBLIC LAND: HONG KONG

In India as in most other Asian countries, urban development has meant continual re-development of older and poorer parts of the cities. Development of publicly owned land is an important part of this process. Compensation for the occupants of public land who are displaced by urban development has risen near the top of public awareness as a policy issue. "Compensation" in this case means both the size of payments (in-kind or in cash) to affected households and the application of due process in executing land clearance

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Hong Kong's Compensation Framework for Urban Development

For 60 years, Hong Kong has been in a constant state of urban development and re-development. Hong Kong is renowned for the rapidity and scale of its urban transformation. The framework for compensation has underpinned the re-development process, even as the framework has been modified in recent years to enhance the rights of occupants.

In Hong Kong, as in mainland China, all urban land is owned by the government. Land parcels are leased to occupants, typically for 50 years (renewable) in the case of residential use. Hong Kong has a well-defined statutory system for government "resumption" of leasehold land. Most re-acquisition of leaseholds actually is done through negotiation at higher prices than called for in statutory provisions. However, the existence of more severe statutory rules serves to accelerate negotiations.

Hong Kong's attempt to balance pro-development interests with compensation protections for leasehold occupants can be summarized as follows:

Public Purpose Leasehold Acquisition. According to Hong Kong's Land Resumption Ordinance, land leaseholds may be resumed by the government "for any purpose of whatsoever description…which the Chief Executive in Council may decide to be 'public purpose.'" Specifically, economic re-development is unequivocally an eligible public purpose allowing authorities to compulsorily acquire property.

Statutory Compensation. Statutory compensation for land leases that are compulsorily re-acquired is set at the open market value of land in existing use, taking into account the remaining life of the leasehold. That is to say, leaseholders do not have the legal right to participate in the expected increase in land value due to infrastructure investment or parcel re-development. Parties whose land is re-acquired by government can appeal to the Lands Tribunal for claims of inadequate compensation.

Compensation in Practice. In practice, leaseholds are re-acquired mostly through negotiation, using the statutory value as a base. "Ex Gratia Allowances" are added to the base. These have the effect of

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compensating leaseholders for part of the increase in land value that will result from development. Ex Gratia Allowances have increased considerably in recent years. The term "Ex Gratia Allowance" emphasizes that these payments are voluntary payments on the part of government, not statutory requirements. Their magnitude is discretionary.

Housing Allowance. In addition to compensation for the re-acquired land use right, government provides a House Purchase Allowance (HPA). In statutory terms, the HPA is defined as the difference between the market value of the current house and a notional replacement flat based on a 7-year old unit of similar size and other characteristics. In practice, the norm has been to compensate house owners with payments equal to 3 times the value of their current house. Commercial properties are compensated at 4 times existing building value.

Squatter Clearance. Squatters—those without land leases--are not eligible for statutory compensation if their settlements are cleared. Hong Kong has recognized the right of displaced households to social housing. Government policy holds that social housing of at least comparable quality (in physical terms) should be provided to displaced squatters. Government retains the statutory right to evict squatters without compensation. The physically comparable social housing provided in re-settlement often is not comparable in terms of location or community cohesion.

Social and Economic Protections. Hong Kong follows a specific procedure in terms of social and economic protections. The Urban Renewal Authority (URA) Ordinance requires URA to take a census and inventory of population in the re-development area as of the date that a redevelopment project is announced. Social service teams are required to conduct two Social Impact Assessments. The first Assessment is called the Freezing Survey. It is designed to inventory ex-ante conditions. Typically, the Freezing Survey is conducted immediately before (same day as) announcement of re-development. It is intended to exclude from compensation benefits those who would move into the area upon public announcement in order to capture compensation payments.

The second Social Impact Assessment gathers information on households' re-settlement needs, employment, work-place locations, and community networks. The intent is to match Housing Payment Allowances and re-settlement to social housing as closely as feasible with household needs. The findings and recommendations of the Social Impact Assessments are submitted to the Town Planning Board and Secretary for Development for approval.

Special Rules to Facilitate Urban Re-development. Majority (80%) owners of buildings more than 50 years old and in poor condition have the right to force minority owners to sell to enable re-development. There is no requirement to establish a public purpose. In practice, this means that developers can acquire 80% interest in old properties through voluntary negotiation, then compulsorily acquire the remaining interest. Land assembly has been greatly facilitated by this ordinance.

Source: Drawn primarily from LaGrange, 2011.

CHINA'S RECENT COMPENSATION REFORMS

Another perspective on land compensation is provided by mainland China's recent reforms. The story of China's urban re-development is the story of an alliance of local governments with private developers. Between them, the two parties targeted low-value areas or "urban villages" for re-development. Land was obtained at low cost. Upon redevelopment land was sold at much higher prices. Profits were split between the municipal budget, where it was used largely to finance infrastructure, and the developer.

Regulations Supporting Re-development. Key to the implementation of China's system of rapid re-development were three enabling regulations from the central government: (i) a regulation, as in Hong Kong, allowing municipal authorities to designate without restriction areas for compulsory re-development, (ii) a 1998 regulation specifying floor space and house condition (not land value) as the primary basis for compensation, and authorizing compulsory demolitions of property by those who refused to move, and (iii) a 2001 regulation authorizing municipalities to designate developers as their agents in clearing re-development sites.

The alliance between municipality and developer often advanced in brutal fashion. Developers could take the lead in identifying profitable re-development areas. Utilities could be cut off for holdouts. Developers bulldozed homes of those who refused to move, and bulldozed homes of others before they had received compensation. Popular resistance mounted, highlighted by individual owners standing in front of their homes in the face of demolition crews.

Recognition of Private Property. In 2004, China ratified a Constitutional amendment recognizing for the first time private ownership of urban property and the right to compensation "based on" market value, including the value of the Land Use Right. This ownership right only applies to urban property, not communal rural land.

During the period of accelerated re-development of low-value areas within the urban region, several abusive practices had become common. Before exercising the compulsory reclamation of Land Use Rights permitted by law, the municipality or developer would designate an appraisal agent to establish the compensation value of property. Value was estimated on the basis of floor space, house condition, location, and remaining period of the land lease, without reference to market value. The resulting system was skewed in favor of developers, who acted as agents of the municipality in price negotiations and demolitions.

As public protests multiplied, five professors wrote an open letter to the People's Congress stating that condemnation of urban property was taking place in a form inconsistent with the 2004 amendment to the Constitution.

Compensation Legislation. In January, 2010, new draft legislation addressing urban property compensation was posted on the website of the Legislative Affairs Office. The five protesting professors had participated in its drafting. Public interest in the issue was demonstrated by the 117,690 'hits' on the website by

9:00 pm of the day of posting, with 2,400 comments. After consultation and modest revision, the legislation was passed by the People's Congress in January, 2011.

The new reforms, taken at face value, strike at the heart of the old land condemnation and compensation system. Perhaps most importantly, municipalities are prohibited from having developers act as their agents. Developers cannot negotiate compensation; they cannot demolish homes. The municipality must act on its own as the responsible party. Authorized grounds for compulsory re-acquisition of Land Use Rights are limited to public uses, including basic infrastructure projects and publicly approved redevelopment plans.

The legislation and supporting regulations go further to define how property values are to be determined for compensation purposes. Lead cities have begun to put into effect the new system, which calls for municipalities to publish a matrix of property values by zone location, house size, land lease period, etc. These values are to be published and used for all public purposes, including compensation (and potentially property taxation). As a result, compensation amounts should be known beforehand, not subject to negotiation between unequals. The legislation also forbids municipalities from cutting off utility services or demolishing homes before compensation agreement has been reached and occupants have moved. Occupants are entitled to compensation for lost income from on-site production.

It remains to be seen how these reforms will be implemented in practice. Central regulations in the past have taken long periods to filter down to local governments, especially outside the largest cities. The legislation only covers the estimated 70% of urban residents who have land use rights. The remaining 30% of the population—including the large 'floating' population that lacks urban residency permits—is not protected by the new rules.

In the short run, the most observable impact of the new legislation has been a reduction in the number of takings of urban property. Over the intermediate term, China has shifted markedly from compensation based on replacement social housing, often located at uneconomic distances from work centers, to compensation based on market value. Commentators have suggested that the policy shift will cut into land financing available for infrastructure investment.

LESSONS FROM INTERNATIONAL EXPERIENCE: PART IV

The lessons for India from the international experience reviewed in Part IV are straightforward.

Selecting a Land Disposition Strategy. More generous compensation for the occupants of public land represents responsible social policy. At the same time, it squeezes the gains that can be achieved from public land sales, delays transactions, and reduces the revenue that can be earmarked for infrastructure investment.

This reality should shape the sequencing of a strategy to unlock public land values in India. A realistic strategy should, at least in the beginning, avoid the immense complications created by re-settlement and compensation. Instead, it should follow the sequence outlined in this volume. First priority should be given to identifying genuinely "surplus" public lands that are unneeded for public service provision and unoccupied by informal settlers. Preliminary studies have found that there are plentiful supplies of such land within government agencies like India Railways and the Major Port Trusts, not to mention Defence estates. Identification of further surplus, vacant or sparsely populated parcels should be a priority for state governments. Once India has made progress in monetizing these land assets, and successfully investing the proceeds in infrastructure, it can consider whether it makes sense to tackle the more difficult challenge of reclaiming lands where large-scale re-settlement is necessary.

Clarifying Compensation Policy. India at present has only case-by-case policies for compensating de facto occupiers of public lands. If re-development of public land is to play a more important role in shaping urban growth and generating revenue for infrastructure investment, it will be critical to define general guidelines for compensation.

FURTHER READING FOR PART IV

Chan, Nelson. 2008. "Land Acquisition Compensation in China—Problems & Answers," International Real Estate Review, vol 6, No. 1, 136-152

China State Council Information Office. 2010. *Assessment Report of the National Human Rights Action Plan for China.* Beijing

China News Service, Xinhua. 2011 (July 13). "China to Further Standardize Land Acquisition and Compensation Practices." [Local regulations in conflict with legislation of Jan. 2011 must be annulled by Oct. 1, 2011]

Dyon, Geoff. 2011 (March 7). "China: A Democracy Is Built," Financial Times.

Dyon, Geoff. 2010 (Jan. 30). "China Shakes Up Land Seizure Rules after Outcry at Violence and Evictions," Financial Times.

LaGrange, Adrienne. 2011 (November). *Reform of Legal and Regulatory Framework for Involuntary Resettlement in the Hong Kong SAR,* Consultant Report for Asian Development Bank. Manila.

Lai, Weihang. 2011 (March 1). "Guangzhou Land Compensation Acquisition and Protection Standards", www.chinesecivilization.org

Mahalingam, Ashwin and Aditi Vayas. 2011. "Comparative Evaluation of Land Acquisition and Compensation Processes Across the World," Economic and Political Weekly, Vol XV, No. 32. August.

Peterson, George. 2009. *Unlocking Land Values to Finance Urban Infrastructure.* World Bank. Washington, DC.

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URBAN LAND DEVELOPMENT AND MONETIZATION OF LAND ASSETS IN CITIES

CANADA LANDS COMPANY:

HOW CANADA HANDLES ASSET OPTIMIZATION OF ITS SURPLUS FEDERAL PROPERTIES

DR. GORDON K. MCIVOR[66]

TORONTO, CANADA

URBAN LAND DEVELOPMENT AND

THE MONETIZATION OF LAND ASSETS IN CITIES

HOW CANADA HANDLES ASSET OPTIMIZATION OF ITS SURPLUS FEDERAL PROPERTIES

[66] Dr. McIvor spent over 23 years as a senior executive with the Canada Lands Company and its predecessor company, CN Real Estate, and helped set the Company up when it was founded in 1995. This paper was written following Dr. McIvor’s tenure with CLC, and was not officially reviewed by the Company. It therefore does not necessarily reflect the views of Canada Lands Company.

ABSTRACT

Strategic, surplus federal real property in Canada is generally sold by government to the Canada Lands Company, an arm's length Crown corporation that optimizes the value of these properties before in turn selling them to organizations outside the federal government, generally in the private sector. Canada Lands has been a profitable and appreciated experiment by government, and works closely with cities and communities across the country to rezone and reintegrate these properties back into the urban fabric. This state-owned company is entirely self-financing, and has contributed to the revitalization of numerous neighbourhoods in Canada's largest cities, measuring its performance using a balanced scorecard to chart financial, environmental and social success. The company owns the iconic CN Tower in Toronto, one of the most visited tourism and recreational facilities in the world.

URBAN LAND DEVELOPMENT AND THE MONETIZATION OF LAND ASSETS IN CITIES

HOW CANADA HANDLES ASSET OPTIMIZATION OF ITS SURPLUS FEDERAL PROPERTIES

PAPER OUTLINE

I. BACKGROUND AND CONTEXT

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3. Role of the Office of the Auditor General of Canada
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5. The Origins of Canada Lands Company Limited (CLCL)*

II. CANADA LANDS COMPANY AND ITS SUPPORTING ENVIRONMENT

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* "Canada Lands Company Limited" , "Canada Lands Company" and "Canada Lands" are used interchangeably in this report, and represent the name of the parent company (CLCL). While all of the core real estate activity of the company is carried out within the subsidiary "Canada Lands Company CLC Limited", or CLC, this is not used widely in this paper (except in Section II, Part I) in order to avoid any confusion.

* Includes information on the Directory of Federal Real Property (DFRP). To access the "DFRP Input Guide", the reader can go to: http://www.tbs-sct.gc.ca/rpm-gbi/doc/dfrpig-gedrbif/dfrpig-gedrbif-eng.asp.

** This item is too long for reproduction but can be accessed through the following link: http://www.tbs-sct.gc.ca/rpm-gbi/doc/gmrp-ggbi/gmrp-ggbi-eng.aspx

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HOW CANADA HANDLES ASSET OPTIMIZATION OF ITS SURPLUS FEDERAL PROPERTIES

Dr. Gordon K. McIvor

It has been demonstrated on numerous occasions in countries around the world that the monetization of public land assets can contribute a substantial share of the financial resources required for investing in urban infrastructure. How value is created on these lands through their development also has an impact on the local community and environs and can significantly increase both the financial and social success of the city where they are located.

Canada Lands Company is a successful national land corporation designed twenty years ago to deal specifically with the disposal and in many cases with the development of high-value state-owned lands. This paper deals with how Canada Lands Company was set up and why it has generally been regarded as an extremely successful organization that has become known for the quality of its redevelopment projects, and the extent to which these redevelopment projects have contributed to city building in Canada.

I. BACKGROUND AND CONTEXT

While 18th century French philosopher Voltaire described the future country of Canada as "a few acres of snow", [67] it has become a prosperous, peaceful and highly successful first world nation of over 33 million people, the second largest country in land mass in the world (of which 89% belongs to the Crown). Because of its climate and proximity to the largest market on the planet, 85% of its population lives within 300 kilometers of the U.S. border. Furthermore, 55% of Canadians live in four cities, Toronto, Montréal, Vancouver and Calgary, and real estate markets in these cities remain extremely robust in spite of sluggish international markets.

CROWN LAND IN CANADA

[67] "quelques arpents de neige…" Candide by Francois-Marie Arouet Voltaire (1759), Chapter 23.

All public lands, whether federal or provincial, are referred to as Crown Lands and are owned by Her Majesty. While the majority of the Crown Lands are within the jurisdiction of the provinces, the federal government is the single largest land owner in the country. Essentially, the federal system has been decentralized so that departments (i.e. ministries) administer real property assets. Treasury Board (TB), one of the several Cabinet Committees of the Queen's Privy Council of Canada and its administrative arm, the secretariat, ensures management consistency and the application of federal policy to the real property regime.[68] Federal properties are held within approximately 30 departments and 47 Crown corporations of the Government of Canada. Some custodian departments including the Department of National Defence, Correctional Service Canada, Parks Canada and Public Works and Government Services Canada are also considered huge land "owners" responsible for thousands of hectares of real property.

THE FINANCIAL ADMINISTRATION ACT AND ROLE OF THE TREASURY BOARD SECRETARIAT

The Financial Administration Act (FAA) is often referred to by the Government of Canada as the cornerstone of the legal framework for general financial management and accountability of public service organizations and Crown corporations. It sets out a series of fundamental principles on things like expenditures, revenues and borrowed funds. It also provides the internal controls which lead to the preparation of Public Accounts, the Government's annual statement of expenses and revenues. Not surprisingly, the FAA contains in Part V, sections 61 and 62, a passage on public property,[69] which provides authority to the Treasury Board to act on all matters relating to administrative policy, as well as the management and development by departments and Crown corporations of lands. This is all laid out in the Federal Real Property and Federal Immovables Act,[70] which recognizes the extreme diversity of federal real property assets including land, buildings, bridges, marine navigation equipment, wharves, monuments and much, much more. While departments retain authority over real property required for departmental programs, Treasury Board and its minister hold overall responsibility for federal real property at the corporate level and as such provide an assessment of the performance and cost of assets and acquired services from all

[68] Time to Celebrate Government as Single Largest Land Owner by St-Amand, Jean Pierre and McIvor, Gordon Kenneth. The Hill Times, May 11, 2009.
[69] Financial Administration Act (R.S.C., 1985, c. F-11), Department of Justice, Government of Canada.
[70] Federal Real Property and Federal Immovables Act. (S.C. 1991, c. 50), Department of Justice, Government of Canada.

perspectives of real property. There are many real property issues that are beyond departmental jurisdiction including government-wide, horizontal, portfolio and program issues. Furthermore, a key dictate of the Federal Real Property and Federal Immovables Act and the subsequent Policy on Management of Real Property articulates that real property surplus to program requirements shall not be retained.[71] These directives create the governance framework necessary for a corporation such as CLCL to be created and flourish, as the Government of Canada clearly recognized in these policy instruments that real property does not necessarily serve indefinitely in the delivery of a departmental program. It can, however, become surplus at which point it should be put into a stream to find a new and productive purpose. It was also recognized that the opportunity for value enhancement also existed, and this was a key point that was well understood in the directives which supported the creation of CLC. Such a creation would not have occurred and would not have been necessary if Canada were to only engage in "as is" disposals of its excess public lands.

