

**FINAL REPORT**

**AN EXAMINATION OF THE AGRICULTURAL LAND  
APPLICATION REVIEW AND DISPOSITION PROCESS:  
PROBLEM IDENTIFICATION, ANALYSIS,  
AND RECOMMENDATIONS**

Prepared for:

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## PREFACE

This report is intended to identify and correct problems in the Agricultural Land Review and Disposition Process administered by the Yukon Department of Renewable Resources. Perhaps no other program generates as much dissatisfaction within the department and as many complaints from the public.

The report follows a simple structure:

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## **1.0 INTRODUCTION; CONTEXT OF THIS PROJECT; METHOD OF APPROACH**

### **1.1 THE AGRICULTURAL LAND APPLICATION REVIEW AND DISPOSITION PROCESS HAS EVOLVED AS A MEANS TO AN END.**

The Yukon Agricultural Policy (1991) has the overall purpose of encouraging the development of an economically viable, and environmentally sustainable agricultural industry in the Yukon. To achieve this goal, it is necessary to place lands into agricultural production. This involves transferring lands from the public domain into private hands, ensuring that they are properly developed, and assisting farmers to become productive.

The Policy provides for two main ways for placing agricultural lands into private production: through planned agricultural dispositions and by accepting and considering spot applications. In both cases, the Policy intends that development be orderly, and that in releasing lands into private hands, the highest public interest is served by considering competing land-uses and resource interests.

For government-designated agricultural releases, the most appropriate use of land would normally be determined through regional or district planning, or through resource plans. For spot agricultural applications, this is done through the Agricultural Application Review Process. As it has evolved under the administration of the Department of Renewable Resources, the Review Process typically involves assisting the applicant to identify a potentially suitable site, receiving and processing the application, assessing its feasibility as a business and its agronomic suitability, and reviewing the interests of other land and resource-users. The Review Process may be considered to be followed by a "Disposition Process" in which an Agreement for Sale is signed and terms are monitored and enforced until title has been transferred.

### **1.2 THE REVIEW AND DISPOSITION PROCESS IS THE PRODUCT OF EVOLUTION AND NOT OF COMPREHENSIVE DESIGN.**

The Agricultural Policy discusses in a general way criteria and standards for how the review and disposition process should function. It does not specify the process in detail. The actual design of the process is not comprehensively and specifically described in any document. Those administering the process refer to a flow chart (Figure One), to the Policy, to precedent, and to various inter-branch and interagency memos and understandings which give it additional form. In some areas, the Policy and the process are contradictory, inconsistent, or ambiguous. In view of this, and in view of the many details left unspecified, the people managing the process must often use judgment and *ad hoc* responses.

If the process is unspecific, it is because it has evolved and adjusted to changes in policy and circumstance over the years. It has developed incrementally, partly in response to precedents; partly in reaction to them. The process has never had a systems review of its design and function in light of its performance.

As it evolved, problems have emerged with the process which merit a systematic review. This need is shown by the difficulty in defining the problems: many of the criticisms are unspecific or are not recognized by all parties.

### **1.3 METHOD OF APPROACH USED BY THIS REVIEW**

We should begin this review by noting that the objective of placing lands into private agricultural production can be achieved with a minimum of problems and objections by releasing planned, designated agricultural subdivisions. This is the most orderly and effective means of delivering suitable lands while minimizing conflicts with other resource interests. This is also a clear directive of the Agricultural Policy.

Even if the emphasis of the Department shifts to planned releases, a need to review spot applications will remain - especially for more outlying areas. The Department's aim should be to obtain an improved process, and to place less demand on it because of planned agricultural releases. The method for improving the process followed by this study is to:

- identify what was expected of the process and how it functions now,
- identify how the process can and should function in light of its structure, constraints, capabilities, and desired outcomes;
- identify how the process deviates from how it should function
- analyze causes for these deviations,
- identify remedies and recommend preferred solutions.

## **2.0 A DESCRIPTION OF THE AGRICULTURAL LAND DISPOSITION PROCESS**

### **2.1 THE DISPOSITION PROCESS AS IT NOW FUNCTIONS**

Using the flow chart in Figure One as the pattern, let us trace the progress of a "spot application" (ie. a parcel identified by the applicant) as it ideally "should" proceed. Delays are possible at each step, depending on the quality of the information provided or available, the timing of the application, the workload of the reviewers, and the actual merits of the application.

The structure and sequence of the disposition process is sensible and functional. Restructuring the YTG part of the process would not be worth the effort; the Federal part, which could benefit from restructuring, is essentially fixed for the time being.

This part of the analysis will first discuss the sequence of steps in the process, then offer a realistic timeframe that the process might reasonably require. At a later stage, the analysis will suggest how each step can be refined to produce a smooth progression with minimal delays, effective reviews, and defensible outcomes.

#### **2.1.1 Sequence of Steps in the Disposition Process**

The following description is based on the flow chart in Figure One, and interviews with participants in the review process. It is the first attempt to give a summary description of the current process.

1. A completed application is received by the Agriculture Branch. Often, but not always, the Agriculture Branch has furnished the applicant with information and advice on potentially

available land and on how to structure an acceptable application. The application is given a file number and the review process begins.

