

LAND MANAGEMENT MANUAL

LAND MANAGEMENT MADE EASY

Volume 1

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(819) 953-5937

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INDIAN AND NORTHERN AFFAIRS CANADA
LAND MANAGEMENT MANUAL

FOREWORD

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(819) 953-5937**

FOREWORD

On behalf of the Department of Indian Affairs and Northern Development, I am pleased to introduce the revised Land Management Manual. This manual presents the departmental policies and procedures used in the management of reserve lands. It is for use by First Nation Land Managers and departmental Land Officers at the district and regional levels. As well, lands staff at headquarters and other staff in Lands and Trust Services will find this manual helpful.

The revision of the 1988 Land Management and Procedures Manual began in the fall of 1992. A committee of First Nations, regional, district and headquarters staff met to recommend better ways to make and issue policies. The committee focussed on the needs of the users of the manual, by basing their recommendations on the findings of a survey of users. In April 1994, the committee issued its final report, which clearly defined the framework for a revised manual.

Since April 1994, policy staff in the Lands Directorate have used the framework designed by the committee to produce the Land Management Manual. As each chapter is developed, drafts are delivered to departmental staff at headquarters, in the regions, and to First Nation Land Managers. Everyone has an opportunity to participate in the development of each chapter.

AVANT-PROPOS

De la part du ministère des Affaires indiennes et du Nord canadien, j'ai le plaisir de vous présenter le Guide de la gestion des terres. Ce document révisé expose les politiques et les méthodes ministérielles pour la gestion des terres des réserves. Il est destiné aux gestionnaires des terres des Premières Nations et aux agents des terres du Ministère dans les régions et les districts. De plus, le personnel des Terres à l'administration centrale et d'autres employés des Services fonciers et fiduciaires le trouveront utile.

La révision du Guide de la gestion foncière et des procédures de 1988 a commencé à l'automne de 1992. Un comité constitué de membres du personnel des Premières Nations et d'employés des régions, des districts et de l'administration centrale s'est réuni pour recommander de meilleures façons de formuler et de publier des politiques. Le comité s'est concentré sur les besoins des utilisateurs, ses recommandations étant fondées sur les résultats d'une enquête menée auprès d'eux. En avril 1994, il a publié son rapport final, définissant clairement le canevas du guide révisé.


Depuis avril 1994, le personnel chargé des politiques à la Direction des terres utilise le canevas conçu par le comité afin de produire le Guide de la gestion des terres. À mesure que chaque chapitre est élaboré, des ébauches sont remises au personnel ministériel à l'administration centrale et dans les régions ainsi qu'aux gestionnaires des terres des Premières Nations. Chacun a ainsi l'occasion de participer à la mise au point de chaque chapitre.

The use of directives, supplemented by interim bulletins and information bulletins, allows regular updates of the material as policies change or where clarification is necessary. In this way, your manual should always be up-to-date. In the future, we hope to make this manual available for electronic distribution.

I join the Policy and Legislation Section in thanking those in First Nations, regions, districts and at headquarters who commented on the drafts of the directives and bulletins. Your advice was indispensable in developing the final documents. We look forward to your continued role as further documents are produced.

L'utilisation de directives, auxquelles viennent s'ajouter des bulletins provisoires et des bulletins d'information, permet la mise à jour régulière de ce document à mesure que les politiques changent ou lorsque des éclaircissements s'avèrent nécessaires. Ainsi, votre guide devrait toujours être à jour. Nous espérons diffuser ce guide par des moyens électroniques à l'avenir.

Je me joins ici à la Section des politiques et de la législation pour remercier les membres des Premières nations et le personnel des régions, des districts et de l'administration centrale qui ont formulé des observations sur les ébauches des directives et des bulletins. Vos conseils se sont avérés indispensables pour l'élaboration des documents définitifs. Nous espérons que vous continuerez à participer lorsque d'autres documents seront produits.



Wendy F. Porteous
Assistant Deputy Minister / Sous-ministre adjointe
Lands and Trust Services / Services fonciers et fiduciaires
Department of Indian Affairs and Northern Development/
Ministère des Affaires indiennes et du Nord canadien



INDIAN AND NORTHERN AFFAIRS CANADA
LAND MANAGEMENT MANUAL

CHAPTER 01
WHAT EVERY READER SHOULD KNOW

For Information call:
(819) 953-5937

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WHAT EVERY READER SHOULD KNOW

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Purpose

01. This manual is based on the final recommendations of a committee of district, region and headquarters staff, and First Nation Land Managers. Their goal was to produce a manual that reflects user needs and is easy to read and use. We hope that this manual achieves these goals.
02. This directive describes the structure and format of the manual and explains how to use the manual.

General

03. **What is the manual?**
 - € **It is a resource and a tool.** It has all of the basic technical information, procedures and policies you will need to manage reserve land. There is an updating system to ensure that the information you have is current.
 - € **It is also a product,** backed by the policy and advisory units which act as "a service unit." Services include bulletins, special projects and consultations in response to new issues and questions.
04. **Who is the manual for?** It is designed to assist three user groups:
 - € The department's officers who manage Indian reserve and designated lands;
 - € First Nation officers who manage Indian reserve and designated lands; and,
 - € Other departmental officials.
05. **What can the manual do?** The manual will provide you with:
 - € General information on reserve lands;
 - € Specific procedures;
 - € Policy information; and,
 - € Updated interpretations and amendments.

06. **The manual is divided into chapters.** Each chapter is divided into directives and bulletins which are then subdivided into headings, paragraphs and bullets.
07. **The manual contains various indexes:**
- € The **main index**, found at the front of the manual, lists the manual's chapters, directives, bulletins and attachments.
 - € The **chapter index**, found at the beginning of each chapter, lists the directives and bulletins in numerical order.
 - € The **key word index** lists paragraphs where reference is made to a particular word or phrase.
 - € The **glossary** lists and defines the technical terms used in the manual. It is located behind Directive 11.
08. **The manual has 11 chapters:**
- € Chapter 01: What Every Reader Should Know
 - € Chapter 02: Choosing the Right Transaction: Authorities and Conditions
 - € Chapter 03: Individual Interests: Creating, Transferring and Cancelling
 - € Chapter 04: Lands Used for the General Welfare of the First Nation
 - € Chapter 05: Designations and Surrenders
 - € Chapter 06: Permits: Drafting, Issuing and Cancelling
 - € Chapter 07: Leases: Drafting, Issuing and Cancelling
 - € Chapter 08: Monitoring and Administering Leases and Permits
 - € Chapter 09: Lands Taken for Public Purposes (Section 35)
 - € Chapter 10: Reserve Creations and Additions
 - € Chapter 11: Devolution of Land Management to First Nations

09. Each chapter is divided into **directives** that deal with key issues. Directives are divided into these headings:

- € Purpose: Objective of the directive.
- € General: Background, definitions, explanations and rationale.
- € Authorities: Relevant sections of the Act, regulations, other legislation and case law.
- € Policy: Policy requirements.
- € Process: Procedural requirements, and an overview or summary of procedures.
- € Implementation: Date of coming into force, application, roles and responsibilities.
- € References: Other sources of information, including other manuals.

10. A **bulletin system** is used to keep information current, to advise you of new legislation, policy or court decisions, and to respond quickly to your needs and questions. You should read all bulletins related to a directive, otherwise, your information may be incomplete. Always refer to the bulletin's implementation section to ensure that the bulletin is in force and applies in your case. Bulletins are located on the coloured paper at the front of each chapter. They follow the same format as directives. There are two types of bulletins:

- € **Interpretation bulletins** clarify existing policy or procedures.
- € **Interim bulletins** contain new or updated information in a temporary format pending the publication of manual revisions.

11. **Flow charts** are used to explain processes and procedures. You will find flow charts at the end of directives and bulletins (as annexes). Flow charts explain processes and procedures step by step. Detailed procedures are described in the flowcharts, not in the directives. Paragraph 18 explains how to read a flow chart.

Checklist boxes are included in the flow charts, to allow you to check off the requirements or specifications that need to be met in completing a particular step.

12. **We have tried to use clear and simple language.** Where technical terms are unavoidable, they are defined either in the text, in a paragraph under the "General" heading, or in the Glossary.

Process: How to Use the manual

13. **How to Find General Information:**

- € Start with Chapter 02. It provides background information and explains how different sections of the Act are intended to accomplish different purposes.
- € Find specific topics using the key word index and the chapter index.
- € Use the flow charts for an overview.
- € Update all information by reading related bulletins.

14. **How to Find Procedures:**

- € Use Chapter 02, the key word index or the chapter list (paragraph 09) to find appropriate chapter(s).
- € Use the key word or chapter index to find specific directives and bulletins.
- € Read the "Process" sections and the flow charts. The flow charts give step-by-step explanations of procedures (if you have trouble reading a flow chart, see paragraph 17).
- € Read related bulletins for updates or changes to procedures.

15. **How to Find Answers to Policy Questions:**

- € Use Chapter 02, the key word index and chapter indexes to find your subject.
- € Read bulletins first for new or revised information.
- € Read the policy sections of directives.

16. How to Find Interpretations and Amendments:

- € Use Chapter 02, the key word index and chapter indexes to find your subject.
- € Read *interpretation bulletins* for clarifications and interpretations.
- € Read *interim policy bulletins* for new or updated information.

17. How to use Flow Charts:

- € Flow charts explain procedures step by step. They have two parts: the text on the left and the process path on the right. The text outlines the procedure in words, and the process path illustrates the same thing in picture form.
- € Read the process path by following the arrow. Symbols tell you what you must do:
 - ' Action 3 Review/Inspection Ë Decision - File/Storage
- € The text explains in words the action required. The process path columns tell you who must do the action (eg., First Nation, INAC HQ, INAC Field). A double line on the path tells you that two or more groups are taking different steps at the same time.
- € The text contains checklists that show you all necessary steps in each procedure.
- € Read the text and the process path at the same time.

References and Getting Help

18. The "References" heading lists other sources of information, including other departmental manuals. Some of these sources are listed in Directive 01-02, paragraph 14.
19. You can contact the policy or advisory units if you have questions about the manual. Contact numbers are listed in Directive 01-02, paragraph 13.
20. If you have questions on specific chapters, you can refer to the contact numbers, which appear on the cover and divider pages and under the reference heading.

21. You can also refer questions to regional or district offices, who may, depending on the nature of the question, refer the matter to Headquarters.
22. Copies of this manual are available from Indian and Northern Affairs Canada regional offices or from the policy and advisory units. The manual is available to government offices and to First Nations with delegated land management authority. First Nations funded for land management should ensure that they are on the mailing list for manual updates.

Purpose

01. This Directive explains how policy is developed.

General

02. Policy development involves **review** and **consultation**.

03. **Review** is a process where draft policies are sent to stakeholders for review and comment.

€ **When?** Always, except interpretation bulletins or urgent cases.

€ **Who?** Policy and advisory units;
First Nations and regions;
Other affected groups such as municipalities, provincial governments and other federal departments.

€ **How?** Draft policies are circulated for review and comment. There is however a cutoff date after which comments will not be incorporated into the revised document. Draft policies are usually circulated for a maximum of two rounds of review.

04. **Consultation** is a process where stakeholders discuss and give input before a policy is drafted.

€ **When?** When policies deal with major issues or new policies where the department has some discretion to incorporate stakeholder views.

€ **Who?** Policy and advisory units;
First Nations and regions;
Other affected groups such as municipalities, provincial governments and other federal departments.

€ **How?** At the discretion of the policy advisor (meetings, workshops, conference calls, etc.).

05. **All policies must be approved** by the Assistant Deputy Minister, Lands and Trust Services. Interpretation bulletins are normally approved by the Director, Lands Directorate or by the Director General, Lands and Environment Branch. Policies that involve other departments or which are particularly important may require approval by the National Policy Committee (see following paragraphs) and the Deputy Minister.

Policy

06. The "National Policy Committee" coordinates all phases of policy development. The committee's mandate is limited to issues related to this manual.
07. The committee consists of:
 - € Manager, Policy and Legislation Unit (chair);
 - € Manager, Land Management and Advisory Services Unit;
 - € Regional Land Managers.
08. Members get input from their groups and communicate that input to the committee.
09. Working groups or subcommittees are sometimes formed to study specific issues. These groups are generally chaired by Headquarters policy advisors and may involve technical experts.

The Policy Development Process: How it works

10. The policy development process involves six phases:
 - € Policy planning
 - € Research
 - € Consultation (where required)
 - € Development
 - € Review/Revision
 - € Approval
11. The process runs through an annual cycle:
 - € **Draft Policy Plan:** The policy and advisory units create, based on committees and user input, a draft plan for new policy, bulletins and directives. The plan will identify proposed projects and deadlines.

Annual Policy Cycle (continued)

- € **Consultation on the Policy Plan:** Committee members discuss the draft plan with their respective groups. The committee meets to discuss the plan and make recommendations on the proposed subjects, activities and priorities. The plan is revised as required.
 - € **Policy Research and Consultation:** Policy advisors, and possibly working groups and subcommittees research issues and confer with legal services as required. Consultation involves surveys, workshops, focus groups and the acceptance of submissions. Policy is drafted based on the revised policy plan, research and consultation.
 - € **Review:** Committee members review draft policies with their groups, and forward comments to the chairperson. If necessary, the committee meets to discuss policy. Policies are submitted for translation.
 - € **Approval:** Policies are finalized and submitted for approval. Paragraph 06 explains who must approve policy.
12. Annex A is a flow chart that explains the policy development cycle in greater detail.

Implementation

13. You can contact the Policy and Legislation Unit at Headquarters if you have questions about the policy development process.
- € **Policy and Legislation Unit:**
 - (819) 953-5937 (phone)
 - (819) 953 9430 (fax)
 - Manager (819) 994-3335 (phone)

References

14. Refer to these manuals for further information:
- € **The Indian Lands Registration Manual** explains the Indian Lands Registry and tells you how to register documents. For copies contact the Deputy Registrar, Lands Directorate, at (819) 994-3668.

Reference Manuals (continued)

- € **The Lands Documentation System Manual** tells you how to obtain standard documents like leases and transfers using the Lands Documentation System (LDS) (publication pending at the date of this directive).
- € **The Indian Environmental Protection Manual** explains environmental protection policy guidelines and procedures. The manual is available from the Environmental and Natural Resources Directorate in Hull, or from the offices of the Directorate's regional counterparts.
- € **The Indian Estates Manual** tells you how to deal with reserve lands after an individual First Nations member has died. Copies can be obtained from the Band Governance and Estates Directorate in Hull, or from the offices of the Directorate's regional counterparts.
- € **The Real Property Volume of the Treasury Board Manual** explains the *Federal Real Property Act*. You should use it when lands are being purchased, expropriated, exchanged, sold, added to reserves, transferred under section 35 of the Act, or where a section 35 right-of-way is granted. A subscription may be purchased from the Canada Communication Group - Publishing, at (819) 956-4802 (phone) or (819) 994-1498 (fax).
- € **The Natural Resources Policy Manual** tells you how to deal with natural resources such as oil, gas and timber on reserve lands (publication pending at the date of this directive).