ROLE OF THE OFFICE OF THE AUDITOR GENERAL OF CANADA

Crown corporations manage more than $375 billion in assets. Some of these 47 entities, such as Canada Lands Company, are required by their enabling legislation to be financially self-sustaining and thus receive no parliamentary appropriations.

Under Part X of the Financial Administration Act, the Auditor General is appointed to conduct annual audits of the financial statements of the corporation. If merited and requested by the corporation in question, this can be done jointly with a private sector audit firm (Canada Lands Company only uses the Auditor General at this time). At least once every ten years, the Office of the Auditor General normally conducts what is known as a "Special Examination" to ensure that the

[71] The Policy on Management of Real Property was issued pursuant to the *Financial Administration Act,* subsections 7(1), 9(1.1), 9(2) and 149(1) and the *Federal Real Property and Federal Immovables Act,* subsection 16(4) (Footnote continued on page 7).

One of its requirements is listed in 6.1.14: Real property surplus to program requirements is not retained. The type of right or interest in the property will dictate the most appropriate means of cessation of occupancy or disposal. A disposal by sale or transfer must be completed in conformance with the Treasury Board *Directive on the Sale or Transfer of Surplus Real Property.*

The Directive on the Sale or Transfer of Surplus Real Property was issued pursuant to the *Financial Administration Act*, subsections 7(1), 9(1.1), 9(2) and the *Federal Real Property and Federal Immovables Act*, subsection 16(4).

Section 6.1 Custodians shall conclude the sale or transfer of properties within three years of formal notification of the property being surplus to program requirements. The consideration received for the property must be justified in relation to market value, determined in accordance with the Treasury Board *Appraisal and Estimates Standard for Real Property*.

Finally, deputy heads and obligation to comply with Treasury Board Policies are derived, at least some extent from the Financial Administration Act paragraph 12 "Powers of deputy heads in core public administration" and paragraph 16 "Accountability of accounting officers within framework of ministerial accountability".

Crown corporation has systems and practices in place to ensure that its assets are safeguarded and controlled, that the financial, human and physical resources are properly managed, and that all operations are being carried out in an efficient and effective manner.

If the Government so desires, a special examination may be carried out more frequently than every ten years. Any deficiencies that are discovered are brought to the attention of the Board of Directors and potentially to the responsible Minister, and ultimately – following these consultations – to Parliament through a report for inclusion in the Corporation's next annual report. The Corporation would also have the ability to address how it would deal with and correct any deficiencies.

A Special Examination Report of the Auditor General was presented to the Board of Directors of Canada Lands Company in May 2006. While there were several recommendations on how to improve the governance and operational framework of the company, no significant deficiencies in the systems and practices examined were identified.

THE DIRECTORY OF FEDERAL REAL PROPERTY AND HOW FEDERAL LAND IN CANADA IS INVENTORIED

The Directory of Federal Real Property (DFRP) is at the core of an effective land value creation program, as you can only create value on land that you know about. It is at the very centre of the real property system of the Government of Canada, and as of 2012 included common real property data for 60 custodian organizations including over 20,000 owned and leased properties on over 41,000,000 hectares of land area. These properties included in 2012 almost 40,000 buildings with over 28,000,000 square metres of floor space.

As with other corporate real property tools, the DFRP is administered by the Treasury Board Secretariat, and is used to provide information to ministries, members of Parliament and the general public on specific properties or groups of properties anywhere in the country. While these listings are not, under any circumstances, to be used as a substitute for legal property descriptions and professional legal advice, and do not constitute in any way a registry, the fact that anyone can see what belongs to the Government of Canada in any area of the country is invaluable to any stakeholder having an interest in the property. It has, furthermore, evolved tremendously since 1955 when the then Department of Public Works implemented the Land Record Card, a first attempt to catalogue what the government owned. It wasn't until almost four decades later that the Treasury Board Real Property Administration Policy required all Departments and Crown corporations to register all the real property they administer, including real property owned by the Crown or leased or licensed for one year or more, to the DFRP. Today this requirement continues as stated in the Reporting Standard on Real Property that was put into place in 2006.

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TEXT BOX

A Brief History of the Directory of Federal Real Property

Extract from Public Enquiries Incident 41793, Treasury Board of Canada, May 4th, 2012, prepared for the author:

i. In mid-1955, The Department of Public Works (DPW) implemented the Land Record Card. The difficulties with this system were said to be due in large measure to the legalistic terminology used to describe the land.

ii. In 1962, the Royal Commission on Government Organization observed that the system had two major deficiencies: the system must be complete and contain a minimum of information on each property.

iii. Through the Federal Land Management Policy in the 19703, the Land Record Card evolved into the Central Real Property Inventory (CRPI).

iv. Once the initial database (Dataflex then Access) was designed and populated with RP data (activities that took many years) annual DFRP reports were published in massive paper volumes and distributed broadly to libraries, departments and on request, to the public.

v. A 1984 Report of the Auditor General of Canada observed the following:

vi. "6.78 Management of an entity's portfolio is not possible without a reasonable accurate knowledge of its holdings. The Central Real Property Inventory (CRPI) maintained for Treasury Board by DPW provides limited information on most federal real property holdings. This information includes location, holding department, size, original cost and identification of the occupants."

vii. "6.79 Departments state that they seldom, if ever, use the CRPI. The primary reason cited included the Inventory's inaccurate and incomplete data. The quality of information in the CRPI is dependent on the quality of information provided to DPW by departmental control to ensure that complete and accurate records of real properties are maintained."

viii. Following the Nielson task force initiative in the late 1980s, responsibility for the management of a national real property inventory was moved from DPW to the newly created Bureau of Real Property Management (BRPM) at the Treasury Board Secretariat.

ix. A survey of the Real Property community in the early 19902 focused on user needs related to the DFRP and RP information. The survey supported expanding the DFRP to encompass much of the data gathered by TBS in the Area Screening Canada (ASC) Program (outsourced to PWGSC).

x. Primarily, the community wanted photographs of property and location/contextual maps. Soon thereafter, interactive mapping functionality was added. The first internet enabled mapping application in the federal government was developed and property photos became a reporting requirement.

xi. Constant refinements of the database design and changes in the software platform required increasingly sophisticated IT support when the DFRP was moved to an internet-based application (for data entry, data access and online publishing).

xii. A 1994 Report of the Auditor General of Canada included the following recommendations:

xiii. "12.59 The Treasury Board Secretariat, in consultation with the departments, should finalize its management information systems framework. Departments should examine their information holdings and management information systems within the context of this framework, and develop and maintain appropriate and complete property records, and information systems that allow aggregation of descriptive and performance information at all levels of management.

xiv. "Treasury Board Secretariat response: Treasury Board Secretariat concurs with the recommendations in this chapter, noting that steps have already been taken to strengthen and integrate real property information systems, and improve the content and review processes for Long-Term Capital Plans."

xv. It was decided that the property performance and policy compliance data contained in ASC reports would be added to the DFRP later when basic data had been stabilized. It was later decided that this type of data reporting would be unduly onerous on departments to report.

xvi. The *Treasury Board Real Property Administration Policy* required Departments and Crown corporations to register all the real property they administer, including real property owned by the Crown or leased or licensed for one year or more, to the DFRP.

xvii. In reporting information to the DFRP departments and Crown corporations must refer to the DFRP Input Guide for instructions regarding content and input methods; hold the "mandatory" and "required" information fields in their internal real property information systems, relate the DFRP number to their internal numbering systems; and annually certify the completeness and accuracy of information provided.

xviii. The *Treasury Board Real Property Administration Policy* was rescinded and replaced in 2006 by the Reporting Standard on Real Property.

xix. With the exception of the structure module was added in 2010, the DFRP data model and configuration have remained relatively stable over the last few years. Changes to the DFRP are now primarily driven by change in technological and legal requirements: accessibility, data security.

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THE ORIGINS OF CANADA LANDS COMPANY LIMITED (CLCL)

Canada Lands Company Limited started its corporate existence as the Public Works Land Company, and was incorporated under the Corporations Act in 1956. Its charter, under the Canadian Business Corporations Act (1977) permits the company an extremely wide range of activities including the ability to acquire, purchase, lease, hold, improve, manage, exchange, sell, turn to account or otherwise deal in or dispose of real or personal property or any interest. This charter, often referred to as the legal mandate of the company, was streamlined by Treasury Board Ministers when the company was re-launched in 1995 with a more tailored policy mandate to meet federal government objectives for certain surplus federal property. The corporation is listed in Part I of Schedule III of the Financial Administration Act.

Before August 1995, Canada Lands Company was inactive and only had nominal assets and share capital. While the Deputy Minister of Public Works Government Services Canada was the nominal CEO of the corporation prior to that date, there was no activity and no management or employees. The Crown Corporation had been used on many occasions since 1956 to carry out real property projects, but had become inactive during the 1980s but was kept alive (albeit dormant) as some believed it could once again serve a purpose at some point in the future.

Two important factors drove the revitalization of Canada Lands Company Limited. First, Canada was in a very focused phase of fiscal resource mobilization by the mid-1990s, having come out of a protracted period of spiraling debt. It was well recognized that disposition of excess public lands had important revenue potential and could not be neglected as government sought to put its finances to rights. These excess public lands also provided the opportunity to create enhanced value, and the creation of an instrument such as CLC would allow for rezoning and the capture of this enhanced value. Second, in 1994, the Auditor General's report devoted an entire chapter to aspects of federal real property management, pointing out that real property was increasingly being viewed as a strategic asset in the private sector and in other jurisdictions, and that the Government of Canada could further its economic performance by focusing more on this area.

The Auditor General had been reporting on real property issues under its "value-for-money" mandate since 1978, and had identified several recurring weaknesses in the asset management of real property. In the 1984 report, it was clearly pointed out that many of the problems associated with this area of operations were the result of years of conflicting priorities for funds and weak property management practices, a situation that was somewhat improved following the 1985 Nielson Task Force Report[72]. The Federal Real Property Act of 1992 facilitated the conveyance of real property "between government agencies and between the government and private individuals",[73] with the goal of making the internal process for real property transactions more efficient. Increasingly, as a result of these various reports and subsequent acts, the complex nature of real property transactions was recognized, and the cost of carrying out these transactions, particularly those involving large parcels of land, was now recognized to have become unavoidably expensive.

Conflicting government objectives often made sound asset management principles difficult to follow within custodial departments, and key management tools were clearly not yet in place (including accounting policies). Since the framework for accountability was not complete, political direction was leading to what the Auditor General characterized as "significant avoidable costs",[74] and the assessment of departmental performance needed to be improved, including having departments comply with agreed-upon policies and procedures. One key recommendation which paved the way for the future reactivation of Canada Lands Company was that property in excess of need should not be retained, a principle already in place in the Federal Real Property and Federal Immovables Act of 1991. Gradually, the recognition that large transactions involving sales of real property to third parties outside of government was coming to be viewed as necessary, and the complexity of executing these transactions spoke to the need for the creation of a specialized agency. Another main driver was the growing realization that "as is" sales without any asset optimization activities would result in a third party, not the federal government, receiving the enhanced value achieved through redevelopment.

The Auditor General, in his discussion with departments, had found that these departments were slow to dispose of property, in part, because of perceptions that there were several disincentives for divestiture. With the Public Works Department making all annual payments

[72] The 1985 Ministerial Task Force on Program Review, known in Canada as the Nielson Task Force, identified significant costs associated with 146 federal regulatory and regulatory-related programs. It concluded that there was not a federal regulatory system per se, but a 'largely unstructured, uncontrolled highly variable, and thoroughly confusing mixture of legal requirements, policy guidelines, and ad hoc administrative practices".
[73] 1994 Report of the Auditor General, Chapter 12, Section 12.11.
[74] Ibid, Section 12.69.

("Grants in Lieu of Taxes") for departmental property holdings on behalf of these departments, the latter had come to view real property as a "free asset" with few consequences associated with holding onto it. Furthermore, revenues from property disposals accrued to the Consolidated Revenue Fund, not the department, and land banking was therefore not only easier but viewed by many as a conservative and inexpensive contingency practice. With little to no expertise available within Departments on land disposal or value creation on land prior to disposal, properties were sometimes sold but done so below market value with little to no benefits flowing to Canadian taxpayers. It bears remembering that federal departments at the time didn't have the ability to create value given their paramountcy to the municipal planning process in Canada. The Auditor General encouraged better management of these assets, including adequate maintenance to avoid deterioration, and encouraged Treasury Board to challenge departments holding properties not clearly serving a program purpose. He furthermore and pushed those departments to determine the life-cycle of their properties and savings that might be generated by improving maintenance practices. Slowly, real property was entering the realm of scrutiny, no longer viewed as a free asset. Departments were being pushed to pursue cost avoidance measures in their real property inventory.

In looking at how other jurisdictions handled these matters, notably in British Columbia, Sweden, Australia and Great Britain, the Auditor General concluded his 1994 chapter on real property with the opinion that changes had to be made which would provide flexibility for restructuring the property management regime, and that consideration should be given to Crown corporation status for the organization that would undertake these changes. "Crown corporations have the freedom to dispose of properties and use the proceeds to refurbish the remaining holdings, using 'business criteria' in making decisions",[75] he wrote, pointing out that real property reforms made in Australia and other jurisdictions had resulted in huge benefits including increased annual returns to the Consolidated Revenue Fund and major savings in their asset and property management activities.

With these recommendations, the stage was set for the reactivation of Canada Lands Company. The year after the recommendations made in the 1994 Auditor General's Report, the

[75] Ibid, Section 12.III

Canadian government proceeded with the privatization of one of the country's largest state-owned companies, Canadian National Railway Company, which provided an opportunity to reactivate the Canada Lands Company. Pursuant to section 6 of the CN Commercialization Act, Canadian National Railway Company created a subsidiary called Canada Lands Company CLC Limited, transferred certain non-railway properties into this subsidiary, and subsequently transferred the shares of the subsidiary to the government. These real property assets were not deemed to be beneficial in any way to the Initial Public Offering for the new, private sector transportation company, and were still advantageous to the government. In other words, the Canadian government realized that the land assets within CN were of considerable separate strategic value (located in urban areas, etc.), and therefore – in the Government of Canada's own interest – they did not want to put them in the IPO. It was noted by some at the time that given the specific context in Canada with an established private rail competitor, an IPO including all of those lands, was not the best way for the Government of Canada to achieve best value for the transportation asset. As a result, on August 31st, 1995, the Government of Canada transferred these shares (representing the real property assets) to Canada Lands Company, which was effectively reactivated on that date as a federal Crown corporation.

II. CANADA LANDS COMPANY AND ITS SUPPORTING ENVIRONMENT

HOW THE COMPANY IS SET UP

Canada Lands Company Limited is an arm's length, self-financing federal Crown corporation. It is legally comprised of three subsidiary companies, one being Canada Lands Company CLC Limited, which carried out the core business of the company, as well as owning and operating one of Canada's tourism icons, the CN Tower. The other two subsidiaries held within the company are The Old Port of Montréal Corporation Inc., a tourism and recreation facility in Montréal, and Parc Downsview Park Inc., a national urban park presently under development in the Greater Toronto area. These two subsidiary companies still exist legally but have recently been dismantled, and their activities integrated into the core CLC subsidiary company. The parent company only has one employee, the CEO, and is an agent of Her Majesty. The core-and now only active- subsidiary is a non-agent and as such receives no subsidies from its unique shareholder, the

Government of Canada, and operates at arm's length. Over its 20 year history, the company has purchased numerous surplus properties from the Government at market value, holding and managing them or more commonly improving and selling them, in order to produce the best possible benefit for the local communities and the shareholder. The Government of Canada as sole shareholder had as of 2012 received approximately $400 million in dividends, cash acquisitions and note repayments. Over and above these payments, the Government is able to remove these non-productive assets from their books, with no further tax equivalency payments ("Payment in lieu of taxes) and no further operational and maintenance ("O&M") costs. These overall fiscal advantages are considerable…CLC is estimated to have created over $1 billion in value since its inception.

While Canada Lands Company's real estate subsidiary, the focus of the paper, operates at arm's length from government, it is nevertheless ultimately accountable to government and as such reports to Parliament through a Minister of the Crown, at present the Minister of Public Works and Government Services Canada. Should parliamentarians have questions on the company and its activities, these questions are asked in the House of Commons and the Minister is responsible for answering them. As the company has been successful in redeveloping or managing government properties in accordance with their highest and best use, as well as harmoniously reintegrating them back into local communities across the country, questions to the Minister responsible for Canada Lands Company have been relatively few and far between.

The company operates in many ways like a private sector organization and has a Board of Directors representing varying regions of the country and bringing a specific skill set to the table (legal, financial, governance, etc.). This is very much a commercial board and – while representing the interests of its unique shareholder – also recognizes its fiduciary obligations to the corporation. In 2010-2011, governance structures underwent some important changes to better reflect the company's operational direction as the Government of Canada's real estate development Crown corporation. The business of the Board is divided amongst its various committees, including Governance, Human Resources, Audit, Investment and Risk. With the exception of Audit

Committee, Committee discussions are integrated into the board agenda with committee items chaired by the committee chair, the subject matter expert.[76]

Canada Lands Company is a small entrepreneurial company which employs over 300 full-time employees across the country. The majority of these employees work in its CN Tower operating division in Toronto, and the core real estate operation takes just over 70 people to manage and run in several major municipalities across Canada. It has often been noted that the real estate industry as a whole tends to be capital intensive and labour poor, and it is therefore not surprising that this company does not require a large number of employees outside of its CN Tower operation. One is a tourism and recreational facility, the other a specialized professional service. Furthermore, CLC essentially acts as Project Manager, and engages a multi-disciplinary consultant team of experts that is tailored to meet the needs of each specific project.