2. Within the first 10 working days, the Agriculture Branch does a preliminary screening to determine if the site is physiographically acceptable (altitude, slope), legally available (in the public domain and not reserved for any immediately apparent reasons such as land claims, wildlife reserves, etc.). The applicant is sent a letter either acknowledging receipt of the application or its rejection because of the preliminary screening.
3. The Agriculture Branch refers the application to:
  - The Renewable Resources Environmental Assessment Branch which is responsible for coordinating the subsequent review. It will refer the application to Fish and Wildlife Branch, Parks Branch, Policy and Planning Branch, to the Land Claims Secretariat, and to the Dept. of Tourism and Heritage.
  - Community and Transportation Services Highways Branch and Planning Branch.
4. At the same time, the Agriculture Branch undertakes to inspect the site for soil suitability. Based on the survey, the application is found to be suitable, or it is rejected. If possible, the applicant is advised how an application could be reconfigured to incorporate an acceptable proportion of suitable soils.
5. The Agriculture Branch also reviews the Farm Management Plan which the applicant should submit within either 30 days of the application (information per Application form), or 60 days (information per Farm Development Plan form). Before the plan can be reviewed, C&TS must provide an assessed market value for the proposed parcel. After an initial review by the Agriculture Branch, an application is referred to the Dept. of Economic Development, where it is either rejected or approved.
6. After all agency reviews have been completed, the chair of the Agricultural Land Application Review Committee (ALARC) places the application on the agenda for the next meeting. At this meeting, the application will either be approved, rejected, or deferred. Deferrals typically require additional information, or that the application be modified to satisfy concerns stated at ALARC.
7. The Agriculture Branch will invite the relevant First Nations to express any concerns they may have about an application approved by ALARC.
8. At this point the review process branches: applications on Commissioners (YTG) Land proceed to the Land Application Review Committee (LARC); applications on Federal Land proceed to the Federal-Territorial Land Advisory Committee (FTLAC). Both of these are bodies granting final approval or rejection of an application. FTLAC requires an additional field report by its Resource Management Officer (RMO) and an additional level of First Nation consultation.
9. (a.) Applications approved by LARC must be surveyed by the applicant and an Agricultural Agreement for Sale is written and signed. The applicant is free to begin development, subject to the terms of the Agreement for Sale.

(b.) Applications approved by FTLAC must be surveyed by the applicant, and a request for a Federal Order In Council (OIC) is sent from DIAND in Whitehorse to Ottawa. After an OIC has been prepared by authorities in Ottawa, the land is transferred to YTG and an Agricultural Agreement for Sale is written and signed. The applicant is free to begin development, subject to the terms of the Agreement for Sale.

### 2.1.2 Time Required for the Disposition Process (Spot applications).

It was the intent of the Agricultural Policy that all agency reviews be completed so that the application could be considered by LARC (or presumably by FTLAC) within 90 days of its submission by the applicant. Although this is not explicitly stated, it is a reasonable conclusion drawn from page 16 of the Policy:

"(c) At the end of the 90- day review period, the applicant will be informed of the status of the application. Options are:

- i) approval of the application (Note: if on lands administered by the federal government, this approval is subject to federal government approval of a land transfer);
- ii) denial of application;
- iii) deferral of application for a period of up to 12 months for completion of soil surveys, further consultation and discussion of the application with the applicant or other factors required for full review and consideration of the application."

The Policy recognizes that there may be good reasons for delays: soils cannot be surveyed within 90 days for an application received in December for instance, and wildlife reviews may require that a study be conducted in a particular season. In the preceding clause of the Policy - 10 (2) (b) - it is recognized that the review is subject to the availability of information. Nonetheless, it is clearly implied by the Policy that a final decision can in principle be obtained within 90 days after the applicant is sent an acceptance letter.

Even in ideal circumstances, this is neither reasonable nor possible given the sequence of steps in the disposition process. Here is a *best case* progression through the process using timelines reasonable to the needs of each step.

1. Applicant submits a clear and well-prepared application which passes its preliminary screening and is referred to the management review agencies. On the 10th working day, a letter of acceptance and a file number is sent to the applicant (14 days after submission).
2. If the applicant was required to submit a Farm Development Plan with the application, (not within 60 days), its review can reasonably be completed within 30 days, depending on the workload at Economic Development.
3. Other agency reviews can reasonably be completed within 90 days, assuming:
  - a) the timeliness of these reviews are recognized as a priority and staff are managed accordingly,
  - b) adequate information is available or can be obtained, taking into account the other duties of the agency. (It should be noted again that soil surveys cannot be done in the winter, and that agencies have other duties which may take priority over reviewing applications.
4. Once agency reviews have been submitted in writing to the chair of ALARC, it can be placed on an agenda, provided these are received two weeks in advance.

By this scenario, the application has taken 120 days to reach an ALARC meeting. If approved by ALARC, the Agriculture Branch must consult First Nations. The amount of time appropriate for this has not been determined. If 30 days were considered to be adequate, an uncontested application could be placed on the next LARC agenda (45 days after ALARC, or 165 days after submission). On Commissioners Lands, 170 days (between 5 and 6 months) is required for a definitive decision on an application - assuming the best in review information and consultation.

According to Federal Lands, N.A.P., if the application is proceeding to FTLAC, 60 days lead-time is the *minimum* required to get on a meeting agenda. Much more time may be required if the RMO inspection is delayed because of season, weather, or workload, or if significant First Nations or land-use concerns exist.

If approved by FTLAC, an applicant could be informed no sooner than 210 days after the forms were received by the Agriculture Branch. However, development work could not proceed until a federal Order-In-Council transferred the land to YTG and an Agreement For Sale written. This typically takes between 4 and 6 months. Thus for Federal lands, a spot agricultural application and disposition should be expected to take one year at an ideal minimum. An additional 8 - 12 months might be required if the review was delayed by the season needed for field inspections, by wildlife or heritage studies, and by First Nation consultation.

## **2.2 SUMMARY OF HOW THE PROCESS FUNCTIONS:**

This discussion reveals a wide gap between the standard of performance envisioned by the Agricultural Policy and what the process can actually deliver. This is not the "fault" of the process nor of the people administering it - but it can be improved both in terms of time required, and the quality and consistency of its decisions.

The Agricultural Policy desired that a decision could be possible (in the best case) within 90 days. By the capabilities and limitations of the process as it exists, the shortest possible time for an Agreement for Sale is 170 days (Commissioners Lands); the soonest possible decision on Federal Lands is 210 days, with an actual Agreement For Sale in approximately 13 months.

Since the disposition process is capable of producing decisions in these timeframes, it is reasonable to adopt these as normal standards for handling spot agricultural applications. The major task is to refine the components of the process so that these standards can be reliably met. The process should produce decisions within these timeframes; its design taking into account limitations of season, information, and available staff. The decisions should meet the criteria of being consistent, fair to all interests, meet the goals and objectives of the Policy, defensible if challenged, and cost-effective.

### **3.0 PROBLEMS; HOW THE PROCESS DEVIATES FROM DESIRED OUTCOMES**

Correct solutions depend on correctly identifying problems. A difficulty in studying the Review and Disposition Process is that different parties see different problems or see the same problem differently. We will define "problem" as follows: *A problem exists when the Process or its results do not meet the expectations of an interested party.*

Expectations are not necessarily justified: they may be unrealistic; they may be based on mistaken assumptions or poor information. Expectations might also be legitimate. Since so much of the Process is vague or undefined, a wide range of expectations may be expected, leaving ample opportunities for disappointments, and therefore problems. By setting appropriate standards for the Process, expectations can be managed - a key to resolving chronic problem areas.