Chapter 01: What Every Reader Should Know

Directive 01-02: Policy Development

Annex A: Policy Development Process

Issued: March 6, 1995

STEPS IN THE PROCESS: POLICY DEVELOPMENT PROCESS STEPS 001 TO 030 LEGEND: <=? = Movement ' = Action 3 = Review/Inspection E = Decision - = File/Storage		ORGANIZATIONS INVOLVED		
		Policy	Members	Committee
Policy and Legislation (January-February):				
001	Prepares and sends to the committee and to 53/60 First Nations a Draft Policy Plan listing policy bulletins and directives to be developed and providing the following information on each planned project or task:	G ' 4<	447	
	€ A description of the project or task	[]	5	
	€ A designation of the project or task as high, medium or low priority	[]	5	
	€ A schedule showing the planned months of review by the committee and the sector executive	[]	5	
	€ An estimate of the resources required to complete the project or task	[]	5	
Committee Members (January-February):				
002	Coordinate review of the proposed plan with regional, district and First Nation staff and get input on:	G	3	
	€ Other issues to be addressed in addition to or in place of those identified in the plan	[]	5	
	€ Which projects or tasks would benefit from prior consultation and formation of a workgroup	[]	5	
	€ Their interest in and views on the issues to be addressed through the plan	[]	5	
003	Summarize and submit their comments to the chair and indicate if they would like to discuss the plan.	G	=4'	
Policy and Legislation (February-March):				
004	Reviews and analyzes input from committee members.	G	3	
005	If necessary, amends the draft plan or prepares responses to the input received.	G	'	
006	Forwards the revised plan and responses to committee members.	G	' 4	444<
007	If necessary, calls a teleconference or meeting to review the draft and set up workgroups, and sends:	G	' 4	444<
	€ A summary of input received, and responses to that input	[]		44<
	€ Statements of issues, objectives, key questions and considerations for each session	[]		5
	€ Agenda and background documents	[]		5
	€ A revised draft of the policy plan	[]		5
National Policy Committee (March - April):				
008	Reviews and discusses the issues included on the agenda.	G		3
009	Submits conclusions and recommendations for consideration by policy and the sector executive.	G		=44
Policy and Legislation (April - January):				
010	Prepares a final plan and distributes it to committee members.	G	' 4<	= 4'

STEPS IN THE PROCESS: POLICY DEVELOPMENT PROCESS STEPS 001 TO 030 LEGEND: <=? = Movement ' = Action 3 = Review/Inspection É = Decision - = File/Storage		ORGANIZATIONS INVOLVED		
		Policy	Members	Committee
011	If necessary, requests committee members to nominate representatives to subcommittees	G	5 '	
012	Develops, with workgroups, project plans for each project and identifies consultation activities such as: € Workshops, conferences and meetings € Surveys and questionnaires € Submissions from First Nations and their representatives € Interviews and discussions	G [] [] [] []	5 5 5 5 5 5	
013	Implements project plans and develops working documents such as: € Background Papers: Outlining basic information and issues as a basis for consultation € Discussion Papers: Suggesting findings, conclusions, recommendations and proposals for discussion € Project Reports: Stating conclusions and recommendations € Draft Directives and Bulletins: Stating proposed policies and procedures € Draft Training Materials and Work Instruments: Including presentations, forms and instructions	G [] [] [] [] []	' 5 5 5 5 5 5 5 5 5	
014	Circulates working papers to committee members and 53/60 First Nations for comment and review.	G	' 4< 5 5	
Committee Members (April - March):				
015	Coordinate the review of working papers by regions, districts and First Nations.	G	5 3 5	
016	Consolidate and submit input to policy and legislation within deadlines including requests for further consultation or meetings.	G	5 =4'	
Policy and Legislation (April - March):				
017	Reviews and analyzes input from committee members.	G	64 5 3 5	
018	If necessary, develops revisions and responses based on member input.	G	5 3 5	
019	If necessary, calls a meeting or teleconference to discuss input and sends to members: € A summary of input received, and responses to input € Statements of issues, objectives, key questions and considerations for each session € Agenda and background documents € Revised drafts of the working documents	G [] [] [] []	' 4< 444< 5 5 5 5	447 5 5 5 5 5
National Policy Committee (April - January):				
020	Reviews and discusses the issues included on the agenda.	G		3 5 ?

STEPS IN THE PROCESS POLICY DEVELOPMENT PROCESS STEPS 001 TO 030 LEGEND: <=? = Movement ' = Action 3 = Review/Inspection É = Decision - = File/Storage		ORGANIZATIONS INVOLVED		
		Policy	Members	Committee
National Policy Committee (cont.)				
021	Submits conclusions and recommendations for consideration by policy and the sector executive.	G 64	=444	5 =4 '
Policy and Legislation (April - March):				
022	If necessary, revises working papers and develops responses to recommendations.	G 5		
023	If necessary, sends revised working papers and responses to members.	G 5	47	
Committee Members (April - March):				
024	Coordinate the review of revised working papers by regions, districts and First Nations.	G 5	3	
025	Consolidate and submit input to policy and legislation within deadlines.	G 64	=4'	
Policy and Legislation (April - March):				
026	Reviews and analyzes member input.	G 5		
027	Prepares policy documents such as:	G		
	€ Directives and bulletins	[] 5		
	€ Training materials	[] 5		
	€ Work instruments, such as forms, instructions and guides	[] 5		
028	Submits policy documents to the Lands and Trusts Services Executive Committee for review.	G 5		
029	Prepares final policy documents based on the sector executive review and submits them to the Assistant Deputy Minister, Lands and Trusts Services, for approval.	G 5		
030	Arranges for distribution of approved policy documents through regions.	G 5	44-	

Chapter 01: What Every Reader Should Know

Directive 01-02: Policy Development

Annex B: Role of Policy Advisor in Policy Development

Issued: March 6, 1995

STEPS IN THE PROCESS ROLE OF POLICY ADVISOR IN POLICY DEVELOPMENT STEPS 001 TO 021		ORGANIZATIONS INVOLVED	
LEGEND: <=?=Movement ' =Action 3=Review/Inspection E=Decision >=File/Storage		Policy Advisor	
Policy Advisor:			
001	Reviews approved policy development plan.	G	3
002	Selects and contacts a project team if appropriate.	G	'
003	Develops project plan:	G	'
	€ State objective	□	5
	€ Describe project	□	5
	€ Describe proposed output	□	5
	€ State performance expectations	□	5
	€ Estimate timeframes	□	5
	€ Estimate costs	□	5
	€ Describe the responsibility / reporting structure	□	5
004	Submits project plan to manager for approval.	G	'
005	Researches issue(s):	G	'
	€ Identify sources of information	□	5
	€ Obtain, review and analyze information	□	5
006	Obtains legal opinion:	G	'
	€ Draft request for opinion	□	5
	€ Include all relevant policy background	□	5
	€ Include all relevant factual background	□	5
	€ Include example(s) if necessary	□	5
007	Reviews legal opinion.	G	3
008	If consultation is required, identifies:	G	'
	€ Stakeholders to be consulted	□	5
	€ Purpose or objective of consultation	□	5
	€ Methods of consultation	□	5
009	If consultation is required, develops consultation procedures.	G	'
	Options include:		5
	€ Surveys	□	5
	€ Workshops/focus groups	□	5
	€ Meetings and interviews	□	5
	€ Requests for submissions	□	5
010	If consultation is required, drafts a background paper:	G	'
	€ A background paper identifies the facts and issues but makes no recommendations	□	5
011	Develops policy option(s) which:	G	'
	€ Reflect the results of the consultation process, if consultation was required	□	5
	€ Meet the expectations of the project plan	□	5
	€ Are efficient, effective and realistic	□	?

STEPS IN THE PROCESS ROLE OF POLICY Advisor IN POLICY DEVELOPMENT STEPS 001 TO 021		ORGANIZATIONS INVOLVED
LEGEND: <=?=Movement ' =Action 3=Review/Inspection E=Decision >=File/Storage		Policy Advisor
Policy Advisor (continued):		
012 Develops decision-making criteria to assess options and determine which option(s) to recommend € Prepares working paper, which includes options and recommendations, for submission to decision-maker	5 ' 5 5 5	
013 Submits the policy options and recommendations to the decision-maker (usually the Assistant Deputy Minister, senior departmental management, or a departmental committee)	5 5 ' 5	
014 Where a policy option(s) is chosen by the decision-maker, revises working paper if necessary.	5 3' 5	
015 Coordinates the review of revised working papers by regions, districts and First Nations	5 ' 5	
016 Reviews and analyzes input from regions, districts and First Nations.	5 3 5	
017 Prepares policy documents such as: € Directives and bulletins € Training materials € Work instruments, such as forms, instructions and guides	5 ' 5 5 5 5	
018 Submits policy documents to the Lands and Trust Services Executive Committee for review.	5 ' 5	
019 Prepares final policy documents based on the sector executive review, and submits them to the Assistant Deputy Minister, Lands and Trusts Services, for approval.	5 5 ' 5	
020 Prepares or amends training materials, or works with the Staffing and Training Directorate to ensure that the materials are updated.	5 ' 5	
021 Arranges for distribution of approved policy documents to the regions, for regional, district and First Nation distribution.	5 5 '	



INDIAN AND NORTHERN AFFAIRS CANADA
LAND MANAGEMENT MANUAL

CHAPTER 02

**CHOOSING THE RIGHT TRANSACTION:
AUTHORITIES AND CONDITIONS**

**For Information call:
(819) 953-5937**

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Purpose

01. This bulletin is an interim policy. It summarizes the requirement for an environmental assessment (EA) under the *Canadian Environmental Assessment Act (CEAA)* and its regulations. Where there are any discrepancies between this bulletin and the Act, the Act supersedes and should be referred to for clarification. This bulletin will be replaced by directives to be included in Chapters 03 through 10 of the revised Lands Manual. You should read this bulletin for information on:
- € **Policy:** How to decide whether an environmental assessment will be required for a particular transaction.
 - € **Process:** How to complete the steps required to meet the environmental assessment requirements under the Act and complete the screening report.

General

02. In this bulletin:
- € **"Alternate means of carrying out a project"** means different ways of implementing the same project; for example, alternative means of carrying out a hydroelectric power plant project might include 24-hour operation or operation only during peak demand.
 - € **"Alternatives to a Project"** means functionally different ways of achieving the same end; for example, alternatives to a hydroelectric power plant might include importing power, or conserving energy.
 - € **"Environmental Assessment (EA)"** means an assessment of the environmental effects of a project conducted in accordance with the *CEAA* and its regulations.
 - € **"Follow-up Program"** means a program for verifying the accuracy of the environmental assessment of a project, and determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the project.
 - € **"Mitigation"** means the elimination, reduction, or control of the adverse environmental effects of the project, including restitution for any damage to the environment caused by such effects through replacement, restoration, compensation, or any other means.

Definitions (continued)

- € "Project" means in relation to a physical work, any proposed construction, operation, modification, decommissioning, abandonment, or other undertaking in relation to that physical work; or any proposed physical activity, not relating to a physical work, that is prescribed in the *Inclusion List Regulations*.
 - € "Proponent" means the person, body, federal authority, or government that proposes the project.
 - € "Responsible Authority" means a federal authority that is required pursuant to subsection 11(1) of the CEAA to ensure that an environmental assessment of a project is completed.
 - € "Screening" means an environmental assessment that is conducted pursuant to section 18 of the CEAA, and that includes a consideration of the factors set out in subsection 16(1).
 - € "Screening report" means the report that summarizes the results of the screening.
 - € "Trigger" means an action by a federal authority that initiates the need for an environmental assessment under CEAA.
 - € "Valued Ecosystem Component (VEC)" means an environmental component identified as having scientific, social, cultural, economic or aesthetic value.
03. **The requirement for an environmental assessment (EA) under CEAA is triggered when** a federal authority exercises or performs one or more of the powers, duties, or functions listed below, in relation to a project. The triggers, as set out in s.5 of the CEAA, are when a federal authority:
- € is the project proponent [s.5(1)(a)];
 - € provides financial assistance for the purpose of enabling the project to be carried out (for a project not on a reserve) [s.5(1)(b); s.10(2)];
 - € grants an interest in land for the purpose of enabling the project to be carried out [s.5(1)(c)];
 - € performs a regulatory duty in relation to the project, such as issuing a permit, lease or other approval, that is included in the *Law List Regulations* [s.5(1)(d)];

Triggers (continued)

- € recommends that the Governor in Council perform a regulatory duty, included in the *Law List Regulations*, in relation to the project [s.5(2)(a)].
04. **When DIAND intends to do one of the above, DIAND is then the *responsible authority* and must ensure that an environmental assessment is completed before taking any action that enables the project to proceed.** The last three triggers are very important to the Lands Unit of DIAND, because they trigger activities that fall within the responsibilities of the Lands and Trust Services Directorate (e.g. the issuance of permits for timber or a lease for commercial purposes).
 05. **Depending on the project, the environmental assessment process may take the form of a screening, a comprehensive study, a mediation, and/or an assessment by a review panel.**
 06. **A comprehensive study is required if the project is on the Comprehensive Study List.** Consult the Comprehensive Study List Regulations or your Environmental Unit to decide whether a comprehensive study is necessary. A Comprehensive Study requires a more in-depth analysis than a screening and should not be undertaken without consulting the Environmental Unit and senior management.
 07. **Most projects reviewed by the Lands Unit will likely undergo a screening** rather than a comprehensive study, mediation or assessment by panel. Each environmental assessment for a project that has a trigger will begin with a screening, unless it is on the Comprehensive Study List. In some situations, mediation or an assessment by panel may follow the screening or the comprehensive study.
 08. **The environmental assessment is to be carried out as early in the planning process as possible**, before irrevocable decisions are made. Specifically, the assessment and screening report will identify whether:
 - € there is a need to mitigate environmental effects;
 - € there is a need to modify the project plan;
 - € there is a need to carry out further assessment of the project through mediation or panel review;
 - € the Lands Unit can provide federal support for the project (that is, take action that enables the project to proceed); or,
 - € the Lands Unit cannot exercise any power or perform any function that would permit the project to be carried out.

09. Screenings will vary in time, length and depth of analysis, depending on the proposed project and the possible extent of environmental effects.

Authorities

10. Statutory authorities governing this policy are the *Canadian Environmental Assessment Act*, S.C. 1992, Ch.37, as amended, and the regulations under this Act, including the *Law List Regulations*, the *Inclusion List Regulations*, the *Comprehensive Study List Regulations*, and the *Exclusion List Regulations*.

Policy

11. Under the *CEAA*, a federal authority must carry out an environmental assessment **before** it exercises any prescribed power or authority, duty or function, which would enable a project as defined under *the CEAA* to proceed either in part or whole.

Process

12. An environmental assessment is required where you have a **trigger for a project**, as defined under the *CEAA*. Information gathered during the screening shall be entered in the public registry. At any time, that information shall be entered into the public registry. The following is the step by step process to be followed when the Lands Unit receives a proposal.
13. **Determine whether the activity is a project and has a trigger.** To be a project, an activity must be an undertaking in relation to a physical work (e.g., construction, operation, modification, decommissioning, abandonment) or be listed as a project in the "Inclusion List Regulations".