In the core real estate division of Canada Lands Company, there is a Senior Management Team made up of the President and CEO, two Executive Vice Presidents-one for Real Estate and one for Corporate Services including the CFO and General Counsel/Corporate Secretary functions. Under the EVP of Real Estate is a Vice President, Real Estate (Western Region), a Vice President, Real Estate (Ontario/Atlantic), and a General Manager, Real Estate (Quebec). The Senior Management Team also includes the Chief Operating Officer of the CN Tower, the Chief Operating Officer of the Montreal Science Centre and the company's Director of Communications.

The President and CEO reports to the Chair of the Board. All other senior management positions report to the President and CEO or-in the case of the real estate vice presidents and general manager-to the EVP of Real Estate.

The company has vision, mission and values statements which are updated from time to time… these statements were for many years reflected in the tag line of "Innovation. Value. Legacy".

<u>CENTRAL AGENCIES, CUSTODIANS (PROGRAM DEPARTMENTS) AND CROWN CORPORATIONS</u>

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[76] Canada Lands Company Limited Annual Report 2010-2011, Pages 6-7 (Corporate Governance).

The business model of the core CLC subsidiary of the Canada Lands Company is relatively simple in that it is mandated to purchase surplus strategic properties from government departments at market value, enhance their financial and community value, hold and manage or improve these properties prior to selling them, and returning profits to the Government of Canada through the parent company, as an annual dividend. This model previously pertained only to the core real estate subsidiary, as the other two subsidiaries held by the parent company (Old Port of Montréal and Parc Downsview Park) acted as parent companies with their own Board of Directors, and reported directly to Parliament without going through the parent board. As previously stated, these subsidiaries still exist legally but have now been dismantled and their activities incorporated into CLC, the core real estate company.

While the business model and value proposition of the corporation may be simple, it operates in the complex policy environment of a federal Crown corporation, allowing the commercial company to also contribute to the policy agenda of government. The promotion of sustainable development, the creation of pedestrian-friendly communities in urban areas, the clean-up of contaminated properties through environmental remediation and the promotion of legacy initiatives to commemorate Canadian heritage are some key examples of activities that are carried out by the corporation that have interest to other areas of government (a good example would be the interest that the Department of National Defence and the Department of Veterans Affairs would have in any military commemorations on former Canadian Forces' sites). Furthermore, the company adheres to the Government of Canada's Official Languages Act and to the Federal Identity Program (FIP), transparently identifying itself as a federal business belonging to government.

With the Treasury Board of Canada Secretariat overseeing the management of real property in Canada (including all property sales to Canada Lands), with the Department of Finance reviewing the Company's financial achievements and borrowing requirements, with Privy Council Office routinely reviewing the machinery issues associated with the company, and with Public Works Government Services overviewing portfolio management issues, Canada Lands Company is constantly on the radar screen of the central agencies of the Government of Canada. Since the corporation only purchases properties from custodial ("program") departments, usually through Treasury Board submissions (this depends on disposal authority of the Minister, as not all acquisitions require Treasury Board approval), and less commonly from other Crown corporations through special Memoranda to Cabinet (MC) submissions, the framework the company operates within to acquire properties is clearly defined, regulated and assessed by its shareholder. While day-to-day operations are arm's length from Government, the pre-existing acquisition and reporting framework ties the corporation into the federal matrix through financial, policy and even supply requirements. It is a state-owned business which is entirely reliant on its shareholder for the product (i.e. surplus land) it requires for value creation. While CLC is not per se subject to Treasury Board policy, the custodial department dealing with CLC is subject to those policies, and the Company must therefore operate within that framework to receive its product supply. It is furthermore subject to reporting requirements for Crown corporations.

Custodial departments may sell a property to Canada Lands Company without Treasury Board approval using delegated ministerial authority up to a value of $1.8 million. In the case of Public Works Government Services Canada, this delegated authority is at the higher level of $6 million.

III. REGULATORY POLICY AND EVOLVING POLICY FRAMEWORK

Canada has divided its federal surplus real property inventory into two categories, "routine" and "strategic". The November 2006 "Directive on the Sale or Transfer of Surplus Real Property",[77] defines routine surplus real properties as having a lesser value and being able to be sold easily without any substantial investment. These properties are usually sold "as is" on the open market by the custodian, its agent (the common service provider department Public Works Government Services Canada), or by a private sector firm. Only when the committees of Government known as the "Director General Committee on Strategic Disposals" and ultimately the "Assistant Deputy Minister's Steering Committee on Real Property" determines that the property is surplus and strategic is Canada Lands Company definitively identified as the potential purchaser[78]. This is not to say that CLC has not already been a part of discussions, as custodial departments

[77] Treasury Board of Canada Secretariat, "Directive on the Sale or Transfer of Real Property", Section 3: Context. November 1, 2006. See Annex iii) at the end of this report.

[78] The work of the "Treasury Board Advisory Committee on Real Property", or "TBAC/RP", is described in Annex 4, Sections 6.14 and 6.15 at the end of this report. Once "TBAC/RP" recommends the sale of a property to Canada Lands Company it goes for final policy discussion and approval to the "Assistant Deputy Minister's Steering Committee on Real Property".

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require CLC's expertise and assessment as to the strategic nature of the site before it (the custodian) can bring it forward to the DG/ADM Committees.

Treasury Board has defined four criteria in determining if a property is strategic and therefore a candidate for sale to Canada Lands Company, and these criteria are used by custodian departments and by Treasury Board Secretariat:

- The size or value of the property (or portfolio of properties) is significant enough to have an adverse effect on the local market if its integration into the market is not managed properly;
- The value creation potential of the property (or portfolio of properties) is significant, achieved through subdivision, rezoning or pre-sale development;
- A partnership (public or private) may offer the best mechanism to realize the inherent value of the property (or portfolio of properties) or the greatest benefits to the Government of Canada beyond financial return;
- Sensitive policy issues associated with the property.

In other words, not all surplus government-owned real property assets are developed or disposed of by Canada Lands Company. The term "strategic" essentially refers to properties that are complex and have value creation potential, and can have an impact on the local community and even on the municipality as a whole. When these types of properties are determined to be candidates for sale to Canada Lands Company, they are also included in the financial planning part of the Corporation's Corporate Plan.

The policy framework around the disposal of real property in Canada has been evolving for the past sixty years, particularly since the recommendations of the Nielson Task Force in the late 1980s and the Auditor General's recommendations of 1994. There are regular improvements, additions, clarifications and corrections made to the policy suite. Many countries have closely followed this evolution in setting up their own state organizations for the sale and reintegration back into the community of public lands no longer required for program delivery.

THE SUCCESS OF THE ARM'S LENGTH MODEL

While operating within a federal context and abiding by certain Government of Canada policies and procedures, the whole "raison d'être" of Canada Lands Company was to set up an entity that would be more flexible, commercially-driven and generally speaking more "private sector" in nature than what is achievable within the apparatus of Government itself. As a commercial, arm's length Crown corporation receiving no subsidies from its shareholder, Canada Lands Company is not subjected to the same policies and procedures as custodial departments, allowing it to respond rapidly to the ever-changing market realities it operates within. While it belongs to the Government of Canada, it is not a part of government per se and as such can apply many private sector disciplines to its operations. Its sole shareholder may change the company's mandate or even close it down at any time, but is not allowed to provide it with specific direction outside of carefully regulated avenues such as the response that Treasury Board Minister's provide annually to the Corporate Plan, as well as a "Letter of Expectation" which the Minister writes to each of his or her Crown corporations outlining the general expectations that the Government has for each of its companies.

Allowing Canada Lands to be run independently day-to-day by an experienced senior management team with direction provided by a commercial Board of Directors has made the arm's length relationship with Government a successful one. While other countries struggle with conflicting governmental and political directives that are often at odds with a company being able to optimize its commercial success, Canada Lands Company was set up in a way that makes it fully accountable to its shareholder without being burdened by interventionist authorities which may not always have the commercial interests of their state-owned companies as priorities. The arm's length relationship that Canada Lands Company enjoys with its shareholder has been a key factor it its success.

It is still important to understand, however, that there is a distinction between the parent and the subsidiary. As the parent is subject to Treasury Board policy, CLC (the core subsidiary) is not at all. In other words, the CLC subsidiary has an arm's legal status that the parent does not, and doesn't represent Her Majesty in right of Canada. The subsidiary is therefore subject to lower levels of government's legislation, policy, etc., and as such pays taxes, etc.

HOW CANADA LANDS COMPANY PURCHASES PROPERTY FROM THE GOVERNMENT OF CANADA

When Canada Lands Company was reactivated in August 1995, it acquired through its core subsidiary the non-operating real property assets of Canadian National Railway Company, including the CN Tower. Within ten years, about 90% of this inventory had been sold.

At reactivation, many in Ottawa contemplated that this would be a "sunset" organization that would be used to sell off the real property assets of Canadian National Railway and subsequently be wound down. It became clear very early on that there were many other strategic, surplus properties that could be sold to the company, and that it should continue to operate and purchase surplus, strategic properties from shareholders.

Once a property has been declared surplus by the custodian department and endorsed as strategic by Treasury Board Secretariat led ADM Steering Committee on Real Property, the custodial Department that is selling the property may be required to prepare a Treasury Board submission to seek authority to dispose of the property to Canada Lands Company. This may well entail a significant amount of detailed due diligence by the custodian. Whether or not a Treasury Board submission is deemed necessary, policy requires custodians to request a "Business Plan" for the redevelopment of the property from Canada Lands Company, and elements of this Business Plan are integrated into the custodian's Treasury Board submission. These elements would include Canada Lands Company's vision/development concept for the site, the value that Canada Lands Company believes the site to be worth with estimates of the added/enhanced value that could be achieved, and finally the company's plans to address all other considerations/issues identified by the custodian department. In other words, the custodial department, in collaboration with Canada Lands Company, includes a "Business Plan" which essentially outlines the value that can be achieved for the Government of Canada by selling the property, and how CLC will optimize the value of this property. These properties, once acquired, will be shown on the company balance sheets as revenue producing properties, properties under development for sale, or land held for future development or sale.

A key component of the strategic disposal process involves establishing the market value of the property. For this, the custodial department selling the land must obtain at least one current appraisal in the case of a single property, or a current portfolio valuation using bulk or mass appraisal techniques in the case of a property portfolio. Within the Department of Public Works and Government Services Canada (PWGSC), the Chief Appraiser acts as a common service provider and creates the terms of reference for the appraisal in collaboration with the selling department and Canada Lands Company. The latter will prepare its own business plan for the property as mentioned above, and a negotiation process commences. The appraiser used by the Government of Canada must be accredited or licensed by a provincial, national or international real property appraisal organization, or a federal public servant recognized by the chief appraiser at PWGSC. When a value has been agreed to, it is inserted into the Business Plan and-when a Treasury Board submission is required- into that submission which will ultimately give the Government the authority to "transfer" title of the property from Her Majesty to the Canada Lands Company. The value that is used in these documents must be justified and supported by the custodian department using the appraisal and the CLC Business Plan as reference points.

After all approvals have been obtained and the Department has prepared the legal sales documentation, a closing date is established much as would be the case for the purchase of a private home. One major difference is that Canada Lands Company does not pay for the property upon acquisition,[79] but rather issues a non-interest-bearing promissory note which essentially outlines how monies will be sent by the company to the Consolidated Revenue Fund, earmarked for reclamation by the custodial department selling the property, as Canada Lands Company begins to achieve profit on the redevelopment of the property. This mechanism was put in place due to the cyclical nature of cash flow in a real estate development project where monies must be invested upfront to service, subdivide and rezone the property before positive cash flow and subsequent profit can be achieved. It provided a way for the Government to not have to subsidize the corporation at any phase of its operations. As to the vendor Department, it removes the property and its operating and maintenance costs from its books upon transfer, and later receives the agreed upon (pre value creation) market value for the property from Canada Lands Company, via the Consolidated Revenue

[79] In certain instances Treasury Board does allow up to $5 million to be paid by Canada Lands Company to the vendor upon closing.

Fund. Custodians can receive up to $5 million as an upfront repayment on the promissory note as a pre-positive cash flow position.

IV. CANADA LANDS AS A BUILDER OF LOCAL COMMUNITIES

Many of the properties bought by Canada Lands from its shareholder are extremely large and often located in the centre of the country's largest cities, as evidenced by the sixteen former military bases or facilities acquired by the company since 1995. These redevelopments have a major impact on cities, and as such are high-profile and attract numerous stakeholder groups. One of the main partners of Canada Lands in the execution of these redevelopment projects is almost always the city.

WORKING WITH CITIES: A FEDERAL-MUNICIPAL PARTNERSHIP

In the British parliamentary system of government, the principle of "paramountcy" results in higher levels of government not subjecting themselves to any of the rules and regulations and processes emanating from lower levels of government. As cities are creatures of the province, the federal government has no legal obligation to consult with them in any way on the development of federally-owned properties.

The rezoning of property, which is the single most important value creation activity of Canada Lands Company, is legally a provincially-regulated process which has been downloaded onto cities. Development on federal properties, because of the principle of paramountcy, is not required to go through any rezoning process.

When a federal property is deemed to be strategic and surplus to government operations and is sold to Canada Lands Company, it is no longer held by Her Majesty but by a non-agent Crown corporation that **is** subjected to the municipal rezoning process. When a land use plan is being developed by Canada Lands Company, it must do this in partnership with the City Planning Department for eventual debate and approval by City Council, at which time it becomes the Official Plan (OP) for that site. This has proven to provide an opportunity for a federal entity, Canada

Lands Company, to partner with the cities it is operating in. Furthermore, redevelopment of the property to optimal zoning and build out provide badly needed new tax revenues to the city emanating from lands that were previously underutilized, more often than not derelict, and not subject to local property taxation.

ENGAGEMENT OF CANADA LANDS COMPANY IN THE LOCAL PLANNING PROCESS

Once Canada Lands Company has acquired a property in a local community, officials from the company meet with the municipal staff to discuss the site in question. These early discussions are important as the city may have certain things they would like to see developed on the site, or even have it included in one of their larger redevelopment plans for areas of the city. Canada Lands Company will also have given some thought to various development scenarios for the site.

One of the key elements of the local planning process is public consultation. The consultation process may be extensive in nature with all stakeholders and the local community, and be prefaced by market research into community needs, market conditions, local issues and other factors. The company strongly supports the principle of sustainable development throughout the process, as well as making it clear that it will pursue projects that are financially viable and provide a lasting legacy.

Consultation methodology changes depending on the municipality, but often includes meetings with local community organizations, business and political leaders, neighbours and special interest groups. Open houses are very common and serve to elicit public input on potential uses of the property. This part of the development process can be long, often longer than the actual build out which follows, due to the wide range of opinions and agendas. Consensus building is an important attribute, and the process is obviously simplified if the city and Canada Lands Company have started with or have come to a common vision for the future redevelopment of the site.

HOW A PROPERTY IS SOLD TO THE PRIVATE SECTOR

Canada Lands Company has often been referred to as a "flow through" company in that it does not hold onto most of the property it acquires for any longer than is necessary, with the exception of the CN Tower which has never been put onto the market due to its iconic status as a Canadian landmark (which for the time being is viewed as a property which should remain in the public realm through Canada Lands Company). When the company acquires a property from its shareholder, it is with a view to eventually bringing it to market as per the core mandate of the company, although this may involve waiting until market conditions are optimal for the creation of value through a sale to an outside party, usually within the private sector. Once the consultation process has been successfully completed and the master plan has been approved by the municipality (becoming the "Official Plan" for the property), the company can begin to service the site to prepare it for its approved use and for development or sale. This may include everything from taking down unsafe or unwanted structures on the site, debris removal, contaminated soil remediation, and the addition of new infrastructure on the site such as roads and other municipal services. With this phase completed, Canada Lands Company is free to either develop the site itself, to hold onto it for future development or sale, or to proceed with a sale in such a way that there will be no adverse effect on local market conditions through "dumping" of too much product. Properties are almost always sold off in phases to a builder or various builders who are contractually obligated to build according to the community and city approved Official Plan for the site. In this way, the local community is not only receiving the economic advantage of the new development but also has the components of the Official Plan safeguarded even after a change in title through a sales process. On occasion, properties may be retained for their investment value to the company.

The sales process is conducted through a Request for Proposals (RFP) which is most often done through an invitation to a number of firms or organizations that are well-qualified in their respective areas of expertise. This may be preceded by a Request for Qualifications in order to determine the most qualified potential purchasers to whom the RFP should be extended. Canada Lands Company is clear in its Marketing and Sales Policy that its objective is to ensure that the company obtain optimal value in the sale of its assets by balancing financial returns and community benefits, and that the sales process must be equitable and transparent, encouraging the use of a competitive process to obtain reputable purchasers who ensure that Canada Lands Company achieves its approved financial and service delivery objectives. Company employees involved in this process must conduct all sales activities in a manner consistent with the corporation's "Code of

Conduct & Conflict of Interest Policy" and "Delegation of Authority" (both internal management policies which are therefore not posted on the company's website), keeping appropriate and adequate records of the selection process and providing feedback to unsuccessful proponents upon request. The goal is to achieve optimal value which means that the price and terms of the offer are considered, as are "the experience, reputation, financial capacity and credit worthiness of the purchaser, product quality, references or any other defined criteria related to the specific property", and "any other direct or indirect benefits which could accrue to CLC and/or the community".[80]

INFRASTRUCTURE FINANCING RELATED TO CANADA LANDS COMPANY ACTIVITIES

Like many countries, Canada is facing major challenges today in developing, maintaining and financing physical infrastructure systems. In some of the county's older cities, such as Montréal, the infrastructure lifecycle has in some instances come to an end and there are challenges in budgeting infrastructure renewal. Canada Lands Company has made a contribution to the resolution of this issue in Canada through the redevelopment of the sites it purchases from the Government of Canada. Prior to a sale to Canada Lands Company, these federal assets have in many instances become deteriorated sites due to chronic budget under-spending on and around the site. Deferred investment in the municipal infrastructure alone including water/wastewater, local transportation, transit systems, cultural, social and recreational facilities, roads, tunnels, bridges, etc. can represent billions of dollars, and the disposal of these sites to Canada Lands Company leads to a reinvestment in public infrastructure. In an era where sub-national governments face deficits of current operating budgets, loss of investment capital and in many cases overstretched spending and borrowing, these disposals and the subsequent new investment by Canada Lands Company and its clients in the private sector into new infrastructure is a fundamental component in the urban renewal process.