The Process is complex, and involves many agencies and people at different stages. Nearly everyone is dissatisfied with some part of the Process. In many instances, the dissatisfaction felt by each individual involved is insignificant. However, in some cases, an application will become a focus for disappointment at each level and from every quarter. The worst of these - a fraction of the total number of cases - are the so-called "problem files". These are usually irritating and frustrating to all players and endure longer than seems reasonable. "Problem files" are worth examining since they illustrate most of what can go wrong in the system.

#### **3.1 HOW PROBLEMS WITH THE PROCESS ARE PERCEIVED**

As noted above, a problem is the perception that proper expectations are not being met. The perception may or may not be accurate, and the expectations may not necessarily be proper. We must identify how problems are perceived by the various parties before we can address the elements of any problem. namely: perception, expectation, and underlying reality.

It is useful to sort the participants into groups and identify perceptions common to each. This analysis considers five main groups.

##### **1. Applicants.**

These are the direct clients of the Agriculture Branch. Most have invested considerable time, thought and emotions in their applications; sometimes these have financial costs as well. Applicants represent many points of view, and various levels of income, education and experience.

Not all applicants are dissatisfied with the program - many have had successful experiences. Some accept their rejected applications without finding fault, others may be disappointed, but not upset. Only a fraction - approximately 15 - out of the several hundred applicants can be considered to be "problem" files requiring the attention of the Deputy Minister or the Minister.

How they see the problem(s):

Most applicants would agree that the process is slow - especially for Federal Lands. They would also agree that it is difficult to understand its structure, its sequence of steps, the information required of applicants, and the rationale for its decisions. More critical applicants have the opinion that its decisions can be arbitrary, inconsistent, inappropriate or unfair - that is, indefensible.

## 2. The General Public:

The most numerous and least homogeneous "group", the general public are the ultimate stakeholders in the process. Even though normally they are not directly involved, they can influence the process in several ways: at the ballot box, in the "court of public opinion", through the Minister, and as interveners.

A portion of the public fundamentally disagree with the objectives of the Agricultural Policy, rejecting the vision of agriculture in the Yukon as futile, a poor use of lands and resources, and a "land give-away" to a favored few. It is not the purpose of this study, nor is it the business of the Department, to change this point of view. It is important, however, that the process provides no grounds for complaints which can be substantiated.

How they see the problem(s):

To some observers, the Agricultural program "doesn't look good". Some claim to see personal or political favoritism in certain cases, others believe that the process does not fairly consider other resource values and especially fails to gauge the cumulative impacts of extensive agricultural development. Others state that the Policy and the process provide unfair or even dishonest access to land by how it handles non-soil-based agricultural applications. These people can usually cite examples to illustrate their views: defense is difficult since the process is in fact inexact and *ad hoc* in many areas.

## 3. Agriculture Branch

This agency fills several roles. Not all are easily compatible. As an extension agency, the Agriculture Branch promotes, sponsors and stimulates the industry and considers that its mandate is to "get ag land out". In this role, the Branch encourages and assists applicants to submit solid applications likely to be approved. Its role and function become ambiguous in the review process: these same professionals must review and judge the applications they had encouraged. They must also send and defend letters of rejection - sometimes based on reasons which the Branch may not support. Finally, in administering the Agreements for Sale, the Branch acts as extension agent, enforcer, and regulator. In accepting the Agricultural Land Disposition Program, the mission of the Branch has become blurred: so has its public image and its self-image.

How they see the problem:

The Branch is proud of its record of getting applications processed and approved - fulfilling how it sees its mandate. Despite this record, the review process frustrates the staff in several ways. In their opinion:

- They are unfairly the focal point for people who are unhappy with how their applications are being handled.
- Too often, submissions by other agencies to management review take too long.

- Applications are needlessly delayed at ALARC by other agencies which have not completed their reviews.
- Applications are delayed by other agencies which suddenly request additional information or studies for reasons not apparent to the Agriculture Branch.
- The reasons for objections heard at ALARC are not apparent, or appear arbitrary, or appear inconsistent with previous positions. The rules of the game appear ambiguous and changeable. Sometimes it appears as if the "goal posts move": having settled one objection, the same agency will bring up another.
- The Agriculture Branch operates in "gray" areas which produce uncertainty and anxiety. Examples include the so-called "Hootalinqua North Land Freeze", the amount of time appropriate for First Nations consultation, and the guidelines for assessing the significance of objections.
- The Branch frequently feels isolated and at odds with the rest of the Department in its efforts to release agricultural land.
- The Branch sometimes feels unsupported in the way complaints or "problem cases" have been handled at the political level.
- The Branch is uncertain when a file may be permanently closed: seemingly "solved" problems can reappear.

#### **4. Other participants in Management Review**

Besides the Environmental Assessment Branch, the other agencies which are the main participants in ALARC are the Fish and Wildlife Branch, the Habitat Branch, Parks and Recreation Branch, and to a lesser degree, the Department of Tourism and Heritage.

In the opinion of some staff, the mandates of these agencies conflict with the agricultural land disposition program. They view land devoted to agriculture as land lost to wildlife and recreation. They also view the Agricultural Policy as dominating the interests of other natural resource values.

How they see the problem:

- ALARC is "stacked" against non-agricultural interests
- The review process does not adequately consider and protect other resource values - fostering cynicism or resignation.
- The review process is incapable of assessing cumulative impacts - resulting in poor resource management and protection and undermining policies and mandates of the other agencies.

#### **5. Minister and senior Department officials**

The Minister and the senior management levels of the Department must balance the interests of the branches as each seeks to fulfill its policies. They should not routinely be exposed to the procedural details of the review and disposition process, nor to the progress and outcome of any application. When this occurs, it indicates a failure of the process. This might be procedural (a deadlock at ALARC, or a

complaint received first by the Ministers office instead of by the Director of Agriculture) or it might represent a deficient decision (one seen to be unfair, unreasonable, or inconsistent).