Annex A lists the common lands activities that trigger the requirement for an environmental assessment under the *CEAA*. If you are unsure if an environmental assessment is required, or if the activity under the proposal is not on the list, consult with the Environment Unit.

14. If your activity falls on the list in Annex A and is in relation to any of the following types of projects consult with your Environmental Unit to decide whether a comprehensive study is required. The projects are:
- € Projects in or on National Parks and Protected Areas
 - € Electrical Generating Stations and Transmission Lines
 - € Water Projects (i.e. Diversion Projects)

Comprehensive Study Activity List (continued)

- € Oil and Gas Projects
 - € Minerals and Mineral Processing
 - € Nuclear and Related Facilities
 - € Industrial Facilities
 - € National Defence
 - € Transportation
 - € Hazardous Waste Management
15. Even though your activity is a project and has a trigger, **it will not require an environmental assessment if it is listed in the Exclusion List Regulations.** Annex B contains a list of excluded projects drawn from the Exclusion List Regulations. If you are unsure, consult with your Environmental Unit.
16. **A screening report must be completed by the Lands Officer.** As a minimum, the report must include:
- € a description of the project;
 - € a description of the Valued Ecosystem Components (VECs);
 - € a summary and determination of the significance of the adverse environmental effects including the cumulative effects and any effects of malfunctions or accidents;
 - € a description of the proposed mitigation measures;
 - € comments received from the public, if applicable;
 - € a statement and rationale for the screening conclusion; and,
 - € identification of the contact person.
- The above are included on the LTS Screening Report, attached as Annex C.
17. **If the Lands Officer deems it necessary** the screening report may include additional information such as:
- € the need for the project, alternatives to the project and alternate means of carrying out the project;

Screening Report information (continued)

- € a record of consultations with expert federal departments;
 - € a description of any necessary follow-up programs; and,
 - € additional supporting information, such as results of environmental studies.
18. When a screening process has been carried out **the Lands Officer has the option of allowing public review and comment** on the screening results. If the project warrants, the Lands Officer may obtain comments and solicit information from other federal departments. If other responsible authorities are likely to have a trigger, the Lands Officer must notify the affected departments.
19. **Following the screening process, the Lands Officer must reach a conclusion as to the expected effects. Based upon the conclusion, the Lands Officer makes a screening decision recommendation as outlined below:**
- € If the project is not likely to cause significant adverse environmental effects, considering appropriate mitigation measures, action may be taken that enables the project to proceed (**Screening Report Decision Code 01**).
 - € If the project is likely to cause significant adverse environmental effects, that cannot be justified, taking into account appropriate mitigation measures action may **NOT** be taken that enables the project to proceed (**Screening Report Decision Code 02**).
 - € If it is uncertain whether the project is likely to cause significant adverse environmental effects, notify your Environmental Unit and your senior management for referral of the project to public review (**Screening Report Decision Code 03**).
 - € If the project is likely to cause significant adverse environmental effects that may or may not be justified, notify your Environmental Unit and your senior management for referral of the project to public review (**Screening Report Decision Code 03**).
 - € If public concerns warrant a public review (panel or mediation), notify your Environmental Unit and your senior management for referral of the project to public review (**Screening Report Decision Code 03**).

20. **Only after a public review** can the responsible authority support the conclusion that a project is likely to cause significant adverse environmental effects that can be justified. If referred for public review, the final decision on the project must await the results of the public review.
21. If it has been determined that a project receives approval, the responsible authority must:
- € ensure that the mitigation measures identified during the environmental assessment are implemented; and
 - € ensure that any required follow-up program is implemented.
22. When the responsible authority decides to take action with respect to a project, it must also make available to the public:
- € the action it has decided to take;
 - € any mitigation measures that are to be implemented;
 - € the extent to which the recommendations of a mediator or review panel have been adopted, and the reasons for not adopting any of the recommendations; and,
 - € any follow-up program and the results of any follow-up program.

Implementation

23. Environmental assessments under *the CEAA* are required as of January 19, 1995.

References

24. Beyond the *CEAA* and its regulations, you may want to consult:
- € The Responsible Authority's Guide to the *Canadian Environmental Assessment Act*, prepared by the Federal Environmental Assessment Review Office (FEARO).
 - € The Participant's Manual for Environmental Assessment (the DIAND Environmental Assessment training course).
 - € Your friendly Environmental Unit.

Chapter 02 : Transactions

Interim Bulletin 02-01: Environmental Assessment under CEEA

Annex A

CEEA Triggers under the *Indian Act* and other legislation

Issued: March 29, 1995

Annex A**CEAA Triggers under the Indian Act and other legislation**

The following sections of the *Indian Act* are triggers under section 5(1)(c) of the *CEAA*:

- € ss. 20(1):
Ministerial approval of allotment only in those situations where a project proposal is attached.
- € ss. 20(4):
Ministerial authorization of temporary occupation only in those situations where a project proposal is attached.
- € s. 24:
Ministerial approvals of transfers of rights to possession only in those situations where a project proposal is attached.
- € ss. 38(1):
an absolute surrender only in those situations where a project proposal is attached.
- € ss. 38(2):
a designation by way of surrender only in those situations where a project proposal is attached (e.g. a lease).
- € ss. 53(1):
leasing, sales and other transactions only in those situations where a project proposal is attached.
- € s. 54:
assignment of leases or other interests only in those situations where a project proposal is attached.
- € ss. 58(1)(b), 58(1)(c):
Ministerial issuance of agricultural and grazing leases.
- € ss. 58(3):
Ministerial issuance of leases for land of which an Indian is lawfully in possession without that land being designated.

The following sections of the *Indian Act* are triggers under section 5(1)(d) of the *CEAA*:

- € ss. 18(2):
Ministerial land use authorizations for schools, band administration offices, Indian burial grounds, Indian health projects or, with the consent of the council of the band, for any other purpose for the general welfare of the band.
- € ss. 28(2):
Ministerial land use or occupancy permits.
- € ss. 58(4)(b):
Ministerial permits for the disposal of, or taking of sand, gravel, clay or other nonmetallic substances upon or under reserve lands.

The following sections of the *Indian Act* are triggers under section 5(2)(a) of the *CEAA*:

- € s. 35:
municipal, provincial, local authority or corporation expropriations of reserve lands.
- € ss. 39(1):
Governor in Council acceptance of a section 38 absolute surrender or designation, where a project proposal is attached.

The following section of the *Indian Waste Disposal Regulations* is a trigger under section 5(1)(d) of the *CEAA*:

- € s. 5:
Ministerial or council issuance of waste permits.

The following sections of the *Indian Timber Regulations* are triggers under section 5(1)(d) of the *CEAA*:

- € ss. 5(1):
Ministerial permits for band members to cut timber for sale.
- € s. 9:
Ministerial invitations to public for licence to cut timber.
- € ss. 22(1):
Assistant Deputy Ministerial varying of existing timber licences.

Chapter 02 : Transactions

Interim Bulletin 02-01: Environmental Assessment under *CEAA*

Annex B

***CEAA* -- Excluded Projects**

Issued: March 29, 1995

Annex B**CEAA -- Excluded Projects**

(Section references refer to the *CEAA Exclusion List Regulations*, Schedule I)

s. 1:

maintenance or repair of an existing physical work.

s. 2:

the continued operation, in the same manner as before, of a physical work, the previous operation of which has been earlier screened as having insignificant impacts, and for which applicable mitigation measures have been implemented.

s.3:

construction or installation of a building with a footprint of less than 100 square metres (1075 square feet), and a height of less than 5 metres (16.5 feet), located greater than 30 metres (100 feet) from a water body, which would not likely pollute a water body.

s. 4:

expansion or modification of an existing building that would not increase the footprint or height of the building by more than 10%, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 5:

certain scientific data collection activities (see the *CEAA Exclusion List Regulations*, Schedule I, section 5 for specifics) that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 6:

construction, installation, expansion or modification of a ramp, door or handrail to facilitate wheelchair access.

s.7:

certain temporary exhibition structure construction activities (see the *CEAA Exclusion List Regulations*, Schedule I, section 7 for specifics).

s. 8:

construction of a sidewalk, boardwalk or parking lot with 10 or less spaces, that is beside an existing building, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 9:

expansion or modification of a sidewalk, boardwalk or parking lot that would not increase its area by more than 10%, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

Excluded Projects (continued)

s. 10:

expansion or modification of an existing fence that would not increase its length or height by more than 10%, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 11:

hydrant or hook-up construction, installation, expansion or modification, if it is to be part of an existing farm or municipal system of distribution, and if there is no crossing of a water body, other than in the air or above the water, involved.

s. 12:

sign construction, installation, expansion or modification, if within 15 metres of an existing building, where no side of the sign would have an area greater than 25 square metres.

s. 13:

radiocommunication antenna construction, installation, expansion or modification, if it would be greater than 30 metres (100 feet) from a water body, which would not likely pollute a water body, and if it is either: affixed to an existing building; less than 15 metres from an existing building; or has a footprint of less than 25 square metres.

s. 14:

certain temporary field camps to be used for less than 200 person-days, where the construction, installation, expansion or modification would not be carried out in or within 30 metres (100 feet) of a water body, and which would not likely pollute a water body.

s. 15:

road expansions or modifications, to occur on an existing road right of way, that would not lengthen the road, that would not widen the road by more than 15%, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 16:

demolition of an existing building with a floor area less than 1000 square metres (10,750 square feet) that would be greater than 30 metres (100 feet) from another building, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 17:

construction, installation or modification of Canada-U.S. international boundary monuments.

Excluded Projects (continued)

s. 18:

modification of an existing irrigation structure that would not likely pollute a water body.

s. 19:

construction, expansion or modification of a domestic or farm water supply well, pump house, water-tank loading facility or dugout on agricultural land that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 20:

construction, expansion or modification of an agricultural centre pivot or side roll sprinkler that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 21:

construction or installation of electrical transmission lines of 130 kV or less, other than international transmission lines, within existing rights of way, that would not likely pollute a water body, and with no support structures in or on a water body.

s. 22:

expansion or modification of existing telecommunication or electrical transmission lines, other than international lines, within existing rights of way, that would not lengthen the line by more than 10%, that would not likely pollute a water body, and with no support structures in or on a water body.

s. 23:

construction or installation of electrical transmission line switching stations associated with telecommunication or electrical transmission lines of 130 kV or less, other than international transmission lines, within existing rights of way, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 24:

expansion or modification of an existing telecommunication or electrical transmission line switching station, within existing rights of way, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 25:

construction, installation, expansion or modification of an international electrical transmission line of 50 kV or less, within existing rights of way, that would not extend more than 4 kilometres (2.5 miles) outside of Canada, that would not likely pollute a water body, and with no support structures in or within 30 metres (100 feet) of a water body.

Excluded Projects (continued)

s. 26 - s. 30:

certain nuclear facility-related activities (see the *CEEA Exclusion List Regulations*, Schedule I, sections 26 to 30 for specifics).

s. 31:

expansion or modification of an existing drainage structure, not connected to a water body, on forested land, that would not lengthen the structure by more than 10%, and that would not be carried out in a place in the Yukon Territory or the Northwest Territories.

s. 32:

construction, expansion, modification or demolition of a land-located fishing or land-located small pleasure-craft-related structure with a floor area less than 100 square metres (1075 square feet) and a height of less than 5 metres (16.5 feet) that would not likely pollute a water body.

s. 33:

construction, installation, expansion or modification of a fish habitat improvement structure, not involving heavy machinery.

s. 34:

modification of a wharf, other than a floating wharf, or a land-accessible breakwater, carried out at or above the structure's high water mark, not involving dredging, and that would not likely pollute a water body.

s. 35:

re-installation, expansion or modification of a floating wharf that would not increase its area by more than 10%.

s. 36:

wharf demolition not involving explosives, and that would not likely pollute a water body.

s. 37:

expansion or modification of existing pavement or gravel areas within airport boundaries that would not increase the pavement or gravel area by more than 10%, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 38:

modification of existing aircraft manoeuvring lights or navigation aids.

s. 39:

construction, installation, expansion or modification of an automatic warning structure at a railway level crossing.

Excluded Projects (continued)

s. 40:

construction, installation, expansion or modification of a railway traffic control signal structure on an existing railway right of way.

s. 41:

modification of that part of an oil and gas pipeline, sewer or drain that crosses under a railway or a road within the railway or road right of way.

s. 42:

modification of that part of a culvert, not connected to a water body, that crosses under a railway or a road within the railway or road right of way.

s. 43:

modification, other than a deviation, of a railway track or bed, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 44:

railway road crossing modifications carried out with an existing right of way that would not be subject to an order under subsection 202(1) of the *Railway Act*, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

Chapter 02 : Transactions

Interim Bulletin 02-01: Environmental Assessment under *CEAA*

Annex C

Screening Report

Issued: March 29, 1995

**CEAA - Environmental Assessment Process
Indian and Northern Affairs Canada, LTS - SCREENING REPORT**

First Nation Name and Reserve: _____ Project No: _____
 Project Title: _____ EA Trigger: _____
 Region: _____ (Subsection of CEAA)
 EA Start Date: _____ Amendment: _____ If Yes, Previous Screening Date: _____

Instructions:

1. Check N/A, U, I, or S for each VEC in Part A.
2. On Page 2, provide a description of the potential significant effects.
3. Also on Page 2, identify mitigation measures that will be implemented.
4. Indicate the information sources used in Part B (including maps, plans, etc.), and indicate location/file of unattached referenced documents.
5. Indicate the screening decision recommendations by selecting one of the 4 decision codes in Part C.

NOTE: This completed form constitutes a documented record of decision and is a legal document.

PART A: SCREENING					PART B: INFORMATION SOURCES		
Valued Ecosystem Components	Summary of Effects*				Sources	Used	Attached
	N/A	U	I	S			
Ground Water					First Nations		
Surface Water					Feasibility Study		
Air Quality					Engineering Design		
Noise					Terrain Analysis Study		
Land/Soil					Environmental Study		
Flora					Site Reconnaissance		
Fauna					Published Literature		
Habitat					Consultations/Meetings		
Special Places**					Correspondence		
Health and Safety					Other Government Agencies		
Socio-economic					Other (specify)		
Aesthetics							

*Effects (N/A=not applicable; U=unknown; I=insignificant; S=Significant)
 **Special Places (Cultural, Traditional, Historical, Scientific)

Part C: Screening Decision Codes.

Choose appropriate decision code from list below, enter here _____.

- 01 Effects not likely significant and public concern does not warrant further assessment - project proceeds
- 02 Effects likely significant and cannot be justified - project does not proceed
- 03 Screening determined mediation or public panel needed
- 04 Comprehensive Study determined mediation or public panel needed

Recommended By

 Officer/First Nation/Consultant Signature Date

Approved by

 Manager Signature Date

ENVIRONMENTAL ASSESSMENT SUMMARY

Project Description (and, if considered necessary, Alternatives to the Project):

Surrounding Environment:

Environmental Concerns/Effects (Including Cumulative Impacts):

Mitigation/Follow Up Programs:

Rationale for Screening Decision:

Purpose

01. This directive provides general information on reserve lands. Read this directive for information about what reserve land is and what makes it unique.