When Canada Lands Company purchases a property from a custodial department of the Government of Canada and has put in place the land use plan for the property with the local municipality, it often puts major infrastructure in place prior to selling the property to the private sector, often builders. The cost of the infrastructure put in place on the property is passed on to the

[80] See Annex vii – Canada Lands Company Marketing and Sales Policy. This policy ensures that the company's sales practises are equitable and transparent, encourage the use of competitive process, and adhere to the company's Code of Conduct and Conflict of Interest Policy cited earlier in this section.

purchasers and includes everything from roads to storm-water retention ponds. In some cases, including the latter, the infrastructure can enhance the value of the overall site and even create greater value on immediately adjacent lots. A storm-water retention pond at a Canada Lands Company site in Edmonton, Alberta was built to look like a lake, and the housing lots immediate adjacent to this have a greater value due to their "waterfront property" status.

Like private-sector developers, Canada Lands Company also pays developer fees to the city, also passed on to the private sector purchasers, and these fees also contribute to infrastructure additions and renewals in the municipality including efficient access points to the newly-developed sites. This may include new traffic signals and road-widening around the newly-populated site.

V. CORPORATE SOCIAL RESPONSIBILITY

Corporate Social Responsibility, or CSR, has been defined as a business approach that creates long-term shareholder value by embracing opportunities and managing risks deriving from economic, environmental and social developments.

BALANCING SCORECARD REPORTING

The company's balanced scorecard measures both financial and non-financial performance and was put in place to achieve operational cost savings, improved stakeholder relations, increased staff recruitment and retention, a higher level of competitiveness and market differentiation, more effective risk management, and a stronger brand and reputation. While fairly new in the business world, many business pundits believe that it will in the future be as universally accepted and expected as the company's financial reporting, providing the corporation with its "license to operate". Increasingly, internationally-accepted measurements, or "Key Performance Indicators", of non-financial performance are being developed and streamlined, such as the Global Reporting Initiative (GRI) out of Amsterdam, Holland. Canada Lands has been involved in balanced scorecard reporting for over a decade, but has recently renewed and reinvigorated its approach to this process. It is now published as part of the Company's Corporate Plan and Annual Report, and measures performance in the following categories: Engaging Communities/Stakeholders, Developing Sustainability, Valuing People, Managing the Environment, Contributing to Society and Strengthening Business Operations.

WHY CSR WORKS IN A GOVERNMENT ORGANIZATION

Government of Canada officials and public sentiment confirm that a commitment to CSR is something that is now expected – especially of highly scrutinized organizations like Federal Crown corporations. An organization soon won't be seen as competitive in its marketplace if it doesn't show (and prove) a commitment to CSR.

Canada Lands Company has used CSR to its advantage in differentiating itself from private sector peers and boosting its reputation through such things as:

- Extensive heritage commemoration, especially on former military base sites, which actually facilitates the sites development; and
- Obtaining environmental certifications, such as the "LEED" designation.[81] Canada Lands Company was the first real estate development firm in Canada to obtain LEED designation for an entire development site in Calgary, Alberta, and this helped position the company as sustainable and compassionate providing a soft cushion of equity when it was going to be potentially criticized for relocating a Farmer's Market off its site.

For CSR to work well, especially in a state-owned organization, it must maintain a robust stakeholder consultation process to determine issues materiality, have internal and external interviews on a regular basis with selected representatives from the Board, management, federal officials, municipal officials and industry thought leaders, and finally maintain a strong, internal advisory committee comprised of managers representing major operational areas of the company. This committee must both validate and prioritize all results to arrive at a number of key performance indicators which are tracked in the balanced scorecard.

CSR is greatly appreciated by most stakeholders and the general public, and helps to improve the image of the organization in a positive and fairly sustainable fashion. While all private sector companies have shareholders to deal with, they tend to be somewhat less scrutinized than a

[81] Leadership in Environmental and Engineering Design (designation of the US Green Building Council, Washington, D.C., U.S.A.

government-owned real estate development company and for this reason CSR provides a solid way to build equity with various stakeholder groups, many of whom are less concerned with the financial performance of the organization than shareholders would be with a publicly-traded company.

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VI. CHALLENGES

Canada Lands Company has faced three primary challenges since it was reactivated in 1995.

PROPERTY TRANSFERS

There have been significant delays experienced in the federal strategic disposal process contributing to a slow rate of properties sold to Canada Lands Company. Because real property is not the core business of any government department, it is seldom given priority and often lacks the departmental resources to get it done. Furthermore, Canada Land Company's policy mandate obstructs it from engaging in a wider range of value-creating activities. Unused surplus real properties that are not transferred to Canada Lands Company continue to deteriorate and represent a significant cost to government, including the on-going Operating and Maintenance (O&M) and "Payment in lieu of taxes" (PILT) costs which could disappear if these properties were no longer held by departments, freeing up badly needed funds to support other priorities. Complex disposals tend to be very high profile and attract significant public and political interest, and tend to require a lot of time to come to fruition. Furthermore, the long and complex disposal process entailing numerous obligations on the part of the custodian prior to disposal lengthens the timeframe of the transaction.

FIRST NATIONS AND CROWN LANDS

First Nations land claims are arguably in many cases perfectly justified, but tend to add to the complexity of any transfer of property to CLC, and therefore are a factor in the slow acquisition process. In areas of Canada where treaties were not signed with First Nations, or are not clear or agreed to, land claims are often brought through provincial and/or federal courts to be resolved. Some recent success stories in this area are bringing new hope that First Nations may in fact benefit from new land development on former Crown Lands, and can conceivably be an integral part of the solution. In other words, Canada Lands Company can be a potential tool which the Government of Canada can use to allow for First Nations participation in the redevelopment of surplus sites, thus allowing disposals to proceed. This can take many forms: priority purchase, percent of profit, commemoration, employment, education/training, or some combination thereof.

While Canada Lands Company maintains a policy respecting corporate relations with Aboriginal groups, and is increasingly consulted by government as it completes its consultations with First Nations groups (when these consultations impact the potential sale to CLC, and where CLC can implement a form of accommodation on behalf of the government) prior to any sale being finalized to Canada Lands Company. It is important to point out, however, that the fiduciary relationship between the Crown and Aboriginal groups, as confirmed by the Supreme Court of Canada, is the responsibility of the Government of Canada, not Canada Lands Company. These obligations are historically sensitive and take time to work through thus impacting the time it takes to dispose of a strategic, surplus property by the Government to Canada Lands Company, at times compounded by legal challenges that can take years to resolve. All sides are finding solutions that benefit all parties involved, allowing for more discussions and the ability to achieve pragmatic economic and social solutions which are mutually beneficial.

SPECIAL INTEREST GROUPS AND PUBLIC CONSULATION

Local special interest groups, particularly green space preservationists who are against any and all development, have increasingly been stalling or obstructing many development projects around the world through intensive lobbying efforts and Canada Lands Company has not been immune from this phenomenon. In the past, these special interest groups had little opportunity to gain prominence, but new social media channels have provided any group – no matter how small – with enormous potential to reach much larger audiences of people. For this reason, it was imperative that Canada Lands Company enter the social media realm with the establishment of YouTube, Facebook, Flickr, and blog sites, new social media tools that allow the corporation to reach stakeholders in an open and broad manner, minimize the negative impact on projects, and reach new stakeholders and champions who may not have known about the company and the very positive contributions it has made and continues to make to community building. It is also important to correct any misinformation that may be on a special interest group's social media site, as these sites often have no control or accuracy vis-à-vis the veracity of what is presented as "fact". In the new era of social media, which is instantaneous and entirely pervasive, one cannot hope to complete a successful public consultation process without being able to put out rapid, accurate information on proposed projects while at the same time correcting misinformation before it becomes accepted as fact. Canada Lands Company has been fully engaged in this sphere since 2011 with positive results.

In the future, the public consultation process itself will in all likelihood be conducted entirely online as people review proposals and land-use plans from the comfort of their homes or offices, and public debate will unfold online as well. Canada Lands Company seems well-positioned for this fundamental shift in the planning process.

VII. SUCCESS STORIES… SOME EXAMPLES

The company reported in its corporate documentation of 2012 that it has generated $7.1 billion[82] in simulated development, 56,800 person years of stimulated direct construction employment, approximately $400 million distributed back to its shareholder through dividends, cash acquisitions and note repayments, and added 33,000 residential units at all affordability levels to the country's housing stock.

GENERATING CASH FLOW: THE CALGARY EXAMPLE

Canada Lands Company has purchased over 15 former military properties from the Department of National Defence, many of them already converted into new mixed developments across the country. None has been more successful than the three military properties in Calgary, Alberta, which has been transformed into thousands of new housing units (at all price points), parks and monuments, retail and commercial areas, and highly sustainable infrastructure, which has allowed the entire major site of Currie Barracks to be designated as a LEED GOLD site.

Calgary is located in the oil-rich province of Alberta, in Western Canada, and it was the Calgary redevelopment projects that first brought Canada Lands Company to the attention of hundreds of thousands of Canadians who visited the sites or read about them in the media as beautiful, European-style communities with a lifestyle quality not often paralleled in this rapidly-expanding city. Just as important, it became obvious to everyone that the extensive private sector investment in these new neighbourhoods, climbing up into the hundreds of millions of dollars, was not only beneficial to Canada Lands Company, but also to the prosperity of the city as a whole.

[82] All figures in Canadian dollars.

Currie Barracks, the last phase of this tripartite redevelopment project is now well underway and will add well over 3,200 housing units to the neighborhood, and generate an enormous new tax base for the city of Calgary. The Calgary projects made it obvious that the potential for the generation of a very large cash flow was now in place, adding value to:

- the former landowner, since the Government of Canada took the property off its books and stopped paying O&M costs on the site;
- Canada Lands Company, the value creation agent through their rezoning and infrastructure activities;
- the private sector builders who bought property from Canada Lands Company before building on it; and
- the city, because of the tax base and a host of new economic activities now occur on the site.

It is for this reason that some people have referred to the Calgary military property reconversion projects, as Canada Lands Company's "flagship project".

REMEDIATING CONTAMINATED PROPERTY… THE MONCTON EXAMPLE

While Canada Lands Company often purchases properties from the Government of Canada which have been remediated by the vendor, the option always exists for the custodian department to discount the value of property so that remediation is carried out after the acquisition of the site by Canada Lands Company. In the province of New Brunswick, one of the initial properties to come over to Canada Lands Company as part of the original CN Real Estate property transfer was the former CN Rail Shop and Franklin Yard, a heavily contaminated property which had been home to one of the City of Moncton's primary economic engines. Using innovative in-situ remediation techniques, Canada Lands Company embarked in late 1996 on one of the largest brownfield decontamination projects in Canada, working with a number of disciplines including toxicologists, biologists, hydrogeologists and statisticians, as well as citizens groups and both municipal and provincial levels of government. To the general surprise of most observers, the project came in on time and within budget, also winning several national and international environmental awards. This project demonstrated that beyond creating cash flow and positive economic activity, Canada Lands Company could also be used to bring rust-out properties back into productive use through various remediation activities. Today, the site is home to sports fields, new homes and businesses including many call centres serving the entire country.

RENEWING AND REVITALIZING ASSETS… THE CN TOWER (TORONTO) EXAMPLE

The CN Tower opened in 1976 as the tallest free-standing structure in the world, and is without question the most famous man-made structure in Canada. It has been categorized as a "Wonder of the Modern World", and welcomes up to 2 million visitors a year who often consider it a "must visit" monument when they find themselves in Toronto, the country's largest metropolitan area.

The asset could have become dated and even obsolete after 35 years, but management has continually revitalized the CN Tower and ensured that it continues its role as a national icon. The addition of a gastronomical menu in the main restaurant, a glass floor on both the main visitor's level and in the elevators, the lighting project, and the recent EdgeWalk rim allowing visitors to walk around the top of the building on an outside ledge, have all contributed to ensuring that this venue continues to attract tourists and locals alike. Perhaps the most significant revitalization project is presently under construction at the CN Tower's base, namely the largest and most ambitious aquarium ever built in Canada in partnership with Ripley Entertainment. Beyond taking advantage of the unused acreage at the monument's base and thereby optimizing the land value, the aquarium project was undertaken after studies concluded that its location would actually contribute to enhancing the CN Tower's operations and number of visitors. This new facility opened in late 2013, and has significantly enhanced the entire neighbourhood around the CN Tower.

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CONCLUSION… LESSONS LEARNED

Canada Lands Company is widely viewed as a Canadian success story in that it has been profitable, contributed to government policy execution, revitalized entire areas of the county's largest cities, and taken underutilized properties and given them a new purpose with new supporting infrastructure. It furthermore provided the Government of Canada a new mechanism of working with municipalities across a vast country where partnerships between the federal government and its municipalities are not commonplace outside of the funding arena. The Company has operated successfully and with minimal controversy in the highly sensitive area of urban land development. Here are the key factors which have contributed to this success story:

1. A GOOD GOVERNANCE MODEL

As has been demonstrated in the early pages of this paper, a tremendous amount of thought was given to the governance regime leading to the creation of Canada Lands Company. The Government of Canada – far from being static – is regularly refining the policies and procedures which regulate its operational framework. Out of this framework, successive Boards of Directors and management teams have further streamlined these policies and procedures, giving this Crown corporation a strong governance regime. This has been noted in both Auditor General reports and in Special Examinations carried out on the company, and this attribute is universally regarded as one of the strengths of this company. Canada Lands Company shows that with the deliberate design of governance systems and adherence to them, a state-owned company operating in the realm of urban land development can actually make the government look good.

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2. QUALITY OF PRODUCT

Canada Lands Company has received numerous awards and positive media related to the quality of new communities it brings to the Canadian public. Whether receiving a LEED GOLD designation for a new Calgary neighbourhood, a hospitality and tourism award for its CN Tower operation or international recognition for a brownfield remediation, this company has been lauded on numerous occasions for the care it puts into the official planning process with municipalities and members of the general public. The CN Tower continues to renew itself and attract millions of visitors every year because of the quality of its restaurant and the various attractions located within and immediately around it.

3. REPUTATION AND REACH

Although not a household name by any stretch of the imagination, Canada Lands Company's commitment to good governance and high-quality product has made it a well-regarded company in the communities in which it operates, as well as with the international public real estate industry. Visitors from China, Korea, the United States of America, Holland and elsewhere have come to learn from its successes, and to take these lessons back to their respective countries.

State-owned companies have met with varying levels of success in Canada, but the model of a federal real estate company optimizing the value of public lands prior to disposing of them to the private sector or to other organizations has been a very successful one. The Canadian taxpayer benefits from this value creation, the private sector benefits from being able to purchase and build on previously unavailable land, and most of all local communities benefit from high-quality legacy developments, complete with new infrastructure which is financed by the parties benefiting directly from the development. It is hoped that this model will provide useful information to other jurisdictions as they seek to manage excess public land assets and mobilize resources to finance new development and infrastructure.

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Dr. Gordon K. McIvor

Toronto, Canada

Dr. Gordon K. McIvor served for over 23 years on the senior management team of Canada Lands Company and its predecessor, CN Real Estate, and assisted the Government of Canada in re-launching the company in 1995. He is the past chair of the National Executive Forum on Public Property, and today serves as its Executive Director. He has also served as the Assistant Deputy Minister Champion to the Real Property Institute of Canada. Dr. McIvor resides in Cambridge, Ontario and is well known for his community and volunteer work across Canada.

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ANNEX 1

Treasury Board of Canada Secretariat | Secrétariat du Conseil du Trésor du Canada

Canada

Treasury Board of Canada Secretariat

ARCHIVED - Treasury Board Real Property Administration Policy

Archived Content

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4.1 1. Effective date

This present document contains the policy as revised June 15, 2000. It replaces the version of this policy dated November 15, 1993.

4.2 2. Policy objective

To ensure that real property is administered by the department or agency responsible for the government program that the real property supports.

Note: For interpretation of this policy in the Province of Quebec, "real property" means "immovable" within the meaning of civil law of the Province of Quebec and includes the rights of a lessee in respect of such an immovable.

4.3 3. Policy statement

It is government policy that

- the appropriate program department administer real property; and
- the total real property a department administers is limited to that required to directly support its programs.

4.4 4. Application

The policy applies to all departments within the meaning of section 2 of the *Financial Administration Act* unless specific acts or regulations override it. Policy requirement 5.3 applies to Crown corporations within the meaning of subsection 83(1) of the *Financial Administration Act.*

4.5 5. Policy requirements

5.1 A department shall seek administration of real property, through acquisition or transfer, only when the property is required for the purposes of the department's programs.

5.2 Departments must conduct regular reviews of the real property they administer and be able to link it to their program requirements and confirm that their current use of it is appropriate.