How they see the problem:

- Senior officials experience problems directly in the form of complaints or controversy from within the Department, or in complaints from the public to the Minister or the Deputy Minister. It can be difficult responding to these complaints: difficult to explain and defend a decision, or to identify and correct a poor one. They also become aware of problems indirectly, in the form of diffuse discontent within the Department and among the public.

### 3.2 "PROBLEM FILES"

The Agriculture Branch calls certain applications "Problem Files". Though not prevalent, these exhibit many or perhaps most of the problems perceived by various participants. This may be why they become "problem files". Since these are the majority of cases in the files of the Minister's office, they are useful examples.

Most of these files are old - predating the Agricultural Policy and the transfer of the land program to the Agricultural Branch. It is likely that as they are settled, the worst of these problems will not recur, since policies and practices have changed - partly in response to these files. Many of the problems in these files stem from past agreements which were unwritten, poorly-written, poorly-conceived or *ad hoc*. Chronic problem areas in the past have been the practice of committing option lands, difficulties with land claims, and policy topics such as the standing of trapping, wildlife, and other interests which have now been mostly addressed.

Although many chronic problem areas have been addressed, "problem files" can still occur and will continue to occur unless the root causes are changed. The Brannigan file is an excellent example.

In the fall of 1991, Dr. Don Branigan made a spot application for a parcel of land near Little Atlin Lake. This site had been previously approved for an earlier applicant who did not enter an Agreement For Sale. The November meeting of ALARC rejected this application, the Fish and Wildlife Branch supporting the position of the Department of Fisheries and Oceans that a hay and grazing farm on this site would hurt important fish habitat.

In September of 1992, Dr. Branigan appealed the decision of ALARC. DFO and the Fish and Wildlife Branch defended their position by reiterating it with no substantiation, and without replying to the specific counter statements made by the applicant. It became apparent that neither DFO nor Fish and Wildlife had inspected this site.

In May, 1993 LARC deferred its decision; while DFO, Fish and Wildlife, the Agriculture Branch and Dr. Branigan agreed to inspect the site together. For the first time, a concern is raised by the Habitat Section that domestic stock at this site might risk exposing the transplanted goats on White Mountain to diseases. During the site inspection, DFO and wildlife staff agreed that their concerns could be mitigated after all. An offer of a lease is made - not an Agreement For Sale - to ensure that fisheries mitigation measures could be enforced and maintained.

A lease was unacceptable to Dr. Branigan, who complained to the Minister. During this period (May-June, 1993) a stronger concern was voiced about the goats even as the

fisheries concern was mitigated. On July 19, a memorandum clearly stated the case for the goats, backed by evidence from a wildlife disease expert. It denied the possibility of mitigation. A statement was also made concerning the interests of the Carcross Caribou Recovery Program.

On July 20, Dr. Branigan met with the Minister. The Director of Lands (C&TS) volunteered to help the applicant find a new site. Several options were considered, and with suggestions from the Agriculture Branch and the Fish and Wildlife Branch, a new site was identified. Dr. Branigan agreed to apply for this as a substitute. We may infer that he had every reason to expect this would be approved.

During the review, new research data from the Carcross Caribou Recovery Program began to establish the importance of Dr. Branigan's new site as a migration corridor and winter habitat for this herd. Despite this, the application was approved by ALARC in March, 1994, and was sent to LARC in April. LARC approved it with conditions respecting concerns raised by the First Nation. In August ALARC reconfirmed that the conditions could and would be met; the First Nation was contacted several times with an explanation of these conditions. No reply is received, and in January it was forwarded to FTLAC.

It was considered by FTLAC in November, 1995 and was deferred to February, 1996 and deferred again to address heritage concerns and possible mitigation measures for the caribou. It was reconsidered in July 1996 and rejected.

#### **SYNOPSIS:**

The Branigan file, beginning in October of 1991, gives the remarkable example of a federal body rejecting an application for wildlife reasons after it had been approved by the department responsible for managing wildlife. It is one of the few applications rejected by FTLAC. In light of the history of this file, the applicant might understandably feel as if the system had been used to thwart him repeatedly.

It illustrates several critical problems:

- The "moving goal posts" - the longer an application is in the review process the more it is exposed to consecutive objections causing rejection.
- Poorly founded objections: the initial rejection of the original application was based on speculation which was overturned by a field inspection.
- "Stonewalling": the initial rejection was defended by simply repeating the original assertions without replying to the substance of the appeal.
- Inadequate tools for protecting resource values. A lease was offered instead of an Agreement For Sale because officials did not believe that fisheries mitigation measures could be enforced on titled lands.
- Emerging information and *ad hoc* policy responses. Although the question of disease transfer to wildlife had been identified as a topic area in the mid-1980's, it had not been addressed in a way that could guide the agricultural review process. The response to the concern about the goat transplants appears hasty and reactive.
- "Special deals": By accepting an application for review, the government makes no promises to please an applicant, only to review it fairly. In balance, the Branigan

file was orderly up to the point where he rejected a lease offer. A mistake was made in the review, an appeal was heard and was responded to. The process was messy and imperfect, but the decision was defensible in light of the public good. The file could have been closed and the applicant encouraged to try again. By offering to find an alternative site, the government either made a "special deal" or it created a precedent which other applicants might expect. YTG also assumed or implied an obligation to approve the alternate site - compromising its own review process.

- Excessive time: the first application was nearly two years in the review process. The second, nearly three. Not all of this can be laid to the YTG part of the review, but some of can.
- Lack of standards: no standards or guidelines framed the time allowed First Nations to respond to consultation. Five months were given the Carcross-Tagish First Nation to respond to an ALARC request before moving on to FTLAC.
- Lack of objectivity (inconsistency) in assessing impacts: like the goat concern earlier, the caribou recovery project identified possible impacts for this application. How significant is this risk? Department of Renewable Resources staff concluded that they could be mitigated, on this application but not on others in the caribou recovery zone. Federal officials disagreed. What is the accepted measure? Is an observer to conclude that YTG favored the applicant for non-resource reasons? Is the applicant to conclude that the Federal agency rejected him for personal reasons?

### 3.3 COMMON ELEMENTS AND THEMES

From the perceptions and experiences of the five groups participating in the process and from the examples drawn from case studies, common elements and themes for the problems emerge. Not every individual will recognize every problem area, nor do they occur with every application.