General

02. The Constitution creates a distinction between Indian reserve lands and other lands in Canada. Section 91(24) states that only the federal government can pass laws about "Indians and lands reserved for Indians."
03. The legal framework underlying reserves is that:
 - € The underlying legal title to reserves belongs to the federal or provincial Crown, depending on various factors such as the province in which a reserve is found, and how the reserve was created;
 - € Reserves are set aside by the Crown in Right of Canada for the use and benefit of a First Nation;
 - € Generally, only First Nations and their members occupy and use reserve land. However, First Nations may ask the Crown to grant interests, such as leases or other rights, to non-members.
04. Reserve lands have **unique qualities**:
 - € **All transactions** involving reserve land must be approved by the Minister or the Governor in Council.
 - € **Reserve lands cannot be seized** by legal process (s.29 of the Act).
 - € **Reserve lands cannot be mortgaged, pledged, or charged to a non-Indian** (s.89 of the Act). However, leasehold interests on reserve lands may be mortgaged.
 - € **Taxation of reserve lands is restricted.** First Nation interests in reserve or surrendered lands cannot be taxed (s.87 of the Act).
05. There are **two types of First Nation interest** in reserve lands:
 - € **Collective First Nation interest:** A First Nation as a whole has the beneficial interest in its reserve. This interest can best be described as a collective legal right to occupy, use and benefit from reserve land. This interest generally cannot be alienated except by following strict statutory provisions;

First Nation interest in reserve lands(continued)

- € **Interest of individual First Nation members:** Individual members may get the right to use and occupy parcels of reserve land by an allotment from their council, with ministerial approval. Under the Act, members who receive allotments have "lawful possession." Members receiving allotments are called "locatees." Locatees may alienate their land without a surrender or designation under a locatee lease (discussed in Directive 02-02, paragraph 22). Some First Nations recognize traditional or custom holdings by individuals, but these holdings are not sanctioned by the Act and are not administered by the department.
06. **The department's role is to carry out and apply the Act.** The transaction sections of the Act used for reserve land management are sections 18-28 and 54-59 ("reserves," "possession of reserves"), sections 35-41 ("lands taken for public purposes," "surrenders and designations") and sections 53 and 60 ("management of reserves and surrendered and designated lands").
07. **Land management powers can be delegated to First Nations.** Section 53 and section 60 of the Act allow delegation of certain transactions normally done by the department to First Nations. First Nations with delegated authority act on behalf of the Minister. They are subject to all legislation, regulations and departmental policies.

Authorities

08. **Under section 91 of the *Constitution Act, 1867* (U.K.) 30 and 31 Vict. c.3:**
-the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated: ...*
- (24) *Indians and Lands reserved for Indians*

Policy

09. **All transactions dealing with reserve land must be authorized by the Act.** Transactions without statutory authority are **void or of no effect** and therefore unenforceable. The creation or expansion of a reserve is not a transaction under the Act. Creations and additions are done under the Crown's Royal Prerogative.
10. **First Nations decide how to use reserve lands.** Although the Crown has title to reserve lands, the department seeks First Nation consent for all transactions.

Process/Implementation

11. There are different statutory and policy-based procedures for each type of transaction. You must follow the required procedures correctly to ensure the transaction is valid. Other chapters and directives in this manual will give you specific instructions.

References

12. Directive 02-02 outlines which transactions are possible and will help you to choose between them. Directives 02-04, 02-05 and 02-06 examine three topics which affect all transactions: fiduciary obligations, environmental considerations and collective versus individual interests.
13. Chapters 03 to 10 explain transactions in greater detail.
14. Chapter 11 discusses the devolution of reserve land management to First Nations.

Purpose

01. This directive outlines the authorized transactions affecting reserve land. It will also help you to choose the appropriate transaction for your purpose.

General

02. **An interest in reserve land** is a legal right to occupy, use or otherwise benefit from reserve land. A lessee, for example, has a "leasehold" interest. The Act creates different types of interests in reserve lands. These are discussed below.
03. **A transaction affecting reserve land** is an act which creates, changes, transfers or terminates an interest in reserve land. It may be:
 - € **Internal:** involving only the First Nation and its members; or
 - € **External:** involving the First Nation and/or its members and third parties.
04. Transactions affecting reserve land require the **approval** of **one or more** of the following:
 - € an individual First Nation member;
 - € a First Nation council;
 - € the First Nation membership;
 - € the Minister;
 - € the Governor in Council.
05. The federal Crown has a role in transactions under the *Indian Act*. This means, for example, that the Minister or Governor in Council must approve all transactions and the Minister must execute all leases and permits of reserve lands.

Policy

06. **Land officers must follow specific procedures**, such as obtaining First Nation consent and Governor in Council approvals, for each type of transaction. You can find requirements and instructions for specific transactions in Chapters 03 through 10.

07. **Proper documentation must be used.** Forms are readily available from the Lands Document System, regional lands managers or headquarters.
08. **Transactions must comply with all applicable laws.** In addition to the *Indian Act*, statutes such as the *Canadian Environmental Assessment Act (CEAA)*, the *Canadian Environmental Protection Act (CEPA)*, the *Fisheries Act*, and the *Federal Real Property Act (FRPA)* may affect a transaction. Court decisions are another source of applicable law, including the law on the Crown's fiduciary obligations toward Aboriginal peoples (see Directive 02-04).
09. **Transactions must comply with policy.** All relevant policy relating to reserve land management is contained in this manual.
10. Transactions that are **unauthorized**, or that **fail to comply** with appropriate laws and policies and proper procedures, may be **void or of no effect**. If you do not comply with the laws, policies and procedures, the transaction may be subject to litigation.
11. Paragraphs 13 through 25 describe thirteen of the most common transactions. **Except for additions to reserves**, these transactions are all **authorized** by the Act:
12. **Additions to Reserves**
 - € **Interest:** The First Nation holds a collective interest in lands added to the reserve.
 - € **Authority:** The Act does not provide for the creation or expansion of reserves. The Crown's Royal Prerogative is the authority under which the Governor in Council grants reserve status to federally owned land.
 - € **Appropriate Uses:** Creating new reserves or adding land to reserves under Treaty Land Entitlement agreements, land claim settlements, court orders or self-government agreements are examples of this transaction.

The Crown may add land to reserves for other reasons, such as social needs, geographic purposes, and providing for landless First Nations.
 - € **Process:** An order in council sets the land aside for the use and benefit of a particular First Nation.
 - € **Documents:** An Order in Council and FRPA documentation are required.
 - € **Reference:** Chapter 10

13. Creation of Individual Interest (Lawful Possession & Allotment)

€ **Interest:** Individual interests in reserve land are created when a parcel or block of land is "allotted" by a First Nation council. Allotments can only be made to members of that First Nation. The person receiving the allotment is called the "locatee". The locatee receives an interest known as "lawful possession".

€ **Authority:** Section 20

€ **Process:** Allotments require a formal First Nation Council Resolution (BCR) and the approval of the Minister.

Allotted lands may be held by one or more locatees (under a joint or common possession arrangement).

Subject to certain restrictions, lawful possession may be transferred or leased.

€ **Documents:** The locatee's interest is evidenced by a Certificate of Possession, which is issued to the locatee by the department. A BCR must also be issued.

€ **Reference:** Chapter 03

14. Transfers of Lawful Possession

€ **Interest:** Lawful possession (allotments) may be transferred under a sale or other arrangement back to the First Nation or to other members of the First Nation. It cannot be transferred to non-members. The reserve status of the land is maintained.

€ **Authority:** Section 24

€ **Appropriate Uses:** Sale of lawful possession from one member to another member; reversion of a member's interest back to the First Nation.

€ **Inappropriate Uses:** Transfer of any interest in the land to a non-member (i.e. to a non-member, to a utility company).

€ **Process:** Transfers do not need First Nation council consent, but ministerial approval is required.

Transfers (continued)

€ **Documents:** Transfer Form, approved by the Minister, and Certificate of Possession

€ **Reference:** Chapter 03

15. **Transfers of Lawful Possession Under a Will or Intestacy**

€ **Interest:** When a locatee dies, his or her lawful possession must be transferred to the heirs by an administrative transfer. If the heir(s) is a member, the lawful possession is transferred to that member. If the heir(s) is not a member, the interest must be sold to a member or to the First Nation, and the proceeds given to the non-member heir(s).

€ **Authority:** Sections 42 - 50

€ **Appropriate Uses:** Transfer of lawful possession upon the death of the locatee.

€ **Inappropriate Uses:** Any other purpose

€ **Process:** Under section 49, the Minister must approve a transfer of lawful possession under a will or intestacy (death without a will).

Refer estate matters to the appropriate departmental or First Nation estates officer.

€ **Documents:** The required documents are the Administrator's or Executor's Transfer, which is approved by the Minister, and the Certificate of Possession.

€ **Reference:** Indian Estates Manual

16. **Reversion of Lawful Possession**

€ **Interest:** A locatee may cease to be entitled to reside on the reserve, in which case his or her interest must be transferred to another member or to the First Nation within six months. If the interest is not transferred within the time limit, it will automatically revert to the First Nation. The Minister may grant an extension of the six-month time limitation through a ministerial Order.

€ **Authority:** Section 25

Reversion (continued)

- € **Appropriate Uses:** When a member transfers his or her membership to another First Nation.
- € **Inappropriate Uses:** Any transfer where the membership of the locatee is not terminated.
- € **Process:** The locatee must transfer his or her interest within six months of the loss of membership, unless the Minister extends the time limitation. The Minister must approve the transfer. The First Nation must compensate the locatee for any improvements to the property.
- € **Documents:** Transfer Form, approved by the Minister, Certificate of Possession, and ministerial Order if time limitation is extended.
- € **Reference:** Chapter 03

17. **Cancellation of Lawful Possession**

- € **Interest:** Lawful possession may be cancelled when a Certificate of Possession, Certificate of Occupation, or Location Ticket has been issued through fraud or in error.
- € **Authority:** Section 27
- € **Appropriate Uses:** Issuance of a Certificate of Possession naming the wrong member or the wrong parcel of land, due to error.
- € **Inappropriate Uses:** Cancellation of a Certificate where there is no evidence of error or fraud.
- € **Process:** The certificate or ticket may be cancelled by the Minister without the consent of the locatee or the holder of the ticket. In most cases, lawful possession will only be cancelled after consultation with the Department of Justice, and, where appropriate, with the First Nation council and the holder or locatee.

An amended First Nation council resolution (BCR) should be obtained where warranted by the situation.
- € **Documents:** Obtain an amended BCR, if warranted. Issue an amended Certificate of Possession, if necessary.
- € **Reference:** Chapter 03

18. Absolute Surrender (Surrender)

€ **Interest:** The First Nation relinquishes its interest in all or part of a reserve to the Crown. The Crown is then allowed to "sell" or "exchange" reserve land for the benefit of the First Nation. A First Nation may surrender the collective and individual interests in the reserve lands. Surrendered lands lose their reserve status, and the First Nation's interest in the land (both collective and individual) is extinguished.

The First Nation may limit the surrender to timber or to subsurface interests such as minerals.

€ **Authority:** Sections 37 - 41

€ **Appropriate Uses:** Surrenders have become rare, since First Nations do not wish to lose their reserve land base. When surrenders occur, they are normally part of a claim settlement or a land exchange.

€ **Inappropriate Uses:** Lease agreements, right-of-ways.

€ **Process:** The Crown must deal with the lands according to the expressed instructions of the First Nation. The Act requires the consent of the First Nation membership. The Act requires acceptance by the Governor in Council, who requires a departmental report recommending the acceptance of a surrender.

Locatees, who lose lawful possession, must be compensated.

€ **Documents:** The surrender document, Order(s) in Council, Agreement of Purchase and Sale (if private land is involved), and FRPA documentation are required.

€ **Reference:** Chapter 05

19. Designations

€ **Interest:** A "designation by way of surrender", known as a "designation", is a process by which the First Nation designates all or part of its land to the Crown. The First Nation may designate the collective and individual interests in the reserve lands. The designation **does not extinguish** the First Nation interest, but it **does extinguish** the individual (locatee) interest. A designation allows the Crown to grant interests in reserve lands on behalf of the First Nation. The reserve status of the land and the First Nation interest are maintained.

Designations - Interest (continued)

Designations are common, since many First Nations wish to develop their land under leases to non-members.

€ **Authority:** Sections 37 - 41, 53

€ **Appropriate Uses:** Designations are commonly used where a First Nation wishes to lease reserve land to a non-member. A non-member may, in some cases, be a company owned by a First Nation (i.e. a band corporation).

A First Nation member may lease designated land.

Although leases are the most common type of interest granted under a designation, a designation may also be used to grant a permit, an easement, or a right-of-way.

€ **Inappropriate Uses:** Sales or exchanges of land to another member must use a section 24 transfer.

€ **Process:** The Crown must deal with the lands according to the expressed instructions of the First Nation. The Act requires the consent of the First Nation membership and acceptance by the Governor in Council.

Any locatee whose interest is extinguished must be compensated.

€ **Documents:** The documentation required includes a Designation, and Order in Council, and a lease or other agreement.

€ **Reference:** Chapter 05

20. Leasing Unallotted Reserve Lands

€ **Interest:** A lease grants **an interest in** and **exclusive possession of** reserve lands. It is granted for a specific period of time, often for a long term.

€ **Authority:** Sections 37 - 41, 53, and section 58(1)(c)

€ **Appropriate Uses:** A section 53 lease following a designation is used mainly for commercial, residential and recreational developments, and occasionally for agricultural purposes. On rare occasions, a lease for agriculture or grazing purposes under section 58(1)(c) may be used, however, the preferred transaction for such purposes would be a section 28(2) permit.

Leasing Unallotted Reserve Lands (continued)

- € **Inappropriate Uses:** As mentioned above, where the transaction is for agricultural or grazing purposes, a section 28(2) permit is preferable over a lease. However, a lease under section 53 or 58(1)(c) is available under the Act.
- € **Process:** The individual who leases the land is called the lessee or tenant. The grantor of the lease is called a lessor or a landlord. The Crown is the lessor for all leases of reserve land.

Unallotted lands can be leased in two ways. The most common is a lease following a designation (ss.37 to 41).

In rare circumstances, a section 58(1)(c) lease of uncultivated reserve lands for the purposes of agriculture or grazing may be used. This type of lease is granted by the Minister without a designation vote, but it does require the consent of the First Nation council.

In all provinces and territories except Quebec, leases may be mortgaged, assigned or sublet, with approval of the Minister. In Quebec, leases grant personal rights only, and cannot be mortgaged. Unless prohibited by the lease or terms of the designation, lessees may mortgage, assign, or sublet their interest, with ministerial approval.

- € **Documents:** A Designation, an Order in Council, and a lease or other agreement are required.
- € **Reference:** Refer to Chapter 07 for drafting, issuing and cancelling and termination of leases, and to Chapter 08 for the administration of leases, including monitoring the terms and conditions of the lease.