5.3 Departments and Crown corporations must maintain accurate records of the real property they administer, which includes recording certain information in the *Directoryof Federal Real Property* (DFRP). Details on the DFRP appear in the appendix to this policy.

5.4 Departments that no longer require particular real property for their program delivery must dispose of it by sale or transfer.

4.6 6. Responsibilities

6.1 Custodian departments are those that administer real property to deliver their programs. They are responsible for developing and using strategic plans to relate their real property to program delivery, for reporting the required real property information to the DFRP, and for providing an annual completeness and accuracy certification.

6.2 Crown corporations within the meaning of subsection 83(1) of the *Financial Administration Act* are responsible for reporting the required real property information to the DFRP, and for providing an annual completeness and accuracy certification.

6.3 The Department of Foreign Affairs and International Trade is the designated custodian of federal real property that supports diplomatic and consular purposes outside Canada.

6.4 Public Works and Government Services Canada (PWGSC) is the designated custodian of general purpose office facilities provided on an obligatory basis to departments and agencies as listed in section 2 of the*Financial Administration Act* and other real property that does not otherwise have a natural program organization, such as the parliamentary precinct, certain common-use facilities and miscellaneous infrastructures.

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6.5 The Treasury Board of Canada Secretariat (the Secretariat) will monitor and advise the Treasury Board on the real property administered by departments and, if necessary, will arbitrate transfers between custodian departments. The Secretariat is also responsible for co-ordinating the core database and maintaining the related systems in respect of the DFRP.

4.7 7. Monitoring

The Secretariat will determine how effective this policy is, find out how it is applied in departments, and decide whether it needs to be revised. It will do this by contacting departments, consulting with the Treasury Board Advisory Committee on Real Property, and studying audits and reviews conducted by departments or the Auditor General of Canada. The *Treasury Board Guide to the Monitoring of Real Property Management* provides information so departments can monitor and assess policy implementation.

4.8 8. References

4.8.1 8.1 Authority

This policy is issued pursuant to the *Financial Administration Act*, subsections 7(1), 9(1.1), 9(2), and 149(1).

4.8.2 8.2 Treasury Board publications

Treasury Board Guide to the Monitoring of Real Property Management

Treasury Board Real Property Glossary

DFRP Input Guide

4.9 9. Enquiries

Please direct enquiries about this policy to your departmental headquarters. For interpretation of this policy, departmental headquarters should contact:

Real Property and Materiel Policy Directorate
Treasury Board of Canada Secretariat
L'Esplanade Laurier
140 O'Connor Street
Ottawa ON K1A 0G5
Telephone: (613) 941-7173
Facsimile: (613) 957-2405
E-mail: rpmpd@tbs-sct.gc.ca

Please direct enquiries about the DFRP to:

Registrar, DFRP
Real Property and Materiel Policy Directorate
Treasury Board of Canada Secretariat
L'Esplanade Laurier
140 O'Connor Street
Ottawa ON K1A 0G5
Telephone: (613) 957-2510
Facsimile: (613) 957-2405
E-mail: rpmpd@tbs-sct.gc.ca

4.10 Appendix - Directory of Federal Real Property

4.10.1 1. Purpose

The *Directory of Federal Real Property* (DFRP) is the central record of the real property holdings of the Government of Canada. Custodian departments and Crown corporations maintain records with additional information. These records together provide a basis for accountability to the Treasury Board, Cabinet, Parliament, and the general public for federal real property.

4.10.2 2. Requirements

Departments and Crown corporations must report all real property they administer, including real property owned by the Crown or leased or licensed for one year or more, to the DFRP. The Executive Director, Real Property and Materiel Policy Directorate (RPMPD), may authorize modified reporting for Crown corporations on a case-by-case basis.

In reporting information to the DFRP departments and Crown corporations must

refer to the *DFRP Input Guide* for instructions regarding content and input methods;
hold the "mandatory" and "required" information fields in their internal real property information systems;
relate the DFRP number to their internal numbering systems; and
annually certify the completeness and accuracy of information provided.

Date Modified: 2000-06-15

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ANNEX 2

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Notice: As of August 1st 2008, Real Property and Materiel policy inquiries should be forwarded to the (613) 946-4798 phone number or the rpmpd@tbs-sct.gc.ca email address.

4.11 Framework

Policy Framework for the Management of Assets and Acquired Services

The Policy Framework for the Management of Assets and Acquired Services and its associated policy instruments set the direction for the management of assets and acquired services to ensure the conduct of these activities provides value for money and demonstrates sound stewardship in program delivery.

4.12 Policies on the Management of Real Property

Policy on Management of Real Property

The objective of this policy and its associated directive and standards is to ensure real property is managed in a sustainable and financially responsible manner, throughout its life cycle, to support the cost-effective and efficient delivery of government programs.

4.13 Directives

Directive on the Sale or Transfer of Surplus Real Property

The sale or transfer of surplus real property has potentially higher risk than activities during other life cycle phases of the management of real property because of the sensitivity or value associated with many of the properties, the numerous diverse stakeholder interests and the importance of horizontal cooperation. This directive is intended to address the issues and ensure that sales or transfers of surplus real property provide for: a whole of government perspective; efficiency, equity and transparency in transactions; best value to the Canadian taxpayer; consideration of the interests of communities and other levels of government; and the fulfillment of any legal obligations with respect to Aboriginal groups.

4.14 Standards

Accessibility Standard for Real Property

The Canadian Human Rights Act (CHRA) gives effect to the principle that all individuals should have equal opportunity to have their needs accommodated, consistent with their duties and obligations and to function as members of society, without being hindered in, or prevented from, doing so by discriminatory practices.

Appraisals and Estimates Standard for Real Property

The Treasury Board Policy on the Management of Real Property requires deputy heads to ensure their respective department maximizes the long-term economic advantage to the Crown, assesses opportunities to earn revenues, ensures real property decisions are financially prudent and represent the best value to the Canadian taxpayer and that the total consideration received or paid by the government is justified in relation to the market value of the property. To meet these requirements, departments must be able to determine the market value of the interests, benefits or rights involved. This standard establishes minimum requirements for making that determination before acquiring, disposing or entering into other arrangements with respect to real property.

Fire Protection Standard

The objective of this standard is to protect and minimize losses to federal real property and protect the lives of those who use these properties from fire-related risks.

Reporting Standard on Real Property

This standard establishes the information management requirements that will ensure compliance with the Treasury Board Policy on the Management of Real Property. That policy requires that deputy heads ensure custodians and Crown corporations regularly record, update and certify information in the Directory of Federal Real Property (DFRP). Custodians and consolidated Crown corporations are required to do the same for the Federal Contaminated Sites Inventory (FCSI).

Standard for fire safety planning and fire emergency organization
This standard establishes the minimum requirements for fire safety plans including the organization of designated staff for fire emergency purposes.

4.15 Related Policies

Common Services Policy
The objective of this policy is to ensure that departments and agencies can acquire responsive, cost-effective support for their program delivery.

Federal Identity Program Policy
Federal institutions, programs, services and contributions shall be identified in accordance with corporate identity standards for the Government of Canada.

Occupational Safety and Health
It is the policy of the government to provide employees with a safe and healthful working environment and with occupational health services as defined in this policy.

Policy on Long-term Capital Plans
It is government policy that capital assets be: acquired, improved, and retained; in support of program goals consistent with broader government objectives; based on long-term plans that outline a responsible investment program within available resources and that take into account managing the asset base on a life-cycle basis; justified and approved, through capital projects, in the context of long-term plans; and disposed of, as being surplus, when they are no longer required.

4.16 Transactions

Transaction Approval Limits and Conditions for the Acquisition or Disposition of Real Property
This repository outlines transaction approval limits and conditions that have been established by the Treasury Board of Canada for the acquisition and disposition of real property.

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ANNEX 3

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Canada

Treasury Board of Canada Secretariat

Directive on the Sale or Transfer of Surplus Real Property

Tools & Resources

Table of Contents **Complete Text** Alternate Formats Related Instruments FrameworksPoliciesStandards Related Links Web sitesArchives

4.17 1. Effective date

This directive is effective as of November 1, 2006.

4.18 2. Application

This directive applies to all departments within the meaning of section 2 of the *Financial Administration Act*, unless specific acts or regulations override it.

4.19 3. Context

The Treasury Board *Policy on Management of Real Property* defines the performance expectations for the management of real property throughout its life cycle, including obligations associated with the disposal phase. The policy requires deputy heads to ensure a disposal by sale or transfer is completed in conformance with this directive.

Of particular importance to the sale or transfer of real property are the policy requirements to: undertake a performance assessment of the functionality and utilization of real property and to develop disposal strategies. These strategies, which are partly based on the findings of the performance assessment, will include plans for the disposal or relinquishment of real property that is no longer required for program purposes and therefore will not be retained by the custodian or occupied by the tenant.

This directive only addresses the obligations of custodians to dispose of surplus real property by sale or transfer. Other disposals, such as easements, leases and licences, are addressed in the Guide to Management of Real Property, as are the relinquishment of real property by tenants, demolitions and other activities of the disposal phase.

Surplus real property is sold or transferred following an established process tailored to the characteristics of the surplus property, i.e., whether it is routine or strategic. In general, routine surplus real properties are properties, or a portfolio of properties with lesser value that can be sold easily without any substantial investment. These properties are normally sold in their "as is" state on the open market by the custodian, its agent (Public Works and Government Services Canada), or a private sector firm.

Strategic surplus real properties are properties or portfolios of properties with potential for significantly enhanced value, those that are highly sensitive, or a combination of these factors. Because of the complexity associated with these properties, they may require innovative efforts and a comprehensive management approach to move them into the market. Canada Lands Company CLC Limited, as the government's disposal agent, disposes of these selected surplus properties through a strategic disposal process.

4.20 4. Definitions

Agreement (*Entente*)

An instrument, such as a memorandum of understanding, a memorandum of agreement or an occupancy instrument, that while not legally binding, creates a custodian-tenant relationship by conferring certain real property rights of use or benefits and obligations on the part of the two parties as if it were a truly enforceable instrument.

Custodian (*Gardien*)

A department whose minister has administration of real property for the purposes of that department.

Disposal (*Aliénation*)

A transaction that alienates real property from a department's inventory by sale, lease, licence, exchange, gift, easement, transfer of administration to another department or an agent Crown corporation, or transfer of administration and control to the provincial Crown.

Market Value (*Valeur marchande*)

The price that a property would likely bring in a competitive and open market on a specified date under all conditions required for a fair sale, with the buyer and seller each acting prudently and knowledgeably, and where the price is not affected by undue stimulus.

Public purpose (*Fins publiques*)

For federal departments and agent Crown corporations, "public purpose" means program need; for provinces and municipalities, "public purpose" generally refers to roads, utilities and parks, but could include other public purposes if they were non-commercial and for the "common good" of all citizens.

Surplus real property (*Biens immobiliers excédentaires*)

Real property that is no longer required in support of a department's programs.

Tenant (*locataire*)

A department occupying real property that is under the administration of the minister of another department.

4.21 5. Purpose

The sale or transfer of surplus real property has potentially higher risk than activities during other life cycle phases of the management of real property because of the sensitivity or value associated with many of the properties, the numerous diverse stakeholder interests and the importance of horizontal cooperation. This directive is intended to address the issues and ensure that sales or transfers of surplus real property provide for:

a whole of government perspective;
efficiency, equity and transparency in transactions;
best value to the Canadian taxpayer;
consideration of the interests of communities and other levels of government; and
the fulfillment of any legal obligations with respect to Aboriginal groups.

This directive is issued pursuant to the *Financial Administration Act*, subsections 7(1), 9(1.1), 9(2) and the *Federal Real Property and Federal Immovables Act*, subsection 16(4).

4.22 6. Directive requirements

6.1 Custodians shall conclude the sale or transfer of properties within three years of formal notification of the property being surplus to program requirements. The consideration received for the property must be justified in relation to market value, determined in accordance with the Treasury Board *Appraisal and Estimates Standard for Real Property*.

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6.2 Custodians shall categorize surplus properties as either routine or strategic. All surplus properties are considered routine unless they meet at least one of the following criteria, which qualifies them as strategic:

a. the size or value of the property, or of a portfolio of properties, is significant enough to affect local markets negatively if its integration into the market is not managed;
b. the value of the property, or properties within a portfolio, can be increased significantly (e.g., through subdivision, rezoning, investment or pre-sale development);
c. a partnership with another level of government, the private sector or other party may offer the best mechanism to realize either the inherent value of a particular property or portfolio of properties or the greatest benefits to the government beyond the financial return; or
d. sensitive policy issues exist, including the potential for a substantial gain by a party other than the federal government.

6.3 Custodians shall involve the Treasury Board Secretariat in the final identification of surplus strategic properties in Canada that qualify for sale to the Canada Lands Company CLC Limited (CLC). They shall establish and communicate a process for the effective management of horizontal issues related to their disposal.

6.4 Prior to seeking an indication of interest in the surplus property, custodians shall ensure they can provide interested parties with sufficient information, in the following minimum areas, to allow them to make an informed decision within the timeframes allowed:

a. legal risk analysis on title, including whether a duty to consult with Aboriginal groups exists;
b. the property's environmental and physical condition;
c. archaeological and heritage findings;
d. risk to wildlife habitat; and
e. market value of the property.

6.5 Custodians shall formally determine the degree of interest in surplus properties in Canada by simultaneously providing federal departments, agent Crown corporations, provincial and municipal governments an opportunity to:

a. acquire surplus routine properties for a public purpose, in the priority order noted above, before the property is offered for sale on the open market; or
b. identify their public purpose interest in surplus strategic properties for equal consideration by the custodian during the development of the disposal strategy.

6.6 Custodians shall provide priority organizations or interested parties 30 days to identify their interest and an additional 90 days to confirm in writing the nature and scope of their interest, supported by a financial commitment. Custodians shall give an additional 120 days to Indian and

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Northern Affairs Canada to provide written confirmation if the real property is to be acquired to settle a comprehensive land claim.

6.7 In the case of a sale or transfer for public purpose:

a. Custodians shall ensure their deputy head is satisfied that the acquiring party has demonstrated that the surplus property is required for public purpose consistent with its long-term plans and that the sale or transfer is the best real property decision from a whole-of-government perspective, taking into account the market value of the surplus property based on highest and best use.
b. Consideration received for property shall be based on market value for continued public purpose use, in accordance with the Treasury Board *Appraisal and Estimates Standard for Real Property*. The variance between the values should inform the conditions of sale, when appropriate.
c. If surplus property sold or transferred for public purpose can or could potentially be rezoned and resold for profit, custodians shall include appropriate covenants in the conveyance documents to ensure that the original intent of the sale or transfer is respected.

6.8 Custodians shall develop a balanced disposal strategy for strategic surplus properties that is supported by a comprehensive assessment of federal and other stakeholder interests, the legal risk analysis, and policy and financial considerations. They shall also develop a business case that is further supported by the valuation, determined in accordance with the Treasury Board *Appraisal and Estimates Standard for Real Property*, and by a business plan from Canada Lands Company CLC Limited.

6.9 When the real property is contaminated and the acquiring party is undertaking the required remediation, custodians shall take steps to ensure that it is carried out within a reasonable length of time.

6.10 To share in the net proceeds from the sale or transfer of surplus real property custodians must:

a. have an approved **investment plan**;
b. reinvest the proceeds in real property, consistent with their approved investment plan; and
c. satisfy the reporting requirements of the Treasury Board *Reporting Standard on Real Property*.

Note: Access to net proceeds is done through theexpenditure management process.

4.23 7. Responsibilities of other organizations

7.1 Canada Lands Company CLC Limited (CLC) is a federal, non-agent Crown corporation mandated with the commercially oriented, orderly disposal of selected surplus federal properties in Canada. A sale to CLC follows the *strategic disposal process* established by the Treasury Board Secretariat.

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7.2 The Department of Justice Canada (DOJ), under the authority of the *Department of Justice Act* and the *Federal Real Property and Federal Immovables Act*, acts as solicitor to departments for real property transactions of all types to ensure that all legal aspects of the transaction have been addressed; provides property-specific legal title search and an assessment as to whether potential or established Aboriginal or treaty rights could be adversely impacted by the disposal of the land and whether a duty to consult is triggered; provides information on any relevant litigation; prepares instruments, contracts and other documents, including approval of their form and legal content; provides legal advice and opinions on real property matters and transactions; countersigns conveyance instruments; and operates a document depository.

7.3 Indian and Northern Affairs Canada (INAC) provides available information about surplus federal properties such as: whether the property is in an area subject to a land cession treaty or completed comprehensive land claim; whether there are ongoing claims negotiations or out-of-court settlement discussions; if the property is subject to any asserted claims; or if there is evidence of use or occupation or history of use and occupation by an Aboriginal group or groups

4.24 8. References

4.24.1 Principal legislation

Canadian Environmental Assessment Act

Canadian Environmental Protection Act 1999

Federal Real Property and Federal Immovables Act

Federal Real Property Regulations

Historic Sites and Monuments Act

Official Languages Act

Species at Risk Act

4.24.2 Treasury Board policies

Policy on Long-term Capital Plans

Policy on the Management of Real Property

Project Management Policy

Common Services Policy

4.24.3 Treasury Board directives and standards

Accessibility Standard for Real Property

Accounting standards

Appraisals and Estimates Standard for Real Property

Federal Identity Program Manual

Reporting Standard for Real Property

Security standards

4.24.4 Guidance and tools

Best Practices Advisory on Environmental Considerations in Real Property Transactions
E-Learning Tool for the Disposal of Surplus Federal Real Property
Environmental Guide for Federal Real Property Managers
Guide to the management of Real Property
Security Assessment Guidelines

4.25 9. Enquiries

Please direct enquiries about this directive to your departmental headquarters. For interpretation of this directive, headquarters officials should contact:

Real Property and Materiel Policy Division
Treasury Board of Canada Secretariat
L'Esplanade Laurier
140 O'Connor Street
Ottawa ON K1A 0R5
Telephone: 613-941-7173
Facsimile: 613-957-2405
E-mail: rpmpd@tbs-sct.gc.ca

Date Modified: 2006-06-26

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ANNEX 4

Treasury Board of Canada Secretariat | Secrétariat du Conseil du Trésor du Canada

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ARCHIVED - Treasury Board Real Property Management Framework Policy

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4.26

1. Effective date

This document contains the policy as revised June 15, 2000. It replaces the version dated November 15, 1993.