1. Slowness.
2. Inconsistency in results, indefensibility of some results.
3. "Gray areas" in process undefined, and without guidelines.
4. Poor or questionable protection of other resources.
5. *Ad hoc* responses and "deal making".
6. Confusion about process on part of some agencies and applicants. Sometimes disorderly or out of expected sequence.

These general problem areas can be distilled into three undesirable primary effects: slowness, inconsistent results, poor resource protection. These in turn produce the symptoms of applicant complaints, public dissatisfaction, staff cynicism and disaffection, and agency isolation (departmental schism).

## **4.0 ANALYZE AND IDENTIFY LIKELY CAUSES OF THE PROBLEMS**

It is common to confuse cause, effect, problem and symptom in analysis. A problem is an unwanted condition, the result of a cause producing an effect, which is detected by a symptom. In identifying causes for the problem areas, we seek the root causes - that which, if changed, will stop the unwanted effect. If the primary effects of slowness, inconsistency, and poor resource protection are addressed, the symptoms of complaints, dissatisfaction and staff disaffection will disappear. The task in this section is to examine secondary and primary causes for these effects.

### **4.1 TOPIC: SLOWNESS OF PROCESS**

As discussed earlier, the Review and disposition process is not always slow, but in no circumstances can it meet the ideal of 90 days as set out in the Agricultural Policy. In this respect, part of this problem area is in framing proper expectations. It is also true that few guidelines exist for key parts of the process - the amount of time allotted for agencies to respond to the review request made by the Environmental Assessment Branch, for instance, or the amount of time needed for proper consultation.

Delays come from other causes, such as the inherent steps required by the federal review and land transfer processes; time spent getting or requesting needed information; or time spent weighing alternatives in "gray" areas with no policy or precedent to guide decision-makers.

Contributing to slowness are:

\* Slowness in FTLAC and Federal OIC processes, caused by:

- FTLAC requirements
- O.I.C. process

\* Slowness in YTG Review processes, caused by:

- staff or agencies not sensitive to time needs
- staff too busy to respond quickly
- no one assigned to respond
- more resource information needed
- need more information from applicant
- wrong time of year for field inspections or research

\* Indeterminate consultation time, caused by:

- no time limits established for public or FN responses

\* Perception of slowness, caused by:

- unrealistic or inaccurate expectations

## 4.2 TOPIC: INCONSISTENT RESULTS

Inconsistent results are a major reason for complaints. If a rejected applicant can point to a similar example which had a different outcome, he will see unfairness. If one problem is settled by a tailor-made offer, others will see a special deal - or a precedent which everyone has a right to expect. If a procedure is followed in one instance and not in another, favoritism or unfairness may be alleged. The same can happen if an application is rejected without an inspection for the reasons which do not stand scrutiny.

A tight, closely-defined process minimizes inconsistency - possibly risking inflexibility. An open, loosely-defined process increases the likelihood of it. The Review Process is the latter. Inconsistency can result from the difficulty of weighing resource values in absence of guidelines or criteria; from the amount or quality of information available from one application to the next; or from the intervention of higher authorities in "special cases".

Contributing to inconsistent results are:

\* Poor information and data available at ALARC, caused by:

- little available knowledge of resource base
- available information not coming to ALARC
  - staff or agencies not sensitive to time needs
  - staff too busy to respond quickly
  - no one assigned to respond

\* Key policy areas in review process undefined or unexamined, caused by:

- policy components of review process not detailed
- protocols or procedures in review process not detailed

\* *Ad hoc* decision making, caused by:

- policy components of review process not detailed

\* Intervention by political or senior management, caused by:

- complaint components of review process not detailed

\* Significance or standing of other resource values undefined, and the significance or standing of interveners not defined, caused by:

- Decision-making component of review process not detailed.

\* Non-soils-based agricultural used or seen to be used as a devious way to obtain rural residential lands, caused by:

- appropriate setting such as land or resource planning process unavailable or unused
- no adequate rural residential lands policy

### 4.3 TOPIC: POOR OR QUESTIONABLE RESOURCE PROTECTION

Many observers - natural resource managers, biologists and members of the public - believe that the net effect of agricultural development has resulted in poor resource stewardship - or that it is trending in this way. For example, over the past 15 years the Takhini Valley has changed from undeveloped public land to mostly cleared and fenced private land. Potential wildlife habitat, forests, and recreational lands have been converted and dedicated to another use.

Whether this is good or bad depends on one's point of view: in any case it was largely unplanned and incremental. Certainly area residents were never presented with this as a vision of how the area would look in 1996. The present pattern of land use is due more to chance than to design. The Review Process is not a planning process: it gives little assurance that a balanced pattern of land use will result.

Contributing to poor or questionable resource protection are:

- \* Inability to assess cumulative impacts of agricultural dispositions over 10-year or longer time-frame, caused by:
  - Integrated Resource Management (IRM) strategic objectives absent or undefined
  - appropriate vehicle such as land or resource planning process unavailable or unused
- \* Significance of competing resource values and guidelines for making tradeoff decisions not defined, caused by:
  - appropriate vehicle such as land or resource planning process unavailable or unused
- \* Non-soils based agriculture dispositions contributing to haphazard development, caused by:
  - appropriate setting such as land or resource planning process unavailable or unused
  - no adequate rural residential lands policy
- \* Poor information on resources at ALARC, caused by:
  - staff or agencies not sensitive to time needs
  - staff too busy to respond quickly
  - no one assigned to respond
  - more resource information needed
  - need more information from applicant
  - wrong time of year for field inspections or research
- \* Mitigation measures not set or not enforced on Agreements for Sale, caused by:
  - little confidence in enforceability - legal standing and mechanisms unresearched

## 5.0 POSSIBLE SOLUTIONS AND IMPROVEMENTS.

In the context of the Agriculture Policy, the purpose of the Review and Disposition Process is to aid in developing agriculture by *facilitating the orderly transfer of agriculturally suitable public lands to private hands, with due regard for other interests.* Improving this orderly and balanced transfer is the objective of this project.

There are two main avenues:

1. Improved methods of conveying agricultural lands;
2. Improvements in the operation of the Review and Disposition Process.

### 5.1 PLANNED AGRICULTURAL LANDS

A planned approach is the most productive in the long run. As a means of putting agricultural land into private hands, the review and disposition process for spot applications is costly and inefficient. The costs to the public in person-days devoted to one parcel has not been calculated, but they are substantial, even more so on federal lands. As a means of producing balanced land use and resource protection, the present means of reviewing spot applications is questionable. The information, attention, and perspective brought to bear on any one application is insufficient.