21. Leasing Allotted Lands

- € **Interest:** A locatee may lease his or her interest in reserve land without a designation. This is called a "locatee lease". Like all leases, a locatee lease grants an interest in and exclusive possession of the land for a specific period of time.
- € **Authority:** Sections 58(1)(b), 58(2), and 58(3)
- € **Appropriate Uses:** Any lease of land by a locatee to another member, the First Nation, or a third party.
- € **Inappropriate Uses:** Although you could use a lease for agricultural purposes, a section 28(2) permit is the preferred transaction.

Leasing Allotted Lands(continued)

- € **Process:** The courts have ruled that locatee leases do not require First Nation council consent. Under departmental policy First Nation councils must have the opportunity to express their views on all locatee leases prior to ministerial approval.

A long-term lease may be seen as conflicting with the designation provisions of the Act. Therefore, a vote of First Nation members is required for all locatee leases of more than 49 years.

Although not commonly used, a locatee lease under section 58(1)(b) for the purposes of agriculture or grazing is used where allotted land is uncultivated or unused. Although this type of lease is available under the Act, the preferred transaction would be a permit under section 28(2).

A s.58(1)(b) lease does not require a designation vote, but the First Nation council must consent to the lease.

In all provinces and territories except Quebec, locatee leases may be mortgaged, assigned or sublet, with approval of the Minister. In Quebec, leases grant personal rights only, and cannot be mortgaged.

- € **Documents:** A locatee lease is required.
- € **Reference:** Refer to Chapter 07 for drafting, issuing and cancelling and termination of leases, and to Chapter 08 for the administration of leases, including monitoring the terms and conditions of the lease.

22. Permits

- € **Interest:** Permits allow non-members to use reserve lands in a limited way for a specific period of time. Unlike leases, they do not grant an interest in land and are generally short-term.
- € **Authority:** Sections 28(2) and 58(4)
- € **Appropriate Uses:** Use a s.58(4) permit for the removal of clay, sand, gravel, other non-metals, wild grass or fallen timber.

Use a s.28(2) permit for all other types of permits such as access, utility services to the reserve, and grazing or agricultural purposes where exclusive use is not required (i.e. distribution). Use s.28(2) permits for utility rights of way only where the primary purpose is to **service** the reserve (i.e. distribution).

Permits (continued)

- € **Inappropriate Uses:** Do not use a permit when exclusive use is contemplated. Crop farms requiring exclusive use (such as those which involve farm buildings), parking lots and airports are examples of inappropriate uses. In these cases, the preferable procedure would be a designation and lease.

Do not use s.28(2) where access is merely to **cross** the reserve (i.e. transmission). In these circumstances, use a designation and lease or a s.35 taking (discussed in paragraph 24).

- € **Process:** The individual who obtains a permit is called the permittee. The grantor of a permit is called the permittor. The Crown is the permittor for all permits granted over reserve land.

Under the Act, consent of the First Nation council is required for permits which exceed one year. Departmental policy requires the consent of First Nation council for **all** permits.

- € **Documents:** A permit is required.

- € **Reference:** Refer to Chapter 06 for drafting, issuing and cancelling and termination of permits, and to Chapter 08 for the administration of leases, including monitoring the terms and conditions of the permit.

23. **Setting Aside Land for the Use and Welfare of the First Nation**

- € **Interest:** Under the Act, the Minister may set aside reserve lands on behalf of the First Nation for "the general welfare of the band". Locatee land may be taken but the locatee must be compensated.

- € **Authority:** Section 18(2)

- € **Appropriate Uses:** The proposed use must be primarily for the First Nation. It must benefit the entire community and not just a restricted group within the community. Appropriate uses include community infrastructure projects (roads, sewers, airports), schools, community halls, health offices and burial grounds.

- € **Inappropriate Uses:** Do not use s.18(2) for commercial or economic development purposes.

- € **Process:** This transaction is often used with a s.28(2) permit, for example, to allow a nursing station or treatment centre run by Health and Welfare Canada to operate on reserve.

Setting Aside (continued)

- € **Documents:** Requires a BCR if the land is unallotted or, if the land is in the lawful possession of a First Nation member, a ministerial Order citing that the land is assigned for the use of the First Nation. If the taking of land is controversial, a ministerial Order will be required. A permit under section 28(2) might also be required.
- € **Reference:** Chapter 04.

24. Takings for Public Purposes ("Expropriations")

- € **Interest:** The interest taken or transferred may be all the interest in the reserve land or something less than full ownership, such as an easement or right of way.
 - € **Authority:** Section 35
 - € **Appropriate Uses:** Use s.35 transactions for public highways, hydro transmission lines, hydro dams, and railway easements.
 - € **Inappropriate Uses:** Where the party seeking use of reserve land **does not have statutory powers of expropriation, s.35 cannot be used.** Another section of the Act must be used, such as a surrender or a designation.
- Do not use** s.35 where the service or use is for the benefit of the First Nation, such as hydro service lines to First Nation members (i.e. distribution). Section 28(2) permits are more appropriate in those circumstances.
- € **Process: Under section 35(1)** a province, a municipal or local authority or a corporation with **statutory expropriation powers** may take or use reserve land, with the consent of the Governor in Council. Since the Crown has title to reserves, the process is not technically an expropriation of the interests of the locatee, First Nation, or lessee.

Under Section 35(3) the Governor in Council may authorize a transfer or grant of reserve land to a province, a municipal or local authority or a corporation with statutory expropriation powers, where the Governor in Council has **consented** to the taking of the land.

Although not a statutory requirement, policy requires the consent of the First Nation council. The only exception is in exceptional circumstances where the national interest is paramount.

Taking of Land - Process (continued)

Before using this section, the possibility of a surrender or designation of the land should be discussed with the First Nation council, to determine which approach they prefer.

The First Nation and affected locatees must receive compensation.

€ **Documents:** The transaction requires an Order in Council and FRPA documentation.

€ **Reference:** Chapter 09

Process: Choosing a Transaction

25. It is sometimes difficult to choose between transactions which seem to accomplish similar purposes. The following paragraphs will help you choose the best transaction for your purpose. The factors are listed in order of most to least important:

€ **Choose the most certain authority.**

€ **Choose the authority which has the least impact on other interests.**

€ **Choose the least complicated procedure.**

26. **Choose the most certain authority.** Avoid authorities which are controversial or questionable in the circumstances. This will minimize future questions or challenges to the validity of the transaction.

EXAMPLE 1: CHOOSE THE MOST CERTAIN AUTHORITY

A company owned by First Nation members will construct a small commercial airport servicing both reserve members and the general public. The airport would benefit the reserve community by improving transportation and enriching the economy. It would, however, disrupt a number of traplines. Two transactions are suggested:

- (a) the lands be taken under s.18(2) as the project is for "the general welfare of the band";
- (b) the lands be designated and leased to the First Nation's company.

Section 18(2) must be used only for projects which are targeted at First Nation members and which are clearly for the welfare of the entire First Nation. In this example, it is uncertain whether these two conditions would be met. The airport is for non-Indians as well as the reserve community, and trappers would be negatively affected.

On the other hand, there is no doubt that a designation and lease would be valid. In this case, **choosing the most certain authority** means choosing a designation and lease.

27. **Choose the authority which has the least impact on other interests.**

EXAMPLE 2: CHOOSE THE AUTHORITY WHICH HAS THE LEAST IMPACT ON OTHER INTERESTS

A local tourist ranch requests a two year right of way over a small strip of reserve lands for a riding trail. The strip of land is unallotted, but is occasionally used by members, with approval of the First Nation council, as a recreational area. The ranch will use the lands only occasionally, on a temporary basis until it can acquire alternate lands.

Two transactions are suggested:

- (a) the lands be designated and leased;
- (b) a permit be issued under s.28(2).

A designation and lease would transfer exclusive possession of the land to the ranch. The First Nation would be completely excluded from using the lands for the duration of the lease. A s.28(2) permit, on the other hand, could merely grant to the ranch a right to occasional use, and would not severely affect the First Nation's use of the property. In this case, **choosing the authority which impacts least on other interests** means choosing a s.28(2) permit.

28. **Choose the least complicated procedure.** This guideline must be applied with caution, and **only in circumstances where "all other factors are equal"**.

EXAMPLE 3: CHOOSE THE LEAST COMPLICATED PROCEDURE

A First Nation negotiates an agreement with a neighbouring non-Indian to use a parcel of uncultivated, unallotted reserve land for grazing or agricultural purposes.

Two transactions are suggested:

- (a) the lands be designated and leased;
- (b) a permit be granted without designation pursuant to section 28(2).

A designation will require a fairly complex and time consuming First Nation vote. A s.28(2) permit does not require a vote and is relatively simple to implement. Both options are certain to be valid, and neither impacts seriously on existing rights. In these circumstances, as "other factors are equal", **choose the least complicated procedure** of a s.28(2) permit.

Process/Implementation

29. Annex A has tables which will assist you in choosing the most suitable instrument or transaction for your purpose. It summarizes major statutory, policy and legal considerations.

References

30. Chapters 03 to 10 describe specific transactions in greater detail.

Chapter 02: Transactions

Directive 02-02: Transactions and Choosing Authorities

Annex A: Choosing an Authority

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SUMMARY OF TRANSACTIONS

Purpose	Authority and Documents	Comments	Manual Chapter
Creation or expansion of reserve	Royal Prerogative; order in council & FRPA documentation	€ Check policy requirements for granting reserve status to land	Chapter 10
Grant lawful possession of First Nation land for indefinite period to First Nation member (Allotment)	s.20; BCR (approved by Minister) & Certificate of Possession	€ To member only (locatee) € Reserve status maintained € First Nation council grants the allotment € Ministerial approval required	Chapter 03
Transfer of lawful possession	s.24; Transfer Form (approved by Minister) & Certificate of Possession	€ To First Nation or member only € Reserve status maintained € First Nation council consent not required € Ministerial approval required	Chapter 03
Transfer of lawful possession under a will or intestacy	s.49; Administrator's or Executor's Transfer (approved by Minister) & Certificate of Possession	€ To First Nation member only € Must be heir € Non-member can receive proceeds of sale, but not lawful possession € Reserve status maintained € First Nation council consent not required € Ministerial approval required	Chapter 03
Reversion of lawful possession	ss.25,24; Transfer Form (approved by Minister) & Certificate of Possession, & Ministerial Order (if extension required)	€ Check that locatee has ceased to be entitled to reside on reserve € Reversion to the First Nation is automatic after 6 months, unless possession is extended under Ministerial Order € Use s.24 to transfer interest within 6 months from disentitlement € Locatee must be compensated	Chapter 03

Purpose	Authority and Documents	Comments	Manual Chapter
Cancellation of lawful possession due to fraud, error	s.27; Amended BCR, if warranted; amended Certificate of Possession, if necessary	<ul style="list-style-type: none"> € Check that certificate was issued through fraud or in error € Minister's consent required € Locatee's consent not required € Department of Justice usually consulted € First Nation council resolution may be necessary 	Chapter 03
Sale or exchange of reserve land (surrender)	ss.37-41; Surrender, Order(s) in Council, Agreement of Purchase and Sale (if private land is involved) and FRPA documentation	<ul style="list-style-type: none"> € Reserve status lost € First Nation interest extinguished € Locatee interest extinguished € Locatees compensated € First Nation membership and Governor in Council consent required € Departmental report required 	Chapter 05
Lease or other use of reserve land by third parties (usually long term) (designation)	ss.37-41, s.53; Designation, Order in Council, and Lease or other agreement	<ul style="list-style-type: none"> € Usually grant a leasehold interest but may grant other interest less than full ownership, e.g., easement € Reserve status and First Nation interest maintained € Locatee interest extinguished € Locatees compensated € First Nation membership and Governor in Council consent required 	Chapter 05
Use of uncultivated land by third parties for grazing	s.28(2); Permit (preferred transaction) s.58(1)(c); Lease (used rarely)	<ul style="list-style-type: none"> € Designation not required € May be unallotted or locatee land € Reserve status maintained € First Nation council consent required € Ministerial approval required 	Chapter 06 (Permit) Chapter 07 (Lease)
Lease of locatee land by third party	s.58(3), s.58(1)(b)(rarely used); Locatee Lease	<ul style="list-style-type: none"> € Designation not required € Must be locatee land € Locatee consent required € First Nation council consent not required € Lease for term of more than 49 years requires First Nation consent € Ministerial approval required € Reserve Status maintained 	Chapter 07

Purpose	Authority and Documents	Comments	Manual Chapter
Short-term, non-exclusive use for utilities which service the reserve	s.28(2); Permit	<ul style="list-style-type: none"> € Do not use when exclusive use is required [consider lease, sale or s.35] € Do not use for line crossing reserve [use s.35, lease] € Do not use for removal of clay, sand, gravel, other non-metals, wild grass or fallen timber [use 58(4)] 	Chapter 06
Short term, non-exclusive use for removal of clay, sand, gravel, other non-metals, wild grass or fallen timber	s.58(4); Permit	<ul style="list-style-type: none"> € Do not use when exclusive use is required [consider lease, sale, s.35] 	Chapter 06
Internal taking for general welfare of First Nation	s.18(2); Ministerial Order citing that the land is assigned for the use of the First Nation, & possibly s.28(2) Permit	<ul style="list-style-type: none"> € For the general welfare of the First Nation € First Nation use only € Must benefit entire reserve community € s.28(2) permit is required for service provided by non-Indians, such as nursing station run by Health and Welfare Canada € Reserve status maintained € Locatees compensated € First Nation council consent required € Ministerial approval required 	Chapter 04
Expropriation, transfer or grant of reserve land for public roads and highways, transmission lines, railway easements, etc. crossing reserve	s.35; Order in Council & FRPA documentation	<ul style="list-style-type: none"> € Authority must have expropriating power € Reserve status may be lost € If made a condition of the Order in Council, the land returns to reserve status after use € First Nation council consent normally required € Governor in Council consent required € First Nation and locatees compensated € Not for utilities which service reserve [use s.28(2) permit] 	Chapter 09

Purpose

01. This directive gives you general information about registration requirements for transactions involving reserve lands.

General

02. The Act requires **two registers** for the purpose of registering transactions affecting reserve lands:
 - € S.21 states that details of all transactions involving reserves lands must be registered in "**the Reserve Land Register**";
 - € S.55(1) states that details of all transactions involving surrendered or designated lands must be registered in "**the Surrendered and Designated Lands Register**".
03. Both registers are located in the "**Indian Lands Registry**", at departmental headquarters in Ottawa-Hull (10 Wellington St., OTTAWA, K1A 0H4).
04. The department **will not register** unauthorized transactions and/or transactions which it does not recognize or administer. Examples include:
 - € custom allotments
 - € leases or permits granted by a First Nation outside the Act
 - € conditional assignments (prohibited under s.55(2)).
05. Aside from statutory requirements, the benefits of maintaining a lands registry are:
 - € having a record of transactions and uses of reserve and surrendered lands to allow First Nations and the department to track transactions;
 - € providing a history of transactions to protect the legal rights of individuals who have, or may acquire, an interest in land. This is particularly important to First Nations, developers and lenders.