4.27 2. Policy objective

To establish the framework for managing federal real property.

Note: For interpretation of this policy in the Province of Quebec, "real property" means "immovable" within the meaning of civil law of the Province of Quebec and includes the rights of a lessee in respect of such an immovable.

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4.28 3. Policy statement

It is government policy to acquire, manage, and retain real property only to support the delivery of government programs and to do so in a manner consistent with the principle of sustainable development. When managing real property, departments must

do so in a manner that will preserve the maximum long-term economic advantage to the Crown;
honour federal environmental objectives;
provide safe and adequate facilities; and
respect other relevant government policies.

4.29 4. Application

This policy applies to all departments within the meaning of section 2 of the *Financial Administration Act* unless specific acts or regulations override it.

Note:

The *National Capital Act* requires separate approval by the National Capital Commission for exterior alterations to buildings in the National Capital Region.

4.30 5. Policy requirements

5.1 Departments must define and implement a framework for managing real property in their custody and maintain the information needed to manage all of their responsibilities, based on Treasury Board Real Property policies.

5.2 Departments must develop, maintain, and apply suitable structures, policies, and practices as well as organizational authorities and the technical, administrative, and financial systems appropriate to managing real property in their custody. These departments are accountable for initiating all actions to acquire, use, and dispose of the real property they need to deliver their programs. They are responsible for the overall planning and management of design and construction projects; for capital and operational budgets; and for operating and maintenance costs, including lease costs and the costs of acquiring and administering leased real property.

5.3 Departments must obtain services related to real property in accordance with the *Treasury Board Common Services Policy*.

4.31 6. Responsibilities

6.1 Departments are responsible for monitoring their adherence to Treasury Board policies. The *Treasury Board Guide to Monitoring Real Property Management* provides guidance in this regard.

6.2 The Department of Justice Canada provides legal services to government departments and agencies, including legal advice and opinions on real property matters and transactions; prepares instruments, contracts, and other documents, including approval of their form and legal content; acts for the Crown in real property transactions of all types; searches, and formulates opinions on, real property titles; and operates a document depository.

6.3 Environment Canada develops federal environmental legislation and policies and provides advice on environmental matters.

6.4 The Canadian Environmental Assessment Agency advises federal departments and agencies on their obligations under the *Canadian Environmental Assessment Act* and provides administrative support for public reviews.

6.5 The Department of Foreign Affairs and International Trade provides common services for real property requirements outside Canada. Some of these services are mandatory; some are not.

6.6 The Parks Canada Agency establishes federal heritage building policies and provides advice on heritage matters.

6.7 Health Canada is responsible for public service health services. That responsibility includes monitoring health services and advising the Treasury Board on its occupational safety and health standards for public service workplaces.

6.8 Human Resources Development Canada, under the authority of the *Canada Labour Code*, develops and ensures compliance with the minimum standards for safety and health in federal workplaces. This includes fire safety standards.

6.9 The National Capital Commission, under the *National Capital Act*, has certain responsibilities for real property within the National Capital Region.

6.10 Natural Resources Canada promotes energy management in federal government facilities, surveys Canada Lands, and manages the Crown's mineral rights.

6.11 Public Works and Government Services Canada offers common services for the real property requirements of the federal government. Most of these services are optional; some, such as office accommodation, are mandatory.

6.12 The Royal Canadian Mounted Police, on request, reviews and advises on the physical security arrangements for real property that departments administer. It initiates related government-wide standards. It also inspects, tests, evaluates and, when necessary, designs physical security equipment and specifications.

6.13 The Treasury Board of Canada Secretariat advises the Treasury Board on the real property plans and expenditures of departments and on individual real property projects and transactions;

develops government real property policies; co-ordinates and maintains information on federal real property holdings in a central database; reviews the use of real property; develops proposals for strategic approaches to federal holdings on a regional basis; and assesses how well departments have followed government policies and carried out previously approved departmental plans.

6.14 The Treasury Board Advisory Committee on Real Property (TBAC/RP) consists of senior representatives from custodian, policy, and service departments. It advises the Treasury Board on policies and practices for managing real property. The Committee's mandate and a current list of member departments and subcommittees appear in the Appendix.

6.15 The Treasury Board Advisory Committee on Federal Accommodation in the National Capital Region (TBAC/FANCR) consists of the Secretary of the Treasury Board, the Deputy Minister of Public Works and Government Services Canada, and the Chair of the National Capital Commission. It advises the President of the Treasury Board on real property issues and on investment strategies in the National Capital Region.

4.32 7. Monitoring

The Secretariat will determine how effective this policy is, find out how it is applied in departments, and decide whether it needs to be revised. It will do this through ongoing contact with departments, consulting with the Treasury Board Advisory Committee on Real Property, and noting audits and reviews conducted by departments or the Auditor General of Canada. The *Treasury Board Guide to Monitoring Real Property Management* provides information so that departments can monitor and assess policy implementation.

4.33 8. References

4.33.1 8.1 Authority

This policy is issued pursuant to the *Financial Administration Act*, subsections 7(1), 9(1.1), and 9(2).

4.33.2 8.2 Treasury Board publications

Treasury Board Guide to Monitoring Real Property Management

Treasury Board Real Property Glossary

Treasury Board Common Services Policy

4.34 9. Enquiries

Please direct enquiries about this policy to your departmental headquarters. For interpretation of this policy, departmental headquarters should contact:

Real Property and Materiel Policy Directorate
Treasury Board of Canada Secretariat
L'Esplanade Laurier
140 O'Connor Street
Ottawa ON K1A 0G5
Telephone: (613) 941-7173
Facsimile: (613) 957-2405

E-mail: rpmpd@tbs-sct.gc.ca

4.35 Appendix - Treasury Board Advisory Committee on Real Property (TBAC/RP)

4.35.1 1. Objectives

The Treasury Board Advisory Committee on Real Property (TBAC/RP) advises the Treasury Board on federal government real property policies, practices, and expenditures. It also provides a forum for discussing real property issues.

4.35.2 2. Membership

The committee is composed of senior executives from each custodian department. Departments with separate custodian authorities may have more than one member. Organizations with special policy or service responsibilities are also members. See Annex for a membership list.

The chairperson is selected from the membership.

4.35.3 3. Administration

Staff of the Real Property and Materiel Policy Directorate (RPMPD) at TBS co-ordinate background documentation, organize regular meetings, and oversee the operations of the committee and its subcommittees.

4.35.4 4. Subcommittee structure

The legislative subcommittee is composed of officials from RPMPD and the Department of Justice Canada. This subcommittee reviews real property legislation and recommends changes.

The Real Property Information Management Subcommittee (RPIMS) is composed of officials from TBAC/RP member organizations. It provides advice on central information systems and the information needs for common or shared systems.

The Policy subcommittee is composed of officials from TBAC/RP member organizations. It meets on request to review policy initiatives and advise TBAC/RP.

4.35.5 Annex - TBAC/RP Membership

4.35.5.1 1. Custodian organizations

Agriculture and Agri-Food Canada
Canada Customs and Revenue Agency
Correctional Service Canada
Department of Foreign Affairs and International Trade
Environment Canada
Fisheries and Oceans Canada
Health Canada
Indian and Northern Affairs Canada
Industry Canada
National Defence
National Research Council Canada
Natural Resources Canada
Parks Canada Agency
Public Works and Government Services Canada
Royal Canadian Mounted Police
Transport Canada

4.35.5.2 2. Policy and service organizations

Department of Justice Canada
Environment Canada
Human Resources Development Canada
National Capital Commission
Privy Council Office
Public Works and Government Services Canada
Treasury Board of Canada Secretariat

Date Modified: 2000-06-15

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ANNEX 5

Treasury Board of Canada Secretariat | Secrétariat du Conseil du Trésor du Canada

Canada

Treasury Board of Canada Secretariat

Guide to Real Property Management: Aboriginal Context

4.36 3. Background
Intersection of federal interests and Aboriginal rights and interests in real property

Throughout the real property life cycle, Canada must take into account the rights and interests of both Aboriginal and non-Aboriginal Canadians. There are also valid policy reasons why Canada may wish to address Aboriginal interests in its decision making. This section examines the various contexts—federal, Aboriginal, and provincial, territorial or local jurisdictions—to be considered when managing federally administered real property where federal interests and Aboriginal rights intersect.

Aboriginal consultation is key to meeting legal obligations and reconciling or building relationships.

4.36.1 Federal context

Real property practitioners need to understand federal-Aboriginal relations and remember that they are acting on behalf of the Crown, not just their departments. As Aboriginal rights or interests arise, prudent practitioners seek information and expertise to foster productive relationships with Aboriginal groups and ensure federal property management legislation and policy compliance.

Ignoring legal obligations to Aboriginal groups or only addressing those obligations without concern for lasting federal-Aboriginal relationships could potentially result in disputes and legal challenges. It is wise for all parties, including neighbouring Aboriginal communities, to jointly develop an honourable, trusting and sustainable relationship to reconcile common challenges and find mutually beneficial solutions to intersecting real property management challenges.

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4.36.2 Canada's Action Plan on Aboriginal Consultation and Accommodation

The Action Plan of 2007, developed by Justice Canada and AANDC, provides a framework for the federal government's approach to Aboriginal consultation and accommodation. This approach is being strengthened through improved information sharing, better coordination, and policy development. The Action Plan is focussed on the following:

- engaging Aboriginal groups, provinces and territories, and industry in the development of federal policy positions on Aboriginal consultation;
- creating a repository of information on the location and nature of established and potential Aboriginal and treaty rights (Aboriginal and Treaty Rights Information System, ATRIS);
- distributing the Updated Consultation Guidelines to federal officials and providing training to support the federal real property community;
- establishing interdepartmental mechanisms to monitor and improve coordination of consultation and accommodation practices; and
- forming an interdepartmental team to implement the Action Plan.

Under the Action Plan, AANDC and Justice Canada developed the Updated Consultation Guidelines, which are the primary resource on Aboriginal consultation for federal departments and agencies and for real property managers and practitioners. The Updated Consultation Guidelines ensure that departments apply a whole-of-government approach to consultation practices.

The Updated Consultation Guidelines detail the following legal and practical principles:

Legal Principals

- Honour of the Crown
- Reconciliation
- Reasonableness
- Meaningful consultation
- Good faith
- Responsiveness

Principles from practice

- Mutual respect
- Accessibility and inclusiveness
- Openness and transparency
- Efficiency
- Timeliness

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4.36.3 Aboriginal consultation context

Aboriginal consultation is subject to the principles developed in Supreme Court of Canada decisions on the reconciliation of Aboriginal and treaty rights recognized and affirmed under section 35 of the Constitution Act, 1982 and Justice Canada's advice on the Crown's legal duty to consult. These decisions outline when, who and how to consult pursuant to the common law duty to consult, as described in Supreme Court of Canada judgments such as *Haida Nation v. British Columbia (Minister of Forests)*, *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)* and *Mikisew Cree First Nation v. Canada Minister of Heritage*.

The Supreme Court determined that the legal duty to consult stems from the Crown's unique relationship with Aboriginal peoples and must be discharged in a manner that upholds the honour of the Crown and promotes reconciliation of Aboriginal rights with the sovereignty of the Crown.

> The duty to consult and accommodate is part of a process of fair dealing and reconciliation that begins with the assertion of sovereignty and continues beyond formal claims resolution. Reconciliation is not a final legal remedy in the usual sense. Rather, it is a process flowing from rights guaranteed by s. 35(1) of the *Constitution Act, 1982*.
>
> —*Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, at para. 32

It is essential to identify the source of potential legal consultation obligations. This will inform what form of consultation is required in which particular context and may serve to guide the consultation process. The legal duty to consult will vary both with the seriousness of the potentially adverse impact of custodial activities on Aboriginal rights and treaty rights and the strength of the claimed right. Justice Canada counsel can help in assessing the strength of the claimed rights and advise on the nature and scope of the consultations. Jurisprudence will continue to evolve as the courts examine how the Crown manages its relationship with Aboriginal groups and addresses constitutionally protected Aboriginal rights.

4.36.4 Treasury Board real property policy context

In accordance with the Treasury Board *Policy on Management of Real Property*, when Aboriginal rights are identified, potential risks must be assessed and, where appropriate, remediated by custodial departments. This policy applies throughout the life cycle of the property.

If the Crown meets its legal duty to consult and does not engage in practices or dealings that would take advantage of Aboriginal rights holders, it will be acting honourably and upholding the honour of the Crown. Specifically, section 3.4 of the Policy on Management of Real Property notes that deputy heads are:

> *...responsible for ensuring that real property is managed in a manner that fulfills any legal obligations with respect to Aboriginal groups and that the Honour of the Crown is upheld.*

Section 5.3.4 of the *Guide to the Management of Real Property* notes that custodians should identify and assess all stakeholder interests and take federal government policy and strategic considerations into account, including potential and established Aboriginal rights and title or treaty rights. Aboriginal consultation is a key part of this process.

4.36.4.1 Aboriginal community governance context

4.36.4.1.1 Aboriginal communities

It is important to consult the proper representatives of an Aboriginal group. Information on the nature of neighbouring Aboriginal government structures, powers and jurisdictions is available from AANDC and Aboriginal communities to help custodians understand these communities. Custodians may face several common forms of Aboriginal governance, including:

- ***Indian Act* bands** subject to AANDC ministerial powers;
- **Self-government or land claim settlements agreements** negotiated in accordance with the federal Comprehensive Land Claims Policy and/or Inherent Right of Self-Government Policy;
- **Aboriginal and public governance relationships**, which may be linked to territorial or regional governments (e.g. Nunavut or Nunavik Inuit);
- **Provincially recognized** Métis Settlements in Alberta; and
- **Landless** Métis and First Nation communities (e.g. Gaspé region of Quebec or Ontario).

4.36.4.1.2 Federal-provincial Treaty Land Entitlement Agreements

Canada has Treaty Land Entitlement (TLE) Framework Agreements with Saskatchewan and Manitoba that fulfill its land commitments under treaties. In Alberta, several band-specific TLE agreements may require attention. Federal custodians are advised to examine the scope of these agreements with AANDC or Justice Canada as they plan any land disposal in the Prairies.

4.36.4.1.3 Practical federal government and Aboriginal agreements and relationships

Apart from treaties or self-government agreements, federal custodians need to be aware of any formal, practical, time-limited agreements or contracts with Aboriginal groups. These may serve to harmonize management practices between jurisdictions or enable Aboriginal groups to work with custodians on common concerns (e.g. access to federal property for hunting or fishing, wild fire management, infrastructure, services, regional land planning) or to explore public-private partnerships.

Date Modified: 2011-11-18

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ANNEX 6

This item is too long for reproduction but can be accessed through the following link:
http://www.tbs-sct.gc.ca/rpm-gbi/doc/gmrp/-ggbi-eng.aspx

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ANNEX 7

CANADA LANDS COMPANY
SOCIÉTÉ IMMOBILIÈRE DU CANADA

5 Marketing and Sales Policy

Current Size: 100%

1. CLC MANDATE

The mandate of Canada Lands Company CLC Limited (CLC), a non-agent federal Crown corporation, is to ensure the commercially oriented, orderly disposition of surplus strategic real properties, optimizing financial and community value, and the holding of certain properties. It accomplishes this by purchasing strategic surplus properties from federal departments and agencies at fair market value, then improving, managing or selling them in order to produce the optimal benefits for the company's shareholder, the Government of Canada, and local communities.

2. POLICY OBJECTIVE

The objective of this policy is to ensure that CLC obtains the optimal value in the sale of its assets by balancing financial returns and community benefits.

3. POLICY PRINCIPLES

CLC's sales practices will follow accepted normal commercial practices and will be guided by the following principles:

- be equitable and transparent;
- encourage the use of competitive process;
- select reputable purchasers that are well-qualified in their respective areas of expertise;
- ensure that contracts achieve CLC approved financial and service delivery objectives;
- require that employees of CLC conduct their sales activities in a manner consistent with CLC's *Code of Conduct & Conflict of Interest Policy* and *Delegation of Authority*; and
- keep appropriate and adequate records of the selection process, and provide feedback to unsuccessful proponents upon request.

4. ACHIEVING OPTIMAL VALUE

CLC's acceptance of any offer shall be based on achieving optimal value. Price is not the sole determinant and is only one criterion in determining optimal value. In determining optimal value, CLC will take into consideration:

- the price and terms of the offer;
- the experience, reputation, financial capacity and credit worthiness of the purchaser, product quality, references or any other defined criteria related to the specific property; and
- any other direct or indirect benefits which could accrue to CLC and/or the community.

5. POLICY APPLICATION

The President & CEO and the operational/functional heads of CLC are accountable to the extent of their authorities and responsibilities to ensure that practices relating to sales respect this policy and that appropriate guidelines are followed by their staff in the conduct of CLC's business.

Administration of sales agreements under this policy shall be in accordance with the company's *Delegation of Authority* limits in effect at the time the sales agreement is signed.