The effort needed to review 65 hectares thoroughly is not much less than that needed to review 130 ha. or 260 ha. - there is a dramatic economy of scale. In terms of economy and efficiency, the logic of a planned approach to agricultural lands should be clear. Similarly, if the resources and attention of all interests can be focussed and brought to bear on large blocks of land in a reasonable time-frame, better information and improved land-use decision-making can result. On Federal lands, only one O.I.C. would be required instead of many if the parcels were released as spot applications. For the end-user (the prospective farmer), there is virtually instant access to land since the time-consuming review work was done earlier. For the public, there are cost-savings and better land-use and resource protection.

There are four main options for improved methods of conveying agricultural lands through planned approaches.

- a. Regional, sub-regional, or district-level planning. These have well-established procedures and are the most reliable means of producing land-use decisions in the public interest. They are also time-consuming, expensive, and require political leadership and public goodwill.
- b. Planned agricultural subdivisions. These could be part of a larger planning exercise, or they could be the result of an area-focus - the western Takhini Valley, or the Marsh Lake / Atlin Road sector, for instance. If in an area with established land-owners, this should be supported by land-use planning. If in an unsettled area, resource-planning would be sufficient. *A drawback of planned releases is that the planners must guess what size and shape of parcels would be in demand.*
- c. Designated areas for spot applications. In a large area with substantial amounts of agriculturally suitable lands, blocks for spot applications could be designated. This could be pre-approved on the basis of resource-planning which accounted for wildlife, recreation, forestry, heritage and other interests. As a broad-brush

approach, this could be well-suited to areas outside of the Whitehorse district: such as the Stewart Valley, Watson Lake, and Carmacks.

d. Systematic use of "exclusion zones" and map notations to guide the locations of spot applications. Significant resource interests can be noted on maps in advance of agricultural applications. This could include critical habitats, migration corridors, locations of rare or endangered species, recreational sites or access points, trails, and heritage concerns. If the values are significant, an exclusion zone could be warranted; lesser values could be identified as map notations. This exercise could be done by resource teams for areas seen to be priority

If First Nations are involved in these preliminary planning steps, subsequent review and consultation steps may be simplified.

The Department of Renewable Resources could begin a systematic process of collecting and analyzing information for Integrated Resource Management, which would yield annotated maps, designated areas for spot applications, and areas for planned agricultural subdivisions. In broad outline, the following steps would be in the process:

1. Identify priority study areas. These would be distinguished by the presence of significant blocks of agricultural soils on vacant public land, and would consider the likely demand by applicants for suitable land which is accessible, and within 100 km of a town or village. A known and significant competing interest can add to the priority of a proposed study area: the elk habitat in the Takhini Valley, critical valley habitats for a wildlife recovery program, significant wetlands, or areas with recreational or park potential are examples.
2. Create resource analysis teams with one or more professionals from the Agriculture Branch, the Fish and Wildlife Branch, Parks and Outdoor Recreation Branch and the Environmental Assessment Branch. The teams might be chaired by the latter. The Department of Tourism might participate if it wishes, or it could be involved via the Parks Branch.
3. Team members would coordinate, assemble, map, and interpret the information from their respective branches, using workshops and individual interviews as appropriate. Each branch would order and evaluate its interests in any study area using standards and policies which had been identified and accepted in advance.
4. The resource analysis teams would identify areas unsuitable for development (agricultural, residential or otherwise) because of a critical conflict with other interests. The teams would identify areas suitable for agricultural development having considered and balanced the interests of other resource sectors (wildlife, trapping, recreation, forestry, tourism, heritage). In determining resource priorities and in devising balanced approaches to land-uses, the teams would refer to recognized policies of the Department in particular and of the Government in general. The Policy and Planning Branch would play a critical role in interpreting and coordinating policies.
5. Draft Integrated Resource Planning maps with supporting policies and rationales would be presented to each branch in workshops lead by the resource analysis teams. A similar workshop would be presented to the Directors as a body. The maps would be revised as needed. Among other values, the output would show which lands were suitable and appropriate for agricultural development.

6. The Agricultural Land Disposition program would determine which of the pre-approved lands would be offered as planned agricultural subdivisions, and which would be designated as open to spot applications. At a later date, remnant parcels could be offered for sale.

## **5.2 IMPROVING THE REVIEW AND DISPOSITION PROCESS FOR SPOT APPLICATIONS.**

Despite the many advantages of planned agricultural dispositions, there will be a continued need to receive spot applications. The speed, the consistency, and the quality of the decisions of the existing process can be improved. The opportunities lie in improving the quality and the flow of information, and in setting standards and guidelines for each step in the progression.

Opportunities for improvement will be identified by tracing the sequence of the process.

### **5.2.1. Initial contact and receiving application.**

#### **a. Informing the applicant.**

The Agriculture Branch can strengthen its role as an extension agency by providing an applicant's handbook ("So You Want to Farm in the Yukon?"). This publication would contain basic information about Yukon agriculture such as opportunities, constraints, infrastructure and support services. It would also detail the review and disposition process and explain the overall objective as well as the specific purpose of each step. It would provide timelines for two review tracks: a fast track (no agency has significant concerns), and a comprehensive track (an agency has need for field research).

The critical role of timing and seasons in the review process would be explained: the window for soils, fisheries, wildlife summer habitat, and heritage field studies is May-September; a winter habitat study may be needed as well. Thus a "fast track" application received in October is likely to await the June ALARC meeting (May being the first opportunity for soil survey). An October application which needed summer field research would not reach ALARC until the following autumn.

The handbook would detail - perhaps with an example - the standard of information required for an acceptable application. It would also explain the appeal and complaint procedures (these are received and considered by the Director of Agriculture - any complaint directed elsewhere is forwarded to the Director first).

Finally, the handbook could discuss topics possibly unfamiliar to farmers from elsewhere, such as land clearing, permafrost, wildlife and predators.