Authorities

06. The *Indian Act* states that:

21. There shall be kept in the Department a register, to be known as the Reserve Land Register, in which shall be entered particulars relating to Certificates of Possession and Certificates of Occupation and other transactions respecting lands in a reserve.

55.(1) There shall be kept in the Department a register, to be known as the Surrendered and Designated Lands Register, in which shall be entered particulars in connection with any transaction affecting absolutely surrendered or designated lands.

- € Subsections 55(2) to 55(4) and s.56 of the Act deal with the registration of assignments.

Policy

07. **All transaction documents** must be submitted for registration upon execution.

08. All documents submitted for registration must meet **certain basic requirements**, as set out in the Indian Lands Registration Manual. These requirements include but are not limited to the following:

- € An application must accompany the document.
- € The document must be an original or certified copy.
- € The document must be legible and properly executed.
- € The document must clearly identify the parties involved and the interest being created, transferred or extinguished.
- € The lands must be accurately identified by an appropriate legal description or a survey. Specific description requirements vary depending on the transaction.
- € Consent of the First Nation council or member and ministerial or Governor in Council approval must be provided where required by the Act.
- € There must be no conflicting registered interest in the land.

Registration Requirements (continued)

- € Generally, a document will not be accepted if there is no road or other access to the land.
09. Any document which the Indian Lands Registry rejects for registration should be corrected and re-submitted as quickly as possible.

Process/Implementation

10. The procedure for registration of interest in land is set out in the Indian Lands Registration Manual and in Chapters 03 to 10 of this manual.

References

11. Refer to the Indian Lands Registration Manual for specific registration procedures.

Purpose

01. This directive introduces the important concept of the Crown's **fiduciary obligations** towards First Nations people.

General

02. There is a **special relationship** between the government of Canada and Aboriginal peoples. This relationship is similar to a trustee-beneficiary relationship.
03. The special relationship creates **specific fiduciary obligations** which the Crown incurs in certain situations, depending on the nature of the transaction. The government of Canada **does not have** a general fiduciary obligation toward First Nations in **all** situations.
04. Based on two important cases decided by the Supreme Court of Canada, the Department of Justice has identified **two categories** of fiduciary obligations: "**Guerin-type**" and "**Sparrow-type**".
05. **Guerin-type** fiduciary obligations arise where the Crown controls assets such as land, natural resources or money on behalf of First Nations. **All three** of the following criteria must be present to **trigger** a fiduciary obligation:
 - € the Crown has an **obligation** to act on behalf of a First Nation, either because of a statutory duty or because of a specific action or decision which triggers the obligation;
 - € the Crown can exercise a **power or discretion** so as to affect the legal interests of the First Nation; and,
 - € the First Nation is **vulnerable** to the action or inaction of the Crown. This means it is unable to protect its own interests because of legal incapacity or possibly lack of resources.
06. Surrenders and designations are examples of **Guerin-type** situations.
07. **Sparrow-type** fiduciary obligations stem from s.35 of the *Constitution Act*, which protects Aboriginal and treaty rights. Where Aboriginal or treaty rights are potentially affected by government actions, the government has a fiduciary obligation not to unjustifiably interfere with the exercise of these rights.

08. Examples of **Sparrow-type** situations include an addition to reserve which might affect Aboriginal rights of a competing First Nation, and a s.35 taking of reserve lands previously established under a treaty.
09. **Guerin-type** obligations occur **frequently** in the course of managing reserve lands. **Sparrow-type** duties, on the other hand, will **rarely** arise in land management.
10. Guidelines in each chapter of this manual are designed to help you to fulfil the Crown's fiduciary duties. You must therefore manage all transactions in accordance with these guidelines.
11. The courts have held that "**the honour of the Crown**" is an important factor in all dealings between the government and First Nations. This concept means the government must deal fairly, honestly, openly and intelligently with Aboriginal peoples.

Authorities

12. **Under the *Constitution Act***, 1982 R.S.C. 1985, appendix ii, no. 44:

35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

13. The leading court decisions concerning the special relationship between the crown and First Nations are:

€ *Guerin v. The Queen*, [1984] 2 S.C.R. 335.

€ *Sparrow v. The Queen*, (1990) 46 B.C.L.R. (2d) 1.

Policy

14. Each chapter of this manual provides guidelines for fulfilling the fiduciary obligations arising in the course of managing and administering reserve lands. You must follow and adhere to the guidelines to ensure that the Crown's fiduciary obligations are met.
15. **Department employees should seek advice from the Department of Justice** if they are **uncertain** about the existence of a fiduciary obligation or the procedures to discharge the duty.
16. **Department employees must seek legal advice from the Department of Justice** if there is a possible conflict of interest between a First Nation and its members, or between the First Nation and the government.

Process / Implementation

17. The guidelines set out in this manual must be followed to ensure that fiduciary obligations are met. However, the process of discharging the Crown's fiduciary obligations is not an exact science and also requires the exercise of individual judgment. Where you wish to **deviate** from guidelines, **consult** with headquarters and/or the Department of Justice **before** making any decisions.

References

18. Chapters 03 to 11 contain fiduciary obligation guidelines specific to particular transactions.
19. A departmental paper entitled "Lands and Environment Fiduciary Management Strategy" is available from Regional Land Managers.

Purpose

01. This directive introduces the general environmental requirements which apply to transactions affecting reserve land.

General

02. In this directive:
 - € "Environmental assessment" means an assessment of the environmental effects of a project conducted in accordance with the *Canadian Environmental Assessment Act (CEAA)* and its regulations.
 - € "Mitigating measures" means the elimination, reduction, or control of the adverse environmental effects of the project, including restitution for any damage to the environment caused by such effects through replacement, restoration, compensation, or any other means.
 - € "Proponent" means the person, body, federal authority, or government that proposes the project.
03. **Under the *Canadian Environmental Assessment Act (CEAA)*, an environmental assessment may be required for certain transactions involving reserve lands.** The purpose of environmentally assessing a proposed transaction is to identify potentially adverse impacts on the environment and to find ways to minimize those impacts. If significant impacts cannot be minimized, a project cannot proceed.
04. The ***Canadian Environmental Protection Act (CEPA)*** regulates the use and control of toxic substances which cause land, air and water pollution, and requires reporting of releases and emissions under specified circumstances. It also imposes stringent liability and penalties for non-compliance.
05. The federal ***Fisheries Act*** regulates the release of deleterious substances into bodies of water frequented by fish.
06. The Lands Directorate has developed an environmental policy under the department's **Additions to Reserve Policy** which confirms the requirement for an environmental assessment when lands are added to reserves.

Authorities

07. Statutory authorities and policy statements include:
- € *The Canadian Environmental Assessment Act*, S.C 1992, c.37, and its Regulations.
 - € *Canadian Environmental Protection Act*, R.S., c.C-15.3.
 - € *Fisheries Act*, R.S., c.F-14.
 - € Additions to Reserve Policy

Policy

08. **All transactions must comply** with applicable federal and provincial environmental laws, regulations and government policies and directives.
09. *CEAA* and the Additions to Reserve Policy environmental policy **must be applied in the planning stages** of all transactions.
10. **The department must ensure that an environmental assessment is completed. The department must ensure that proponents**, usually developers, conduct and pay for the environmental assessment under *CEAA*. The assessment must be submitted to both the department and the First Nation council.
11. Depending on the policy justification for a proposed addition, **the First Nation, the vendor or the department** will conduct and/or pay for the costs associated with environmental reviews of proposed additions.
12. Final decisions about if and how transactions may proceed **cannot be delegated** to non-departmental proponents.

Process / Implementation

13. Chapters 03 through 10 of this manual describe the specific environmental obligations for each transaction.

14. **The general procedure** under *CEAA*, when an environmental assessment is required, is:
- € The environmental assessment must be carried out as early in the planning process as possible, before irrevocable decisions are made.
 - € Where there is a **third party proponent**, or where the First Nation council is the proponent, the proponent must, at the request of the department, provide an environmental assessment to both the department and the First Nation which includes the environmental impacts of its project and the proposed mitigating measures.
 - € Where **the department is the proponent**, it conducts or arranges for an environmental assessment and **must provide** the First Nation with the results. The department must make its environmental assessment decision before the land transaction can be approved;
 - € The department **consults** the First Nation on whether the proposed transaction should be approved, and then **decides** whether the transaction will proceed and if so, on what basis;
 - € Where a **First Nation has delegated authority** to approve a transaction (under sections 53 and 60 of the *Indian Act*), it assumes what would otherwise be the department's responsibilities. It must ensure that an environmental assessment is done and decide if and how a proposed transaction will proceed.
15. **The general procedure under the *Additions to Reserve Policy*** is:
- € The department obtains **information** on past and present land use;
 - € The department conducts a **preliminary visit** to the site;
 - € The department conducts **searches** of public records and government authorities;
 - € Where required, the department ensures that a **comprehensive site investigation** is done;
 - € Where required, the department ensures that the land to be added to reserve is **cleaned-up**.
16. Contact the Environment and Natural Resources Directorate for procedures related to **compliance** with *CEPA* and the *Fisheries Act*.

17. **You should seek advice** from Environment and Natural Resources or Lands staff and/or the Department of Justice (if you are a departmental employee) to answer any questions about the department's environmental protection responsibilities.

References

18. Specific environmental policy and procedures can be found in Chapters 03 through 10, and in Interim Bulletin 02-01.
19. Refer also to the Indian Environmental Protection Manual, as amended from time to time.

Purpose

01. This directive discusses the collective interest of a First Nation and the individual interest of a locatee in reserve land. It provides general guidelines to help resolve situations where these two interests may conflict.

General

02. The Crown holds legal title to reserves specifically "for the use and benefit" of a First Nation. This creates the **beneficial interest** of a First Nation in a reserve. This beneficial interest is held by the First Nation **as a whole**.
03. The First Nation council may **grant a share of the collective beneficial interest** to an individual called a locatee. A **locatee** holds reserve land in **lawful possession**.
04. A First Nation and a locatee may transfer, lease, or otherwise deal with their interests under the Act, subject to the necessary approvals. Transactions involving the First Nation's interest often **affect** the locatee interest. Occasionally, a transaction involving a locatee interest may **impact** upon the collective First Nation's interest. This may create a **conflict** between a First Nation and a locatee.
05. A transaction may also affect the Crown's **fiduciary duty**. For example, when managing and administering a s.58(3) locatee lease, where the First Nation takes an action which diminishes the locatee's interest, the Crown's **primary** obligation is to the locatee.
06. You will not find a section of the Act dealing specifically with conflict. If the Act permits a transaction, and the Crown and the First Nation as a whole or the locatee follow appropriate procedures, the transaction will be **valid** regardless of a possible conflict.
07. A lands officer or manager may be asked to help **resolve** conflicts.

Authorities

08. These sections of the Act specifically refer to the **collective interest** of a First Nation in reserve land:

€ 2; 17(2); 18(1); 18(2); 25; 28(2); 35(4); 36-38; 58(1)(a), 58(1)(c), 58(2) and 58(4).

09. These sections specifically refer to the **individual interest** of a locatee in reserve land:

€ 18(2); 20; 22-25; 35(4); 38; 50(1); 58(1)(b); 58(3).

10. Since the above sections **interact**, you must read the relevant sections together.

Policy

11. Although the Act is silent on conflicts between a First Nation as a whole and individual First Nation members, the department **will address conflicts** as they arise.

12. In addressing conflicts, the department **must ensure** that it meets its **fiduciary obligations** to both First Nations and individual members.

13. **Examples** of potential conflicts are:

€ Locatee objections to a surrender or designation;

€ Locatee objections to a s.18(2) taking "for the general welfare of the band";

€ Locatee objections to a s.35 "expropriation";

€ First Nation objections to a transfer of an allotment by a locatee;

€ First Nation objections to a locatee lease. Locatee leases **do not** require the consent of a First Nation council (*Boyer v. The Queen*). However, as a matter of policy, the department always **seeks the council's views** on a proposed locatee lease. There must also be a **membership vote** where a proposed lease has a term **exceeding 49 years**;

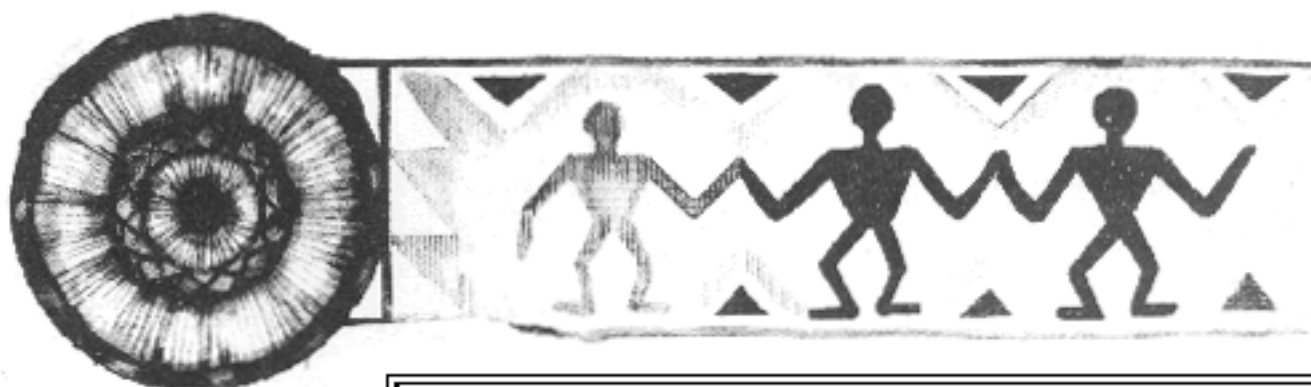
€ Bill C-31 persons in lawful possession of reserve lands request locatee leases but are not recognized by the band council as legitimate band members.

14. **Compensation** must be paid where locatee interests are **extinguished or diminished**. The Act generally requires compensation, but when it is silent, fair compensation will be paid as a matter of policy. Individual manual chapters discuss this requirement where applicable.

15. Compensation is a matter for **negotiation** between locatees and First Nation councils. You can assist by providing information in the department's possession and encouraging the parties to reach an agreement. Information you provide must be accurate and timely.
16. The parties may be unable to reach an agreement. The Minister can **impose** an amount of compensation to be paid by the First Nation or the person who goes into the possession of the lands under certain sections of the Act (ss.18(2), 23, 25(2), 50(3)). These situations and **specific requirements** are discussed in the individual transaction chapters.
17. There may also be questions about whether the Crown owes a **fiduciary obligation to the First Nation or the locatee** in a particular case. **Legal advice** should be obtained in these circumstances. Departmental employees must seek advice from the Department of Justice.

References

18. You can find specific policy and procedures in Chapters 3 through 11. Refer also to Directive 02-04 for information on the department's fiduciary obligations.



INDIAN AND NORTHERN AFFAIRS CANADA
LAND MANAGEMENT MANUAL

CHAPTER 03

**INDIVIDUAL INTERESTS: CREATING,
TRANSFERRING AND CANCELLING**

**For information call:
(819) 953-5937**

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CREATING, TRANSFERRING AND CANCELLING INDIVIDUAL INTERESTS

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Directive 03-01

Chapter Overview

Purpose

01. This Directive provides general information about the contents of this chapter.

General

02. This chapter provides information about individual interests in reserve lands. Read the directives in this chapter for information on creating, transferring and cancelling individual interests and related transactions.