Original Board Approval Date: June 14, 1996
Revisions: October 18, 2001, January 19, 2005

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ANNEX 8

National Executive Forum on Public Property

August 2012

The National Executive Forum on Public Property, based at Queens University, Kingston, Ontario, Canada, is a highly regarded and unique Canadian networking organization that actively facilitates better management of public property owned by any of the three levels of government (federal, provincial/territorial and municipal). The Forum's programs, developed by the member organization's executive level representatives, focus on strategic approaches to resolution of the issues of the day.

Members believe the Forum is meeting its mandate. They continually report the high value received through Forum programs, as well as through ongoing informal linkages with other members. They report the membership fees are small versus the great benefits they receive through the sharing of knowledge and experience. Of critical importance is the atmosphere of trust developed through a professional and collegial approach. The enduring culture of mutual support and friendship is key to success.

History – The forum was established by Queens University in 1998 to improve the management of public property through the sharing of knowledge and experience. It was founded by representatives of federal Treasury Board Secretariat and of Queens University's School Urban and Regional Planning to address the many hurdles created by the lack of effective communication between the levels of governments around managing public property. Other organizations did and continue to exist for federal departments, the provinces and municipalities in some provinces, but are often more formal in approach.

Membership – The Forum's constitution provides for up to 30 government members, with membership balanced between 3 levels of government. As well, the Forum includes interested businesses as Associates members, International Associates, Forum Advisors and Academic Advisors. The numbers are limited to ensure good communication between members; currently, the Forum has 24 committed government organizations as Members, 10 Associate members, 6 International members, 2 Forum Advisors and 3 Academic Advisors as well as a Queens University representative. The international class of membership was added recently.

Organization – The Forum is a part of Queens University and reports to it. Queens provides legal and financial services, as well as a small office at reduced rent. The Forum is operated by a Convenor, the former head of the City of Toronto's large property department and is based in Toronto, and an administrative assistant, based at Queens. A representative of the School of Urban and Regional Planning is a member and acts as the liaison with the University. The Forum elects an Executive Committee, which actively provides direction to policies and programs. The Forum Chair is chosen annually by the Executive Committee and is rotated by level of government and location in the country. The Executive Committee members, elected for 2 year terms, include representatives of the three level of government from different parts of the county, as well as an Academic Advisor and a Queens University representative. The Research Advisory Committee, composed of Academic Advisors and interested government member representatives, develops and oversees the research information program. The Forum produces two newsletters and maintains a web site, www.publicpropertyforum.ca, but mainly communication with and between members throughout the year is mainly via email and phone.

Funding – The Forum is a lean organization, with typical annual budget of around $150,000. A reserve is maintained. It began with only 10 government members, each committing $10,000 for 3 years. Its funding comes primarily from annual dues, currently $5,000 per government organization and $1,000 per Associate. The other classes of membership do not pay membership fees. Additional funding comes from conference registration fees and from event sponsorship. Two representatives of each government member organization, Academic and Forum Advisors, and International Associates do not pay conference fees and Associates pay reduced fees.

Programs – The Forum's highly regarded programs are developed in close consultation with members, finalised with the Executive Committee, and adjusted as needed. The Forum holds two main events each year. The May Conference or Symposium for about 70 members and invited guests is held in different cities across the country. It includes a Members Day for government members and Academic Advisors only. The Fall Retreat, the heart of the Forum, is also only for government members and Academic Advisors. It is held each October in Montréal. The Symposia cover the issues of the day, which are further pursued at the Retreat and Members Day, along with reports from attendees on their current priorities. These "roundtable" reports provide critical information that is followed up between interested government members throughout the year. This sharing is probably the most valuable part of the Forum. An important recent addition to the Symposium has been special working sessions on selected topics. These sessions are also for government members and academic advisors only.

The research program was originally intended for the development of an academic body of information as now exists for urban and regional planning but unfortunately there has been little interest from academics in topics that matter to Forum members. Therefore, the Research and Information program focuses on information collection on topics of interest, with the results posted on the Forum's website or distributed by email. In response to strong demand and support, government members have recently completed the development of a benchmarking program because private sector programs often do not meet more complex needs of those managing public property.

Over the years, the wide variety of topics explored by the Forum include outsourcing, partnerships, "doing more with less", making use of heritage buildings, sustainability and greening, creating value from public property, leasing versus owning, and responding to new needs such as changing opportunities resulting from new IT options and government's changes to service delivery modes.

For further information – See the Forum's website www.publicpropertyforum.ca.

Acquisition and Disposal of Property Interests by the Commonwealth of Australia

Background Paper for World Bank Project on Monetizing Public Land in India

Dr Guy Verney[83]

Assistant Secretary, Special Claims and Land Policy Branch, Department of Finance and Deregulation

Australian Government Department of Finance and Deregulation

[83] Views expressed are those of the author and do not necessarily reflect the views of the Government of Australia

Abstract

The efficient and effective use of land resources by governments is important.

Australia, like India, is a federation and faces similar challenges in maximising the value of land resources owned and managed by Government. The challenges are related to the legal framework for the acquisition and disposal of property interests and the implementation of the policy framework to acieve the efficient and effective use of land resources. The paper outlines the legal framework, including Native Title, the policy framework for the management of public land and the mechanisms to implement the policy framework.

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Introduction

Any discussion of the acquisition and disposal of property interests by the Commonwealth of Australia needs to take account of the differences between India and Australia.

Scale is an obvious difference. India has a population of more than 1.1 billion and a land area of 3 million square kilometres; Australia has a population of 21.5 million and land area of 7.7 million square kilometres. This difference is reflected in pressure for land resources.

India is also rich and diverse in established ethnic /religious groups (Hindu, Muslim, Sikh and Buddhist). Australia's diverse cultural communities are dispersed geographically rather than being concentrated within a particular State or region and are rarely, if ever, a significant factor in the acquisition and disposal of property interests by the Commonwealth.

Like Australia, the Indian Constitution establishes a federation including the Union and the States as well as local government (Panchyat and Municipalities). The Constitution provides that executive, legislative and judicial authority is vested in the President, Parliament and the Supreme Court respectively at the Union level and the Governor, Legislative Assembly and High Court respectively at the State level. Under the Indian Constitution, land is listed as a State responsibility. The Constitution also contains centralising elements which enable the Union government to expand its legislative power in relation to the States, for example, the emergency rule provisions.

Federalism in Australia

Property acquisitions and disposals at the Commonwealth level in Australia are set in the context of Australia as a federation and the powers set out in the *Constitution.* [84]

At any time, it is a challenge to define federalism. Sawer pointed out that it is a way of achieving a distribution of power based on geography between various government entities in order that they might be sustained and exercise power.[85] Federalism is also about the 'federal qualities' of a society and how they are explained and defended.[86]

In 1901, the six colonies of the British Empire in the Australian continent (Tasmania, New South Wales, Victoria, Queensland, Western Australia and South Australia) became a federation.[87] In

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[84] *Australian Constitution* 1901 (Cth).

[85] G Sawer*, Modern Federalism* (Carlton, Victoria, pitman Australia1976), 2.

[86] A Livingstone, "A Note on the Nature of Federalism", 67 (1952) *Political Science Quarterly*, 81 at 88.

[87] M Raff, *Planning Law and Compulsory Acquisition in Australia*, 27-74 in T Koyaka, D Callies, *Taking Land – Compulsory Purchase and regulation in Asian-Pacific Countries* (Honolulu, University of Hawaii Press,2002. A conventional explanation of the structure of a federal system is that there is a central or national government, sovereign state or regional governments and a division of powers between the national and state governments. This reflects, for example, the federal features of the constitution of the United States.

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addition to the States, Australia has two self-governing Territories (Northern Territory and the Australian Capital Territory). As a result of its British colonial history, Australia inherited a common law tradition based on English practice.

The *Constitution* sets out the structures, institutional processes and powers of the units of government. Chapter 1 sets out the legislative power of the Commonwealth of Australia. Section 51 lists the subjects which the Parliament is authorised to make laws (heads of power) and section 52 lists those matters in which the Commonwealth has exclusive power. Powers not covered in sections 51 and 52 are 'residual' powers which reside with the States.

In relation to the acquisition of property of which land acquisition is one activity, s 51 (xxxi) *Constitution* provides for 'the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws'. The High Court of Australia has interpreted the meaning of property in broad terms.[88]

The Commonwealth of Australia has other constitutional powers, for example, external affairs and corporations, which have been exercised in relation to resource management dealing with mining and forestry.

While the *Constitution* provides powers relevant to property acquisition and resource management, land use planning in the Australian federation is generally a responsibility of the States and Territories in which local government plays a vital operational role on a day to day basis for planning developments and schemes.

In relation to India, Rajendra Prasad, one of the leaders of the nationalist movement and a leader of the Constituent Assembly, said that he did 'not attach any importance to the label which may be attributed to it- whether you call it a federal Constitution or unitary Constitution…. it makes no difference so long as the Constitution serves its purpose.'[89] Prasad's view was echoed in *State of Rajasthan v Union of India*, in which Beg CJ commented that federalism was 'watered down by the needs of progress and development' in order to achieve national integration and political and economic coordination.[90]

Legislative Frameworks Relevant to Land Acquisition and Disposal

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5 S Brennan, "Native Title and the Acquisition of Property under the Australian Constitution" (2004) 28(1), *Melbourne University Law Review*, 1-41 <http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/MULR/2004/2.html?stem=0&synonyms=0&query=the%20high%20court%20and%20property>. 14 June 2012.

[89] Professor Sir David Derham, a Vice Chancellor and Professor of Law, University of Melbourne contributed to the drafting of the Constitution of India.

[90] *State of Rajasthan v Union of India* [1978] 1 SCR 1.

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In Australia, several frameworks are relevant to access to Commonwealth land and the acquisition and disposal of property interests by the Commonwealth. Since 1901, the Commonwealth of Australia has owned and managed land but its footprint has become smaller in recent times as a result of the disposal of land surplus to government needs. However, proposals for access to Commonwealth land are increasing, for example, access to land to explore and mine for minerals and for urban development, and ensure that the frameworks continue to be exercised and attract scrutiny.

Australian Constitution

The *Constitution* s 51 (xxxi) gives power to the Commonwealth Parliament to pass legislation subject to two limitations: the land to be resumed (of private owners and the States) must be for a purpose in respect of which the Commonwealth has a constitutional right to make laws and the law must provide for "just terms" compensation.

Section 51 (xxxi) also refers to the word "property". "Property" is given a wide meaning and refers to real property (land) and to personal property. In *Commonwealth v New South Wales*[91], the High Court decided that there is no limitation upon the term "property" for which the Commonwealth may legislate, provided "just terms" is observed and it is "for any purpose in respect of which the Parliament has power to make laws".

"Just terms" is therefore not confined to the payment of a sum of money for the market value of the land which was acquired by compulsion. The term "value" is read broadly, so that the property owner can be justly compensated for the interference with their rights.

***Lands Acquisition Act 1989* (Cth) (LAA)**[92]

In Australia, the initial legislation relating to the acquisition of property interests for a Commonwealth purpose was the *Acquisition of Property for Public Purposes Act 1901* (Cth). It was replaced by the LAA 1906 (Cth), and subsequently by the LAA 1955 and the LAA 1989.

The LAA 1989 (Cth) is the principal legislation giving effect to s 51 (xxxi) *Constitution*. It contains processes for the acquisition (including compensation and review of decisions) and the disposal of property interests. It is worth noting that there has never been a challenge to the constitutionality of the act. Decisions under the act are subject to judicial review.[93]

[91] *Commonwealth v New South Wales* [1923] HCA 34; (1923) 33 CLR 1

[92] Any decision under the LAA must also recognise and observe the requirements of the *Financial Management and Accountability Act 1998* (Cth) – the Commonwealth's financial management framework, that is, the acquisition and disposal of property interests must represent value for money for the Commonwealth and be an ethical and efficient use of resources.

[93] *Administrative Decisions (Judicial Review) Act 1976* (Cth); s 75 Constitution of Australia (1901) *(Cth).*

- **Acquisition**

Property interests can be acquired through purchase on the open market, by negotiated agreement or by compulsion. Most commercial property transactions are for leases and are managed by the relevant Commonwealth agency. The Department of Defence is the key sponsor for acquisitions of land: it undertook 20 acquisitions by agreement in the period June 2010 to June 2012 and eight acquisitions by compulsion.

As a result of Australia's inherited common law tradition from England, the acquisition of property interests by negotiated agreement or by compulsion requires that the property owner and any other persons with rights are informed in advance about the acquisition. A Pre Acquisition Declaration published in relevant newspapers/media also informs the public about the acquisition.

Section 40 LAA enables the Minister to authorise an acquisition by agreement of a property interest in land. The acquiring authority may enter into an agreement for the acquisition of the interest if a pre-acquisition declaration in relation to the acquisition is absolute and is in force and the interest is available in the market.

In recognition of the fact that compulsory acquisition is a significant interference with the property rights of an individual, s 41 LAA provides that such an acquisition must be authorised by the Minister for Finance, and must be for a public purpose. A public purpose is a purpose in respect of which the Parliament has power to make laws. Section 6 LAA gives a broad definition of the term "property" – it is described as an interest which includes a legal or equitable interest in land, a restriction on the use of the land and any other right, charge, power or privilege in connection with the land.

The processes of the Act allow the property owner to lodge an objection to a proposed acquisition. Section 26 LAA gives the landowner the option of seeking reconsideration by the Minister and s 29 LAA gives an additional right to seek review by the Administrative Appeals Tribunal.

While the LAA contains administrative review processes, decisions in relation to the acquisition of property interests are also subject to judicial review.

- **Compensation**

For compulsory acquisition of property, s 85 LAA allows the Minister to make an advance payment of compensation to the previous property holder, equal to 90 per cent of the amount already offered. The LAA also provides for flexibility in dealing with a previous property owner by providing in sections 55 and 110 LAA that the Minister may make an advance to a property owner on account of compensation that may become payable, pending receipt of a compensation claim.

- **Disposal**

Disposal of Commonwealth property interests are also reported to the Minister for Finance (Part X LAA 1989 (Cth)). The LAA provides an umbrella for the policy guidelines on disposal of property interests (outlined later in this paper).

Native Title Act 1993 (Cth)

In Australia, native title was recognised in *Mabo v Queensland*[94] after other common law countries (United States, Canada, New Zealand) had accepted that there were indigenous land rights under common law. Since *Mabo v Queensland*, Malaysia and South Africa have also accepted the native title of indigenous peoples on the basis of pre-colonial occupation.

Following *Mabo v Queensland*, the *Native Title Act 1993* (Cth) was enacted. The act provides a framework for native title claims and interests, including the definition of a native title group, proving native title, processes for pursuing a claim, and the extinguishment of native title, compensation for extinguishment and agreement making, in particular, Indigenous Land Use Agreements.[95]

Under s 223 (1) *Native Title Act*, a claim is established if the claimants show their rights and interests are traditional and predate British settlement. There must nevertheless be a continuous connection with traditional laws, customs and practices to establish a connection to the land. Native title is usually communal but can be individual and in some circumstances it is proprietary.

The common law recognises that the Crown may commit an act which shows a clear intention to extinguish native title, for example, public works, as well as the creation of rights in third parties which were at variance with the existence and continuation of native title. However, there was no intention by the British to extinguish native title by merely acquiring sovereignty of the Australian continent.

It was assumed that the grant of a pastoral lease by the Crown extinguished native title, but in *Wik Peoples v Queensland*, the High Court of Australia held that pastoral leases did not confer a right of exclusive possession and that native title was not necessarily extinguished in such cases.[96] The High Court of Australia acknowledged that while Australian law is derived from English law, Australian law has its own sources and can create unique interests in land to accommodate local conditions.

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[94] *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

[95] H Mc Rae, G Nettheim, T Antony, L Beacroft, S Brennan, M Davis, T Janke, *Indigenous Legal Issues-Commentary and Materials* (Lawbook Co, 2009), 280-281.

[96] *Wik Peoples v Queensland* (1996) 187 CLR 1.

In 1998, the *Native Title Act* was amended to provide a framework to resolve native title issue by voluntary negotiation, for example, compensation for the weakening of native title or extinguishment of native title by surrender to the Crown.

Native title is therefore a unique form of interest in relation to the land and is recognised in common law in Australia.[97]

Environment Protection and Biodiversity and Conservation Act **(Cth)**

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) ensures that activities, by either the government or private sector, likely to have significant impacts on the environment are properly assessed and environmental values are protected. The EPBC Act embeds in practice five principles of ecologically sustainable development:

1. Decision making processes should integrate both long-term and short-term economic, environmental, social and equitable considerations;
2. Measures to prevent environmental degradation should be initiated where serious environmental damage is threatened, even if full scientific certainty is lacking;
3. Today's generation should maintain or enhance the health, diversity and productivity of the environment for the benefit of future generations (intergenerational equity);
4. Conservation of biodiversity and ecologies should be a fundamental consideration for decision making
5. Improved valuation, pricing and incentive mechanisms should be promoted.

The key obligation of the Commonwealth with respect to the management of property, and in particular to any site contamination, relates to the "polluter pays" principle, spelled out in the *National Environment Protection Council Act 1994* (Cth) (NEPC Act). Under the polluter pays principle, polluters who generate pollution and waste are obliged to "bear the cost of containment, avoidance or abatement". Relating this principle to property management and divestment, Australian courts have found that:

- the polluter is unable to transfer liability for any contamination that has not been fully disclosed (for example, the nature, extent and levels of all contaminants, with an agreed remediation standard associated with appropriate future use of the property) at the time of property transfer, regardless of the terms of any contract or associated payment,
- the polluter's responsibilities include liability for impacts arising from the pollution (for example public/workplace health and safety, environmental impacts, reduced amenity); and
- a landowner who knowingly permits contamination of their land is effectively deemed to be a "polluter".