#### **b. Assisting in selecting a site.**

The Branch could maintain a reference facility where all legally available map information was provided, including:

- soils maps
- land ownership and infrastructure base maps
- Native settlement lands
- interim protected land claims

- mining claims and forestry leases
- traplines
- grazing leases.
- exclusion zones (could be identified for wildlife, heritage, or recreation interests)
- map notations - items of interest or concern noted by resource managers or by the public

If provided at a common scale (1:20,000 blueines), and if the applicant was informed how to use this information, the site could be effectively pre-screened. The information could be regularly updated, but applicants could be cautioned that the base maps are not definitive and that a pre-screened site might yet fail because of a change in land status. In any case, this would eliminate much guess-work by the client and repetitive counseling by the Branch.

### c. The Application

The present forms require little of the applicant, and the little that is asked is not specific. The more information supplied by the applicant in the beginning, the greater the likelihood of a smooth and expeditious review. Each of the items below would speed up the review process and effect cost-savings for the Department.

With the aid of the "handbook" the applicant should be required to:

- Provide a map at 1:20,000 of the proposed parcel. Photocopies of C&TS blueines can be furnished.
- Clearly flag the site.
- Describe the site: vegetation, slope, aspect, drainage.
- Provide photos taken inward from near each corner, and outward from the center of the parcel.
- Provide documentation (via application checklist) of the status of the parcel with respect to the following (as available in Ag. Branch resource center):
  - soils (from existing maps, if available)
  - land ownership
  - Native settlement lands
  - interim protected land claims
  - mining claims and forestry leases
  - traplines
  - grazing leases.
  - exclusion zones (could be identified for wildlife, heritage, or recreation interests)
  - map notations - items of interest or concern noted by resource managers or by the public
- Provide Farm Development Plan at the time of application. Information contained in a Farm Development plan can be useful to other reviewing agencies; it should be part of the original package, not a later submission.

*\* One could make the case that the soil survey could be privatized to recognized technicians. This free public service could be handled by the private sector. Alternatively, applicants could be informed that a private soil survey could speed their application.*

### 5.2.2. Agency Reviews.

With better and more detailed "front-end" work by the applicant, the review process is made easier. There should be sufficient information to determine if an application should be on a "fast track" or on a "comprehensive track" requiring field work.

#### a. Pre-ALARC reviews

With more and better information provided by the applicant, agencies should be given 30 days to respond in writing that they have no concerns which should keep the application from ALARC; or that they will require field investigations - this should be accompanied by an estimate of when these investigations could be scheduled. Under no circumstances should an agency recommend a rejection at ALARC without a site inspection, unless the site is clearly in a documented "exclusion zone." Agencies should be instructed by senior officials to designate a person to be responsible to respond to the request for a review and to attend ALARC. Timeliness and consistency depend in part on this. It should be understood that no response in 30 days implies no concern. No application should go to ALARC with insufficient information, so there should be few occasions when ALARC defers a decision.

#### b. ALARC Reviews.

Each review agency should provide the Chair of ALARC with a memorandum of its findings which will be circulated to all committee members. As often as possible, recommendations for rejection should refer to a recognized body of reasoning and objective standards. For example, fatal wildlife objections might include critical habitat, migration corridors, incompatibility with a recognized management plan or recovery project, disease transmission. Recreation reasons might include pre-existing trails, and access to an important recreation feature.

Every effort should be made to avoid "special deals", recognizing that these can backfire, be seen as favoritism, or come back to haunt the Department as a precedent. The Agriculture Branch should at this time identify every theoretical or speculative "open question" that it can and provide structured answers for them. For example: should a vacant parcel be added to an existing farm, or should it be offered to meet the needs of someone new? There is no "correct" answer - but consistency depends on providing a structured approach to such questions.

When it is necessary for ALARC to require that a parcel be reconfigured, it should be so specified that it is unnecessary to return to ALARC. When mitigation measures are needed, these should be specified, justified and explained, and delegated to the Agriculture Branch to ensure.

#### c. Consultations

A defined period of time should be granted to all consultations. Affected First Nations should be notified by registered mail with the express statement that no response within 30 days will be taken to mean "no concerns". The standing for an expression of concern should be clarified: if a proper review has been completed, an approved application should be on open public land with no other conflicting interests. The purpose of consultation should be to gather any important information missed or overlooked by the review agencies, to second-guess the wisdom of the decision, and to offer a courtesy to any possibly affected parties. One suggestion to consider is to send pre-ALARC review packages and an offer to attend

ALARC to the First Nation as a matter of course, and then a 30-day limit to consultation later.

### 5.3 DIRECTIVES AND INFORMAL POLICIES.

Although each application is at present well tracked and documented, it is remarkable how little is written about how the process works.

On at least one occasion, an unwritten directive or the impression of such constrained the operation of the Agriculture Branch. The so-called "Hootalinqua North land freeze" had its origins in an interim government response to a district planning effort. It was not a full "freeze"; it was a moratorium on new applications in the planning district (existing ones were still reviewed). When the plan was not accepted in 1992, C&TS worried how to lift the moratorium without causing a "rush". By the Spring of 1994, when the program was transferred to the Agriculture Branch, nothing had been done. Although the transfer was a window of opportunity to review this and other practices, the "freeze" was not examined and continued amid uncertainty. It was never formally lifted: instead it was incrementally tested and dropped piecemeal by the Agriculture Branch.

From the public's viewpoint, this looks as if land policy is being formulated, administered, and modified organically: without forethought. It fosters a suspicion in some quarters that the staff behind the counter at the Agriculture Branch wield great power to pursue hidden, capricious, and unaccountable agendas.

Other policies and program needs can impinge on the agricultural land program just as the Hootalinqua planning effort did. In making adjustments between the agricultural land program and extensive programs such as a wildlife recovery and management plan, to an economic initiative, or to a tourism corridor development, there should be a clear record of agreements or memorandums of understanding. These should be flagged for review at a definite date.

### 5.4 REJECTIONS AND COMPLAINTS

One of the symptoms prompting this study has been the complaints received by the Minister and the Deputy Minister. The handling of these complaints is in turn a cause of difficulty for the Agriculture Branch and for the ongoing delivery of the agricultural land program. Almost all complaints are triggered by a rejected application or an application which has been significantly modified by ALARC conditions.