03. Definitions

- € **"Allotment"** refers to the process by which an individual First Nation member receives lawful possession of reserve land from the First Nation council under section 20 of the Act;
- € **"Certificate of Occupation"** means the documentary evidence, issued under subsection 20(5) of the Act, of a First Nation member's right to temporary use and occupation of reserve lands pursuant to the provisions of subsections 20(4) and (6);
- € **"Certificate of Possession"** means documentary evidence of a First Nation member's right to use and occupy reserve lands pursuant to the provisions of subsections 20(2), (3) or sections 22, 24 or 49 of the Act;
- € **"Locatee"** refers to the individual First Nation member entitled to the use and occupation of a duly allotted parcel of reserve lands. A locatee must be a First Nation member who is registered or entitled to be registered under the Act;
- € **"Location Ticket"** means a document issued under *The Indian Act, 1880* or any statute relating to the same subject matter, which is evidence of a First Nation member's lawful possession of reserve lands, and is synonymous with "Certificate of Possession" as defined in the *Indian Act*;

Définitions (continued)

- € "Transfer" refers to the process which allows a locatee to give his or her right to possession of reserve land to another member of the First Nation, or back to the First Nation, under section 24 of the Act.

Authorities

04. Departmental policy is governed by sections 20 - 28, and 49 of the *Indian Act*. The directives in this chapter set out the text of the applicable sections of the Act.
05. In addition, section 60 of the Act is relevant in that it permits the Governor in Council to grant to the First Nation, control and management over its lands.

Policy

06. The department's chief objective is to respect and carry out decisions made by the First Nation and its members concerning the creation and transfer of unrestricted land rights on reserve land. However, individual interests in reserve land will only be created, transferred or cancelled where the relevant departmental policy requirements are satisfied. This chapter includes separate policy statements for each of these requirements and other related transactions.
07. **Fiduciary Obligations.** In some circumstances, questions may arise about whether the Crown owes a fiduciary obligation to the First Nation or to an individual First Nation member. To determine where the fiduciary obligation lies and how to effectively discharge the obligation, departmental employees should refer to the Lands and Environment Fiduciary Management Strategy, or seek legal advice from the Department of Justice.

Process

08. Different statutory and policy-based procedures exist for each type of transaction. Lands officers must follow the required procedures correctly to ensure the validity of the transaction. The directives in this chapter will provide specific guidance in this respect.

Implementation

09. This chapter replaces previous policy directives dealing with this subject matter and will come into force upon distribution.

References

10. For more information you should read:
- € *Indian Environmental Protection Manual*
 - € *Indian Lands Registration Manual*
 - € *Estates Procedures Manual*, September 14, 1994
 - € *Lands and Environment Fiduciary Management Strategy*, January 12, 1994

Directive 03-02

Creating Individual Interests

Purpose

01. This directive explains how to create individual interests in reserve land and what evidence of possession the Department provides, where possession of the land has been allotted by a First Nation council pursuant to section 20(1) of the Act.
02. This directive explains how the historical practices of "Cardex Holdings" and "Notices of Entitlement" created individual interests in reserve land.
03. This directive also explains how, pursuant to section 22 of the Act, individual interests may be created where a First Nation member in possession of lands has made permanent improvements thereon, and the lands are subsequently included in a reserve.

General

04. Although reserve lands are for the use and benefit of the First Nation as a whole, individual members may acquire an exclusive right to use and occupy parcels of reserve land. A First Nation council may allot possession of the land to a member of that First Nation, subject to the approval of the Minister. According to the provisions of section 20(1) of the Act, members who receive such an allotment have "lawful possession" of land in a reserve.
05. It is the "right to possession" which the locatee can transfer under section 24, and may pass by devise or descent under sections 48 and 49 of the Act. Legal title to the land in question remains vested in Her Majesty in right of Canada.
06. The actual allocation of an allotment is made by BCR, which is then submitted for Ministerial approval. An approved allotment is subsequently registered in the Indian Lands Registry, and the Department issues a Certificate of Possession as evidence of lawful possession.

07. **Cardex Holdings.** A "Cardex Holding" is a historical individual interest in reserve land. These holdings were created by BCR and approved by the Minister under section 20(1) of the Act. The land descriptions associated with Cardex Holdings were vague and often inaccurate. While most of the interests known as Cardex Holdings are registered in the Indian Land Registry, a proper survey must be done before any further transactions can take place on the particular land. Generally, the interest of the holder of a cardex holding is considered lawful possession under the *Indian Act*.
08. **Notices of Entitlement (NE).** An interest held under a Notice of Entitlement is similar to a Cardex Holding, in that the holdings were created by an allotment by the First Nation council and approved by the Minister under c.20(1) of the *Indian Act*. Also characterized by a vague description of its boundaries, a new transaction involving an interest under a Notice of Entitlement will not be registered in the Indian Lands Registry until the lands are surveyed and a proper legal description obtained. The interest of the holder of a Notice of Entitlement is recognized as lawful possession under the *Indian Act*.
09. By virtue of section 22 of the Act, lawful possession may also arise where a First Nation member was in possession of lands at the time that the lands were included in the reserve, and he or she had made permanent improvements on that land. Generally, the lands in question would be those which, prior to their addition to a reserve, were held by a First Nation member under the laws of the province where the lands are situated. The expectation is that First Nation members will rarely claim interests under this section of the Act.
10. Certain First Nations do not subscribe to the allotment provisions of the *Indian Act*. Instead, these First Nations recognize traditional or custom holdings by individuals and grant "occupational rights at the pleasure of the First Nation council." The department does not administer these interests, which are not "lawful possession" under the Act.

Authorities

11. **Relevant statutory authorities include:**

Indian Act, ss. 20(1) - (3), 22

20. (1) *No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.*

(2) *The Minister may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein.*

Section 20 (continued)

(3) *For the purposes of this Act, any person who, on the 4th day of September 1951, held a valid and subsisting Location Ticket issued under The Indian Act, 1880, or any statute relating to the same subject-matter, shall be deemed to be lawfully in possession of the land to which the location ticket relates and to hold a Certificate of Possession with respect thereto.*

22. *Where an Indian who is in possession of lands at the time they are included in a reserve made permanent improvements thereon before that time, he shall be deemed to be in lawful possession of such lands at the time they are included.*

Policy

12. **Duty of Lands Officer.** Lawful possession of a parcel of reserve land by an individual has important consequences for the individual, his or her heirs and assigns, and the First Nation overall. Consequently, Lands Officers have a duty to ensure that both the individual and the First Nation council are in possession of all relevant information **before they make an allotment**.
13. It should also be emphasized that allotment is a serious process which, once approved, **cannot be rescinded** unless there has been a major defect in the allotment such as fraud or an incorrect description.
14. **Contents of BCR.** A BCR must contain the following information for a First Nation council to allot an allocation of land:
 - € The section of the Act under which they are making the allotment;
 - € The full formal name and First Nation number of the person(s) to whom they are making the allotment. They should refer to the Indian Membership register for verification of correct names and First Nation numbers. In addition, married women should be identified by their given names;

Example: Mrs. Linda Jean Smith, No. 25 *not* Mrs. George Smith, No. 25.
 - € Where an individual is a First Nation member, but does not appear on the First Nation membership list, the First Nation's certification of the individual's membership;
 - € Where an individual is entitled to register under the *Indian Act*, but is not yet registered under that Act, the First Nation's certification that the individual is entitled to be registered under the *Indian Act*;

Contents of BCR (continued)

- € A land description which meets the requirements for legal descriptions of Indian lands, and includes all known encumbrances affecting the parcel of land. Obtain further information by consulting the *Indian Lands Registration Manual* and the *Interdepartmental Agreement respecting Legal Descriptions of Indian Lands*, December 1, 1993;
 - € Where access to the allotted parcel is not available by a public or First Nation owned road, the allotment must provide access in conjunction with the land description. Access may be provided for in the allotment itself, it may be the subject of a separate transfer pursuant to section 24 of the Act (see Directive 03-04), or access may be granted over adjacent lands by agreement of the lawful possessors of that land. For further information, consult the *Indian Lands Registration Manual*;
 - € The number forming a quorum of the First Nation council and the signatures of a quorum of the First Nation council.
15. **Environmental Assessment Requirement.** Usually, an allotment does not incorporate a project proposal for future use of the allotted land. However, where the allotment does include a project proposal, the lands officer must determine whether the department requires an environmental assessment under the CEAA. If so, the environmental assessment must be conducted prior to Ministerial approval of the allotment. Allotments without a project proposal attached are not subject to an environmental assessment under the CEAA. For further information on environmental assessments see Directive 03-08.
16. **Recommendations for approval of allotments** from Lands Officers should be based on a thorough consideration of the following criteria:
- € **Status of Land.** Is the land to be allotted reserve land within the meaning of subsection 2(1) of the Act? The definition of reserve under subsection 2(1) of the Act expressly excludes designated lands for the purposes of section 20. Also, the council cannot allot lands which the First Nation has surrendered absolutely under section 20, because those lands no longer form part of the reserve;
 - € **Compatibility of Third Party Rights.** Is the land capable of allotment to a First Nation member, or is it subject to third party encumbrances or other rights which are inconsistent with the proposed allotment (e.g. leases);
 - € **Affect on First Nation.** Has the First Nation council confirmed that the allotment is in the best interests of the First Nation;

Recommendations for approval of allotments (continued)

- € **Conformity with Development Plans or Zoning Bylaws.** Has the First Nation council confirmed that the allotment meets the requirements of any development plans or Zoning Bylaws which the First Nation council may have approved, or which the First Nation council has indicated it intends to approve soon; and,
 - € **Extent of Third Party Interests.** Is the proposed locatee aware of the interests to which the parcel of land is subject, such as pipelines, access roads and telephone lines?
17. **Where the Lands Officer cannot satisfactorily resolve the above criteria** in favour of the allotment, the officer should give the First Nation council an opportunity to reconsider its allotment choice considering the information provided.
 18. Where the council decides to continue with the allotment, although it does not meet the above criteria, the Lands Officer should note the specific problems and unsatisfactory features of the allotment. He or she should submit this information, along with the BCR and recommendations, to the approving authority for consideration.
 19. Where the allotment does not meet the criteria with respect to Status of Land or Compatibility of Third Party Rights, the subject lands are incapable of allotment and the approving authority cannot approve the allotment.
 20. **Allotments to council members and members of their immediate families** raise the potential for a conflict of interest. Lands Officers should therefore take precautions to ensure that they have informed the First Nation of the effects of the allotment. In these situations, the council should advise the council member, who is in a potential conflict of interest, not to participate in the allotment vote.
 21. The Lands Officer should also advise the First Nation council that where the council makes an allotment to a council member or their family, a majority of the electors of the First Nation who are present at a subsequent general First Nation meeting must ratify the BCR. The council should also pass another allotment resolution to conform with the specific provisions of the ratification vote.
 22. If the allotment is unusually generous or contains the most valuable lands in the reserve, the First Nation vote should be appropriately conducted; for example, by secret ballot under the procedures outlined in the *Indian Referendum Regulations*. No intimidation can be alleged if votes are cast by secret ballot.

23. **Status of Possession.** Reserve land which the First Nation council has allotted to two or more First Nation members may be held by those individuals as joint tenants (right of survivorship) or as tenants in common (no right of survivorship). Where the locatees make no election when they acquire lawful possession, the interest will be recorded as held by the First Nation members as tenants in common. A full explanation of these terms, the process and consequences of electing to hold possessory rights as joint tenants or tenants in common can be found in the *Indian Lands Registration Manual*.
24. **Location Tickets.** Before enactment of the present *Indian Act*, evidence of possession was by way of Location Ticket. Although Location Tickets continue to be valid evidence of lawful possession, Location Ticket holders should be encouraged to obtain a Certificate of Possession as evidence of lawful possession.
25. **Section 22 Claims.** Where it is claimed that an individual interest has been created by virtue of section 22 of the Act (i.e. where a First Nation member in possession of non-reserve lands has made permanent improvements on the lands and the lands are subsequently included in a reserve) the matter should be reviewed in consultation with the Department of Justice.
26. Where section 22 applies, the First Nation member occupant is entitled to evidence of his or her possessory rights without requiring an allotment by the First Nation council.
27. Where new lands are set apart as reserve lands or as additions to existing reserve lands, Lands Officers should ensure the prior interest of the individual in occupation of such lands, who has made improvements thereon, are properly reported and recorded at the time of the inclusion or addition.
28. Where section 22 is applicable, inform the First Nation council of the circumstances with respect to the improvements before the lands are given reserve status. In this way, where the expectation is that the additional lands will be used as reserve lands, the First Nation council will have an opportunity to negotiate issues such as possession or compensation for improvements with the occupants.
29. **Compensation.** The issue of compensation for improvements is a matter for negotiation between the occupant and the First Nation council. The Lands Officer's role is to provide information in the department's possession and encourage the parties to reach an agreement. Any information provided by the Lands Officer must be accurate and timely. For further information on compensation see Directive 03-07.

Process

30. This section provides an overview of how to allot land under section 20 of the Act. A detailed checklist is included as Annex A to this Directive. Please note that First Nations exercising delegated authorities under section 60 of the Act are responsible for taking the steps identified as the responsibility of **INAC Field** in the checklist. The Lands Officer should consult delegation instruments to confirm the scope of authority.
31. **Request from First Nation Council.** The First Nation council usually initiates the process by contacting the Lands Officer to confirm the status of a parcel of land which is being considered for allotment.
32. **Identify Land and Verify Status.** The Lands Officer, who has a duty to ensure all relevant information is conveyed to and considered by the First Nation before making an allotment, reviews the pertinent information prior to allotment.
33. **Practice varies among First Nations.** Some First Nation councils may not require the assistance of the Lands Officer to confirm the status of the land being considered for allotment.
34. **BCR.** The First Nation passes a BCR which meets the requirements of this policy, allotting possession of the parcel of land to the First Nation member(s). This requires a majority of council's vote [s. 2(3)(b)]. The BCR and any supporting documentation are then forwarded to the Lands Officer. The First Nation council should undertake Special BCR procedures where the allotment is to a council member or their immediate family (see policy requirements in paragraphs 20 to 22 of this Directive).
35. **Consideration of Allotment.** The Lands Officer considers the allotment and recommends it for approval or remits the allotment to the First Nation council for reconsideration. Where a project proposal is included in the allotment, the Lands Officer must ensure that, where required, the appropriate environmental assessment has been conducted.
36. **Recommendation for Approval.** If the allotment is recommended for approval, the Lands Officer submits the BCR and supporting documentation to the approving authority.
37. **Ministerial or Departmental Approval.** The authority approving the allotment for the Minister then approves or rejects the allotment according to department policies. If the authority approves it, the approved allotment is registered in the Indian Lands Registry by application to register the B.C.R. Where Ministerial approval is withheld, the First Nation is so advised.