[97] *Members of Yorta Yorta v Victoria* (2002) 214 CLR 422.

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The NEPC Act (including the polluter pays principle) applies equally to the Commonwealth and the States/Territories, as it does to the private sector. Related legislation (*National Environment Protection Measures (Implementation) Act 1998*) obliges the Commonwealth to apply the environment protection measures (NEPM) it sets out.

Many of the States have implemented the NEPM's in their jurisdictions with state contamination land acts (but no such legislation in the Northern Territory). The key NEPM is the "*NEPM – Assessment of Site Contamination*" which establishes a nationally consistent approach to the assessment of site contamination.

Policy Frameworks - Administrative Guidelines

In order to meet the objectives of government and the requirements of legislative frameworks, administrative policy guidelines have been developed to assist with the management of Commonwealth property interests.

The Commonwealth Property Disposals Policy (CPDP) and the Commonwealth Property Management Framework apply to Commonwealth departments and agencies under the *Financial Management and Accountability Act 1997* (111 departments/agencies) and some bodies under the *Commonwealth Authorities and Companies Act 1997*.

Commonwealth Property Disposals Policy (Land)

The CPDP supports the efficient management of Commonwealth owned land and disposal of surplus property to drive or facilitate economic development. In February 2009, the CPDP was amended to reflect new government policy.

The CPDP now provides that, where Commonwealth property has no alternative efficient use, it is to be sold on the open market unless it is considered suitable for housing or community amenity, in which case it is to be disposed of under strategy jointly approved by the Minister for Housing and the Minister for Finance.[98]

All priority and concessional sales (below market value) are subject to approval by the Minister for Finance. Any proposal for other than an open market sale must be supported by evidence that a priority or concessional sale could facilitate Commonwealth policy outcomes and how these would be achieved. If the Minister rejects a proposal for a priority or concessional sale, the disposal proceeds through an open market sale.

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[98] Commonwealth Property Disposals Policy < http://www.finance.gov.au/property/lands/lands-acquisition/commonwealth-property-disposals-policy.html>. 16 June, 2012.

In order to prevent windfall gains from a priority or concessional sale, a security of purpose agreement which locks future owners into the agreed purpose for the disposal, must be concluded prior to disposal. Contract clauses for a security of purpose agreement are available on the Finance website.[99]

Good policy outcomes from property disposals may include increasing housing supply, particularly affordable housing, creating jobs and improving community amenity (for example, by enabling construction of public transport facilities, car parks, public reserves).

Commonwealth Property Management Framework

The Commonwealth Property Management Framework (Property Framework) facilitates informed decision-making processes and establishes the foundation for the efficient, effective, sustainable and ethical use of Commonwealth property resources, including the Commonwealth's overseas-owned property estate. It sets out the Commonwealth's policy, within which all agencies subject to the *Financial Management and Accountability Act 1997* determine their own specific property management practices.

Agencies apply the Property Framework in making decisions on whether to own, lease or dispose of property. A cost-benefit analysis process, using whole-of-life costs, is mandatory for Capital Works projects greater than $30 million (excluding fit-out) or $100 million (excluding fit-out) for Defence projects. It also applies for decisions on property divestment or leases to the same values (lease obligations estimated over whole-of-life).

Under the Property Framework, costs are not the only factor to be considered. The decision should consider analysis of other relevant factors, including fitness for purpose, relative risks, impact on the Commonwealth Budget, flexibility to adapt to change over the lifecycle of the investment, capacity to deliver the outcome, environmental and heritage obligations/ impacts, and social and planning issues.

Assisting the Acquisition and Disposal of Commonwealth Property Interests

Supporting the policy frameworks, tools have been developed to facilitate informed decision making processes. They include a Commonwealth land audit data base, a mapping tool and established methodologies for the valuation of property.

Although different from the computerisation of land records in India (see the report on the computerisation of land records in Karnataka by Manoj Ahuja and AP Singh) the tools used in the

[99] Contract Clauses – Security of Purpose Agreement < http://www.finance.gov.au/property/lands-acquisition/commonwealth-property-disposals-policy.html>. 16 June 2012.

Australian Government context are also essential elements in a system in order to achieve policy outcomes and ensure the ethical and efficient use of resources.[100]

Land Audit Data Base

Commonwealth departments and agencies are required to report annually on their landholdings and demonstrate the need to retain each of their properties.

Information on the size, location and description of Commonwealth landholdings is compiled into the Land Audit which serves as a means of identifying surplus landholdings that might be considered for disposal to facilitate achievement of economic and social policy objectives, such as affordable housing and aged care. The Audit relies on accurate and comprehensive reporting by individual agencies and we are working to improve the quality of input.

As the Audit includes commentary on commercial-in-confidence matters such as disposal timeframes and environmental, heritage and contamination issues, it is not published. This avoids the risk of having policy decisions prematurely shaped by community pressure for housing and commercial property development, without alternative policy options having been considered. Not all property shown as surplus to Commonwealth needs will be made available on the open market, as disposal by a priority sale may better meet the government policy objectives in some cases.

Under current policy, the release of surplus Commonwealth land is intended to facilitate an increase in the supply of housing without adversely effecting surrounding property prices; improvement of the amenity of local suburbs through the addition of parks, playgrounds, child care centres or other facilities; and creation of new jobs.

Mapping Tool

The Geoscience Australia mapping tool provides information on property interests and land uses and functions. It assists decision making by identifying property interests and how they intersect with infrastructure and planning regimes.

The mapping tool is an Arc Explorer based computer program that identifies the various uses and interests of Commonwealth land on a single map. The land uses and interests can be represented as layers on the map to illustrate where they operate. Various layers can be displayed on the map including: Commonwealth land, Defence land (bases and training areas), operating mines, existing exploration and mining licences, native title claims, mineral deposits, and major transport and urban infrastructure comprising road, railroads and pipelines.

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[100] M Ahoja, AP Singh, "Evaluation of Computerisation of Land Records in Karnataka – A Study from Gulbarga District" *Economic and Political Weekly* Vol 41 No 1 (Jan 7-13 2006), 69-77; K Deininger, "A Strategy for Improving Land Administration in India" *Agricultural and Rural Development Notes Land Policy and Administration-World Bank* (Issue 33, February 2008), 1-3.

Stage 1 of the mapping tool was developed in 2009-10. Stage 2 will update existing data sets and geo-code Finance's land holdings from the 2011 Land Audit data for inclusion on the map as a new layer.

Valuation

Robust valuation methodologies are an important tool in settling the value of land in both negotiated and compulsory acquisitions. In acquisitions negotiated by agreement, it contributes to the settlement of the contract value of land by assessing the pecuniary loss to the owner of the property acquired by the Commonwealth. In compulsory acquisition, it is an input in determining compensation on "just terms".

Valuation deals with specific types of property, for example, rural lands, mines and mineral bearing lands, and heritage factors, and requires the application of principles such as the value of the property to the owner, disturbance, severance, enhancement and injurious affections.[101]

Valuation services are procured for the Commonwealth owned domestic non-Defence Property Portfolio to meet the Commonwealth financial reporting requirements and assist in asset management functions including disposals, acquisition and rent reviews.

A number of valuation methodologies or approaches can be used. Ideally, more than one should be used, with one forming the primary method and a second as a check. Approved approaches include:

- Direct Comparison
- Capitalisation or Income Approach
- Discounted Cash Flow Analysis
- Summation
- Depreciated Reconstruction Cost.

All agencies covered by s49 of the *Financial Management and Accountability Act 1997* are required to comply with the Financial Management Framework and comply with accounting standards and interpretations issued by the Australian Accounting Standards Board applicable to property valuations. *Requirements and Guidance for the Preparation of Financial Reports of Australian Government Entities* is available on the Finance website. Australian Accounting Standards (with updates and amendments) likely to be relevant to property transactions include, but are not limited to:

- Australian Accounting Standards Board Accounting Standard AASB5 – *Non-current Assets Held for Sale and Discontinued Operations*
- Australian Accounting Standards Board Accounting Standard AASB116 - *Property, Plant and Equipment (PPE)*

[101] A Hyam, *Valuation* (The Federation Press, Sydney, 2009), 218-289 and 295-525.

- Australian Accounting Standards Board Accounting Standard AASB136 – *Impairment of Assets*
- Australian Accounting Standards Board Accounting Standard AASB140 – *Investment Property*
- Australian Accounting Standards Board 1031 (AASB1031) – *Materiality*

Other relevant references used by Australian Government agencies include:

- International Valuation Standards, 2011
- Australian and New Zealand Valuation and Property Standards (Australian Property Institute)
- Glossary of Property Terms – 2nd edition 2006 R.E.I.A./ A.P.I/ P.C.A.

Contamination

Australian environment protection legislation recognises the principle of "polluter pays". Where contamination can be attributable to a particular person or group, that person or group is responsible for any costs arising from the contamination (including compensation for injurious effects, removal of the contamination and remediation of the land).

As regards land owned by the Commonwealth, the government agency responsible for the site is also responsible for any contamination, whether caused by their use of the site or unauthorised use of the property (for example illegal dumping).

To improve the management of Commonwealth owned contaminated land, it is proposed that detailed information on the location, type and extent of contamination and associated remediation costs be collected. A consolidated, cross-portfolio, database of contaminated Commonwealth land and whole-of-government strategy to manage associated liabilities will also be developed. Expenditure on removal of contamination or remediation of the land will be monitored and analysed to inform better practice.

Case Studies

The following case studies illustrate the acquisition and disposal of property interests by the Commonwealth.

Cox Peninsula – Transfer of Land covered by Kenbi Aboriginal Land Claim

The Kenbi Land Claim, lodged by the Larrakia people of the Northern Territory in 1979, is the longest-running Aboriginal Land Rights claim and covers over 65,000 hectares on Cox Peninsula and its shoreline, west of Darwin. Land granted as Aboriginal land cannot generally be used for residential or commercial development, and the Northern Territory was concerned that an Aboriginal land grant would restrict the future expansion of Darwin.

In 2009 the traditional Aboriginal owners reached agreement with the Northern Territory that the Cox Peninsula land would be granted freehold to an Aboriginal Land Trust, and available for development. This arrangement was immediately supported by the Commonwealth, which agreed to relinquish land on the peninsula and an offshore island. Transfer of one site has been delayed to allow the Commonwealth to undertake extensive site remediation made necessary by a long history of contamination. Commonwealth operational facilities are being secured by leases.

Malabar Headland – Remediation of Contamination on Urban Pristine Land

Malabar Headland is a significant coastal headland rich in environmental, cultural and heritage values. In August 2010 the Australian Government undertook to transfer the site to the New South Wales Government for conservation as a nature reserve and public open space. The Federal and State Governments also agreed to transfer 70 hectares of bushland to create a new national park at Malabar Headland.

The central area of Malabar Headland was previously used for sand mining and waste disposal, and has been used as a rifle range for over 100 years. The Commonwealth is now obliged to remediate the land to protect the site's environmental and heritage values.

The planned remediation works include removal of contaminated soil from the stop butts on the rifle range, removal of asbestos contaminated materials, and establishment of a walking trail through the site. These works will facilitate safe public use of the site and realise its potential as a community asset.

Acquisition of Land to Expand the Cultana Military Training Area

The Commonwealth will acquire land adjacent to the Cultana Training Area to support future training needs for the Australian Defence Force. Through acquisition of surrounding pastoral leases, the existing Cultana Training Area will be expanded westward, increasing its total size from approximately 50,000 hectares to approximately 209,300 hectares.

Key activities of the acquisition phase of the project include an Indigenous Land Use Agreement and related agreements with other indigenous groups, acquisition of the selected pastoral leases and finalisation of a Miscellaneous Lease for Defence Purposes with the South Australian Government. During the delivery phase, the necessary infrastructure will be established, livestock will be removed and the new areas will be managed as part of Defence's existing national landholdings on an environmentally sustainable basis.

Development of Intermodal Freight Hub Moorebank New South Wales

Commonwealth land will be transferred to the State of New South Wales for the Moorebank Intermodal Terminal (IMT). Defence units located on the Moorebank site will be relocated to another Defence facility by the end of 2014.

The IMT Project will develop freight terminal facilities linked to Port Botany by rail, increasing Sydney's rail freight capacity and reducing road freight on Sydney's congested road network. Private sector involvement and investment, through an open and transparent process, is integral to the project. The Commonwealth site was preferred to a privately owned adjacent site, due to its closer proximity to connecting infrastructure and capacity for full interstate service delivery.

Conclusion

In managing the Commonwealth's property transactions, the Australian Government uses legislative and policy frameworks which set out procedural guidelines and performance criteria, supported by information tools that facilitate good practice and decision making.

In an environment of increasing demand for access to Commonwealth land and a legal obligation to manage Commonwealth property in a way that is efficient, effective, economical and ethical, our focus continues to be on streamlining processes to achieve outcomes that are, and are seen to be, consistent with the policies of the Commonwealth[102].

The achievement of best practice is aided by transparency and accountability.

Accountability includes public scrutiny through media reporting and the Parliament, and access to documents under the *Freedom of Information Act 1982* (Cth); administrative review through performance and financial audits; and also judicial review specifically provided for in relevant legislation.

In the acquisition of property interests and property divestment or disposal, we are engaged in a continuing process of learning and improving policy and administrative practice, as we deal with new demands and emerging issues, such as contamination, and develop new tools to support our work. Australia had been managing its national estate for nearly 50 years before India achieved nationhood and can share the lessons learned from that experience.

[102] *Financial Management and Accountability Act 1997* (Cth)

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Bibliography

Articles

Ahoja,M, Singh, AP "Evaluation of Computerisation of Land Records in Karnataka – A Study from Gulbarga District" *Economic and Political Weekly* Vol 41 No 1 (Jan 7-13 2006), 69-77.

Alm, J, Annez, P, Modi, Arbind, "Stamp Duties in Indian States – A Case for Reform" *World Bank Policy Research Working Paper 3413* (Washington DC;World Bank) (September 2004), 1-80.

Brennan, S, "The Northern Territory Intervention and Just Terms for the Acquisition of Property" *University of New South Wales Faculty of Law Research Series* (2011) 17, 957-983.

Deininger, K, "A Strategy for Improving Land Administration in India" *Agricultural and Rural Development Notes Land Policy and Administration-World Bank* (Issue 33, Feb 2008), 1-3.

Livingstone, A, "A Note on the Nature of Federalism", 67 (1952) *Political Science Quarterly*, 81 at 88.

Winnett, C, "Just Terms or Just Money? Section 51 (xxxi) – Native Title and Non-Monetary Compensation" *UNSW Law Journal* (2010) 33 (3), 776-807.

Books

Appu, S, *Land Reforms in India* (Vikas Publishing House Pty Ltd, New Delhi, 1996).

Blackshield, T, Williams G, *Australian Constitutional Law and Theory* (The Federation Press, 2006).

Butt, P, *Land Law* (Lawbook Co, 5th edition, 2006).

Gammage, B, *The Biggest Estate on Earth – How Aborigines Made Australia* (Allen and Unwin, Sydney, 2011)

Ganguli,S, Mukherji, R, *India Since 1980* (Cambridge University Press, Cambridge, 2011).

Hepburn, S, *Australian Property Law* (Lexis Nexis, Butterworths, Sydney).

Hyam, A, *Valuation* (The Federation Press, Sydney, 2009).

Jacobs, *M, Law of Compulsory Land Acquisition* (Lawbook Co, Sydney, 2012).

Khanna, *The Making of India's Constitution* (1981)

Koyaka,T, Callies, D, *Taking Land – Compulsory Purchase and Regulation in Asian-Pacific Countries* (Honolulu, University of Hawaii Press,2002).

I • D • F

Misra, M, *Vishnu's Crowded Temple* (Allen Lane an Imprint of Penguin Books, London, 2007).

Sawer, G, *Modern Federalism* (Carlton, Victoria, Pitman Australia, 1976).

Tomlinson, B, *The New Cambridge History of India 111- The Economy of Modern India, 1860-1970* (Cambridge, Cambridge university Press, 1980).

Cases

Australia

Mabo v Queensland (No 2) (1992) 175 CLR 1

Wik Peoples v Queensland (1996) 187 CLR 1.

Members of Yorta Yorta v Victoria(2002) 214 CLR 422.

Commonwealth v New South Wales (1923) HCA 34; (1923) 33 CLR 1

India

State of Rajasthan v Union of India (1978) 1 SCR 1

Statutes

Australia

Aboriginal Land Rights Act (Northern Territory) Act 1976 (Cth)

Administrative Decisions (Judicial Review) Act 1976 (Cth)

Commonwealth Authorities and Companies Act 1997 (Cth)

Constitution of Australia (1901) (Cth).

Environment Protection and Biodiversity and Conservation Act (Cth)

Financial Management and Accountability Act 1997 (Cth)

Lands Acquisition Act 1989 (Cth).

National Environment Protection Council Act 1994 (Cth)

National Environment Protection Measures (Implementation) Act 1998 (Cth)

Native Title Act (1993) (Cth).

Native Title Amendment Act 1998 (Cth).

Northern Territory Self Government Act 1978 (Cth)

Racial Discrimination Act 1975 (Cth).

India

Constitution of India (Ninety – Seventh Amendment) Act (2011).

Other

Report(s)

World Bank, *India – Land Policies for Growth and Poverty Reduction* (Oxford University Press, 2007)

Internet

Articles

Brennan, S, "Native Title and the Acquisition of Property under the Australian Constitution" (2004) 28(1), *Melbourne University Law Review*, 1-41 < *http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/MULR/2004/2.html?stem=0&synonyms=0&query=the%20high%20court%20and%20property*>. 14 June 2012.

Supreme Court of India <http://supremecourtofindia.nic.in/constitution.htm>. 14 June 2012.

Constitution of India <http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm>. 17 June 2012.