The grounds and justifications for rejections have been addressed above. If followed, and if clearly conveyed, there should be fewer causes for complaints. The applicant should be aware that there is a fixed period for an appeal of 60 days with no exceptions. After this date the file is closed - permanently. All appeals should be to the Director of Agriculture and make plain the grounds for appeal. Recognized grounds should be:

- factual error or misunderstanding in the review (specify)
- procedural error in the review (specify)
- decision inconsistent with facts or with policy (specify)
- evidence of bias or misconduct (specify)

Under no circumstances should the Minister's Office receive a first appeal or complaint - these should be forwarded without comment to the Director. The role of the Minister's office should be to respond to a substantiated complaint *after* the Director has had an opportunity to respond. After this point, any intervening directives should be consistent with established policies and practices.

## 5.5 NON-SOIL-BASED AGRICULTURAL APPLICATIONS

It has been said that at least one root cause of problems with the agricultural program is that "there is too little land". On first thought, this might sound absurd, with only 30,000 people inhabiting some 186,000 square miles. On further reflection, this claim has some merit, especially when taken as "there is too little *available* land."

The vast scale of the Yukon quickly pares down when potentially available land is understood to be:

- accessible by road,
- below the 2500 feet in elevation,
- agronomically capable,
- vacant public land not dominated by other interests,
- and within approximately 100 km of a town.

The bulk of the demand for agricultural and rural residential land in the Yukon is within the "Whitehorse periphery" and to a lesser extent on the outskirts of the larger communities. Within these areas, land is available through planned residential subdivisions as released by C&TS, for some commercial and industrial uses through DIAND, or through the spot agricultural application process. C&TS will not receive applications for rural homesites within these areas, neither will DIAND.

There is a continued demand for rural residential land which is not being met by C&TS releases. It is clear that part of this demand is being met through the non-soils-based agriculture part of the land program. This has some serious effects:

- It burdens an already stressed Department with applications which could be and should be met in another way.
- It contributes to ad hoc rural development and to the risk of poor patterns of land-use and resource protection.
- It contributes to a perception by some of the public that the agricultural program is a thinly-disguised land give-away and that it provides a cynical outlet for people who want rural land but have little interest in agriculture.

The net effect is that the Agricultural Disposition Program looks bad in some quarters, and is likely to be bad in some cases.

The demand for rural residential land will not abate and it will find outlet through non-soils-based agricultural applications as the program is now structured. Non-soils-based agriculture is little different in effect from other rural residential or commercial land-uses. It should properly be considered as such and be reviewed and handled by C&TS with technical advice from the Agriculture Branch.

The fundamental purpose of the Agricultural Land Disposition program is to facilitate the orderly transfer of agriculturally suitable public lands to private hands with due regard for other interests. The review of spot applications for non-soils-based agriculture detracts from a fundamental mission of the Agriculture Branch. Handled by C&TS, this same land-use can be properly integrated and supportive of the agricultural sector, as the *Agricultural Policy* intends.

Spot applications for non-soils-based agriculture are likely to remain necessary, even if this responsibility were accepted by C&TS. A division of reviewing responsibility could be as follows:

- Parcel is Agricultural Class 5 and is more than 8 ha:
  - Reviewed by Renewable Resources as an agricultural application
- Parcel is not Agricultural Class 5:
  - Reviewed by C&TS as some variant of rural residential or commercial land use.
- Parcel is Agricultural Class 5 and is less than 8 ha:
  - Reviewed by Renewable Resources if it is an enlargement to an existing farm; otherwise reviewed by C&TS as a rural residential or commercial land use.

Involving C&TS in the latter phases of the integrated resource planning process discussed in Section 5.1 would be an effective way of identifying sites suitable for non-soils-based agriculture.

## **5.6 FEDERAL LANDS**

Little can be done to speed the steps followed by FTLAC and the O.I.C. process for spot applications. Minor improvements would result from the steps outlined above. The greatest savings in the apparent time faced by a prospective farmer would come from a large block land transfer to YTG. The land could then be planned in advance by the Department of Renewable Resources for parcel releases or for pre-screened areas for spot applications.

## 6.0 RECOMMENDATIONS

The shortcomings in the Agricultural Review and Disposition Process identified in this study originate in the incremental and sometimes haphazard government involvement in land transfers. Although the Agricultural Policy of 1991 was an excellent consolidation of previous practices and gave solid direction for future efforts, it must be systematically backed by established programs, procedures, standards and guidelines. This occurred only partially for the agricultural land program. In absence of the detailed supporting work needed, much of the subsequent development of the process was *ad hoc* or not integrated with the whole.

Almost every observation made about the process and many of the measures proposed to improve it, have been voiced by some person at some time and place. Like the development of the process, efforts to reform it have been piecemeal. The following recommendations flow from the analysis presented in this paper.

1. The major thrust of the agricultural lands program should be in planned areas as discussed in 5.1. The long-run benefits and savings to the Department and to the public as a whole merit the short-term reallocation of priorities and monies.
  - a. Substantial areas for study should be identified, considering likely demand, amount of agricultural soils, other resources, present patterns of ownership, and land claims. If on Federal lands, a request for large block land transfers should be prepared.
  - b. Depending on the intensity of current use, land ownership patterns, and estimates of demand, the Department should begin for agricultural areas:
    - land-use planning, or
    - resource planning, or
    - map notations and exclusion zones
2. The process for spot applications should be revised per the suggestions in 5.2. If the process is to meet the criteria of timeliness, cost-effectiveness, consistency and fairness, and produce balanced land-use decisions, it merits the focussed attention of each reviewing agency. The quality of the review information and the way it is presented and considered are critical to good results. The Fish and Wildlife Branch in particular needs either more resources or to reallocate its resources in order to effectively contribute to this goal. Similarly, the Agriculture Branch would benefit from more resources or from reallocating its resources in order to assist the Agricultural Land Disposal Coordinator. Part of this effort could be to keep a resource center current and to work more closely with the public to ensure well-prepared applications.

Priorities should include:

- information handbook per 5.2.1.a
- resource center per 5.2.1.b
- application forms per 5.2.1.c
- development of objective standards for review per 5.2.2.
- formalized procedures for rejection and complaints per 5.4.
- development of an MOU with C&TS per 5.5 regarding a revised division of interests between non-soils-based agriculture, rural residential interests, and agricultural applications.

In closing, it should be emphasized that in delivering its programs, the Agriculture Branch is highly interdependent with other branches and agencies. The cooperation of these other players, and a clear operating environment as envisioned in these recommendations is essential to its success.