38. **Certificate of Possession.** Once the allotment has been registered, the Registrar of Indian Lands will issue a Certificate of Possession.
39. A request for **cancellation of a Location Ticket** and substitution with a Certificate of Possession may originate with a simple statement signed by the individual. This statement may explain that the individual wishes to cancel the Location Ticket and replace it with a Certificate of Possession describing the parcel of land by its most recently identified features.
40. The Lands Officer then forwards this request to the Registrar of Indian Lands who will issue a Certificate of Possession.

References

41. For more information refer to:
 - € *Indian Environmental Protection Manual*
 - € *Indian Lands Registration Manual*

Chapter 03:
Directive 03-02: Creating Individual Interests

Annex A: Flowchart

Issued: July 9, 1999

STEPS IN THE PROCESS: CREATING INDIVIDUAL INTERESTS - ALLOTMENT STEPS 001 TO 016		ORGANIZATIONS INVOLVED		
		First Nation	INAC Field	INAC H.Q.
LEGEND: < = ? = Movement ' = Action 3 = Review/Inspection € = Decision - = File /Storage				
First Nation: 001 Where applicable, identifies the proposed parcel of land for allotment and notifies the region or district. G		' 4<	47 5 5 5	
INAC Field: 002 Where applicable, checks the status of the land to be allotted and provides First Nation with relevant information. G		64	=4 '	
First Nation: 003 Passes BCR allotting possession of the parcel of land to the First Nation member(s) which must include: G		5 '		
€ the section of the Act under which the council makes the allotment []		5		
€ the full formal name of the person(s) to whom the allotment is being made []		5		
€ the First Nation number of the person(s) to whom the allotment is being made []		5		
€ the First Nation's certification of the individual's membership in the First Nation, and right to be registered under the Act (if applicable) []		5		
€ a land description which meets the requirements for legal descriptions of Indian Lands, including all known encumbrances affecting that land []		5		
€ an allocation of access in conjunction with the land description []		5		
€ the number constituting a quorum of the First Nation council []		5		
€ the signatures of a quorum of the First Nation council []		5		
004 Where an allotment is to a council member or their immediate family, undertakes special BCR procedures as follows: G		'		
€ the council member to whom the allotment is made cannot participate in the council allotment vote []		5		
€ a majority of electors of the First Nation present at a subsequent First Nation meeting must ratify the BCR []		5		
€ if the allotment is unusually generous or contains the First Nation's most valuable lands, appropriately conducts a ratification vote; for example, by secret ballot pursuant to the <i>Indian Referendum Regulations</i> []		5		
005 Forwards the BCR and any supporting documentation to the Lands Officer. G		' 4<	47 5 ?	

STEPS IN THE PROCESS CREATING INDIVIDUAL INTERESTS STEPS 001 TO 016		ORGANIZATIONS INVOLVED		
		First Nation	INAC Field	INAC H.Q.
LEGEND: < = ? = Movement ' = Action 3 = Review/Inspection Ę = Decision - = File/ Storage				
INAC FIELD:				
006	Considers the allotment for approval having regard to the following criteria: G		3	
	€ whether the BCR is correct and duly passed by a quorum of the First Nation council []		5	
	€ whether the land to be allotted is described properly []		5	
	€ confirmation by council that the allotment is in the best interests of the First Nation []		5	
	€ confirmation by council that the allotment meets the requirements of the First Nation's approved or pending development plans and zoning bylaws []		5	
	€ whether any third party rights inconsistent with the proposed allotment are present []		5	
	€ whether the proposed locatee is aware of the third party interests to which the parcel of land is subject []		5	
	€ if the allotment is to a council member or their immediate family, evidence that the council member did not participate in the allotment vote. []		5	
	€ if the allotment is to a council member or their immediate family, whether the BCR has been ratified by a majority of the electors of the First Nation present at a subsequent First Nation meeting []		5	
	€ if the allotment is to a council member or their immediate family, and the allotment is unusually generous or contains very valuable land, whether a ratification vote was appropriately conducted; for example, by secret ballot pursuant to the <i>Indian Referendum Regulations</i> . []		5	
007	Ensures environmental assessment has been conducted according to CEAA, if applicable. G		5	
008	If the above criteria are not satisfied, returns documentation to the First Nation for reconsideration. G		'	
009	If the council decides to continue with the allotment, submits for consideration by the authority approving the allotment for the Minister, a record of the specific problems and unsatisfactory features of the allotment, along with the BCR and recommendations. G		5	
010	If the necessary criteria are satisfied, submits the documentation to the approving authority with a recommendation for approval. G		'	
011	Upon approval being granted, applies to register BCR. G		5	
			' 44<	447
INAC H.Q.:				
012	Checks all documentation against the criteria in the <i>Indian Lands Registration Manual</i> . G		'	?
013	Where applicable, verifies that the locatee is registered under the <i>Indian Act</i> and is a First Nation member. G		'	5
014	Registers the BCR following the <i>Indian Lands Registration Manual</i> . G		'	5
015	Issues Certificate of Possession. G		'	?

STEPS IN THE PROCESS CREATING INDIVIDUAL INTERESTS STEPS 001 TO 016 LEGEND: < = ? = Movement ' = Action 3 = Review/Inspection Ë = Decision - = File/ Storage	ORGANIZATIONS INVOLVED		
FIELD INAC: 016 Retains the registered Certificate of Possession on file or forwards C.P. to locatee, keeping copy of registered Certificate of Possession on file.	First Nation	INAC Field	INAC H.Q.
G	- =44	- /' =44	5 =48

Directive 03-03

Temporary Possession

Purpose

01. This directive explains what happens where the First Nation council allots possession of land, but Ministerial approval of the allotment is withheld pending fulfilment of certain conditions. Read this directive for information about the authorization of temporary possession of land which the First Nation council has allotted, the resulting issuance of a Certificate of Occupation, extending the term of a Certificate of Occupation, and the termination of temporary possession through the subsequent grant or refusal of an allotment.

General

02. Pursuant to section 20(4) of the Act, where the First Nation council allots possession of a parcel of land, the Minister may withhold approval of the allotment, grant temporary occupation of the land to the proposed locatee, and prescribe conditions as to use and settlement that the locatee must meet before the Minister approves the allotment. Note, however, that these provisions are very rarely used.
03. In practice, the First Nation council decides whether to recommend conditions as to use and settlement, however, the Lands Officer who reviews the allotment may suggest conditions to the First Nation.
04. Where the Minister grants temporary possession, a Certificate of Occupation is issued pursuant to section 20(5) of the Act. This certificate entitles the individual, and those claiming through the individual by devise or descent, to temporarily occupy the land which is the subject of the allotment. The Certificate of Occupation also identifies the term of occupation. The original term of the temporary occupation is for a period of up to two years from the date of its issue. The Minister may extend this period pursuant to section 20(6) of the Act for a subsequent period not exceeding two years. The Act does not provide for any additional extensions.
05. Where the locatee has fulfilled the prescribed conditions, the Lands Officer may submit the allotment to the approving authority where, upon approval, the Minister will issue a Certificate of Possession.

06. Where there is a noncompliance with the conditions, the Minister may grant an extension of the temporary possession according to the Act, or the allotment may be refused and the First Nation council notified that the land is available for re-allotment. The First Nation may also choose to waive the conditions that it set for the proposed locatee and go ahead with the allotment.

Authorities

07. **Relevant statutory authorities Include:**

Indian Act, ss. 20(4) - 20(6)

20. (4) *Where possession of land in a reserve has been allotted to an Indian by the council of the band, the Minister may, in his discretion, withhold his approval and may authorize the Indian to occupy the land temporarily and may prescribe the conditions as to use and settlement that are to be fulfilled by the Indian before the Minister approves of the allotment.*
- (5) *Where the Minister withholds approval pursuant to subsection (4), he shall issue a Certificate of Occupation to the Indian, and the Certificate entitles the Indian, or those claiming possession by devise or descent, to occupy the land in respect of which it is issued for a period of two years from the date thereof.*
- (6) *The Minister may extend the term of a Certificate of Occupation for a further period not exceeding two years, and may, at the expiration of any period during which a Certificate of Occupation is in force*
- (a) *approve the allotment by the council of the band and issue a Certificate of Possession if in his opinion the conditions as to use and settlement have been fulfilled; or*
- (b) *refuse approval of the allotment by the council of the band and declare the land in respect of which the Certificate of Occupation was issued to be available for re-allotment by the council of the band.*

Policy

08. **Prescribing Conditions.** As a matter of policy, the First Nation council may recommend conditions which the locatee must fulfill before they make an allotment.

Example: A typical condition might require that the First Nation member complete the foundation for a house within two years of being granted temporary possession of the lands, to be eligible for permanent entitlement to possession.

09. When considering a proposed allotment, a Lands Officer may recommend to the First Nation council temporary possession of the land in question, pending fulfilment of certain conditions. It is the First Nation council, however, which must decide if it wishes to proceed in this manner.
10. Where a First Nation member must fulfil conditions before an allotment is finalized, the council should pass a BCR which reflects the following:
 - € permanent entitlement is conditional upon the fulfilment of the conditions prescribed in the BCR; and,
 - € the council will grant temporary possession to the First Nation member pending fulfilment of the conditions.
11. The Lands Officer reviews the documentation submitted by the First Nation council, and prepares a report and recommendation which he or she submits to the approving authority, with the BCR granting temporary possession and any other supporting documentation.
12. Conditions submitted must be reasonable, and capable of compliance within a period of two years.
13. **Temporary possession is not "lawful possession"** within the meaning of section 20(1) of the Act. As a result, the First Nation member cannot transfer or dispose of the subject lands except by devise or descent. Where temporary possession of the land is transferred by devise or descent, the heirs-at-law or the beneficiaries must fulfil the stated conditions to be eligible for permanent entitlement to possession.
14. **Environmental Assessment.** Although it is uncommon, it is possible that a request for temporary possession or subsequent allotment may include a project proposal. In such cases, the Lands Officer must determine whether the Department requires an environmental assessment under the CEAA. If so, the Lands Officer must ensure that an environmental assessment is conducted prior to Ministerial authorization of the temporary possession or the subsequent allotment, as applicable. For more information on environmental assessments see Directive 03-08.
15. **Term of Possession.** While the Minister may allow temporary possession for a period of two years, lesser periods may be appropriate where desired by the First Nation council and approved by the Minister.
16. **Extension of Term.** According to the provisions of subsection 20(6) of the Act, the term of a Certificate of Occupation may be extended for a second period not exceeding two years. There is no authority for additional extensions.

17. Either the holder of the Certificate of Occupation or the First Nation council may submit requests for an extension pursuant to section 20(6) of the Act. Requests for an extension by the individual concerned should always be supported by an appropriate BCR.
18. Where a First Nation council either opposes or otherwise fails to support an individual's request for an extension, the Lands Officer must investigate the circumstances. The Lands Officer must submit a report containing the officer's recommendations to the appropriate approving authority.
19. **Compliance with Conditions.** The Lands Officer should obtain First Nation council agreement that the conditions have been met. This agreement would usually be in a BCR. Where the First Nation council has established that the member has met the specified conditions as to use and settlement, the Lands Officer may submit to the appropriate authority a recommendation for approval of the allotment. The documentation indicating compliance with the prescribed conditions and making the allotment must be attached to the recommendation.
20. **Noncompliance with Conditions.** Where there is sufficient information showing noncompliance with the conditions at the end of any initial or extension period during which a Certificate of Occupation is in force, Lands Officers should investigate the circumstances of the noncompliance and submit the appropriate report and recommendations to the First Nation council for confirmation.
21. Where there is noncompliance with the conditions at the end of any initial or extension period during which a Certificate of Occupation is in force, the council may waive the conditions and go ahead with the allotment.

Process: General

22. This section provides an overview of the process for the granting of temporary possession where an allotment of land is conditional upon the fulfilment of certain prescribed conditions. These steps are besides the steps required to complete an allotment as detailed in Directive 03-02.
23. A detailed checklist is included as Annex A to this Directive. Please note that First Nations exercising delegated authorities under section 60 of the Act are responsible for taking the steps identified as the responsibility of **INAC Field** in the checklist. Consult delegation instruments to confirm the scope of authority.

Process: Authorization of Temporary Possession

24. **Lands Officer Recommending Temporary Possession.** The Lands Officer, when considering an allotment, determines whether to recommend it for approval. In doing so, the Lands Officer may recommend to the First Nation the option of temporary possession, requiring that the First Nation member fulfil certain conditions before the Minister approves the allotment. In these cases, however, it is the First Nation council that decides how it would like to proceed.
25. **BCR.** The First Nation council passes a BCR granting possession of the parcel of land to the First Nation member(s). This must be done according to Directive 03-02 and this policy. The First Nation forwards the applicable BCR to the Lands Officer.
26. Usually, the BCR will grant temporary possession of the lands to a First Nation member and prescribe conditions for permanent entitlement to possession, citing subsection 20(4) of the Act. Upon fulfilment of the specified conditions, the First Nation council passes a second BCR allotting the parcel of land, quoting subsection 20(1) of the Act.
27. Practice may vary. The First Nation council may pass a single BCR quoting subsections 20(1) and (4) which makes the allotment, grants temporary possession of the lands, and specifies the conditions which the member must fulfil before permanent entitlement to the lands is granted. Once the member has met the conditions, the First Nation passes a second BCR indicating compliance which is then forwarded to the Lands Officer. Alternatively, the First Nation council may notify the Lands Officer of compliance by way of a letter.
28. Where the Lands Officer receives a BCR which prescribes conditions for permanent entitlement to possession of the subject lands, the Lands Officer reviews these conditions. Where a project proposal is included, the Lands Officer ensures that, where required, the appropriate environmental assessment has been conducted. The Lands Officer then submits his or her report and recommendation to the approving authority.
29. Upon approval, the requisite documentation is forwarded to the Registrar of Indian Lands for registration.
30. **Certificate of Occupation.** Where the Minister authorizes temporary possession, the Registrar of Indian Lands issues a Certificate of Occupation under section 20(5). This Certificate sets out the conditions that the member must fulfil and the term of occupation.

Process: Extension of Temporary Possession

31. **Requests for Extension.** The holder of the Certificate may submit requests for an extension, including a supporting BCR, to the Lands Officer of Occupation or the council of the First Nation.
32. The Lands Officer reviews the BCR and forwards it to the approving authority for approval.
33. Upon approval, the BCR is registered and a new Certificate of Occupation is issued.

Process: Expiration of Temporary Possession

34. **Compliance with Conditions.** Where the member has fulfilled the prescribed conditions, the First Nation council submits the appropriate documentation to the Lands Officer. The Lands Officer reviews the material and submits it to the approving authority. Upon approval, an application to register, along with the relevant documentation, is forwarded to the Registrar of Indian Lands who registers it and issues a Certificate of Possession.
35. **Noncompliance with Conditions.** Where, at the end of any initial or extension period during which a Certificate of Occupation is in force, the Lands Officer has not been advised whether the member has fulfilled the prescribed conditions, the Lands Officer should investigate the circumstances of the noncompliance and submit the appropriate report and recommendations to the First Nation council for confirmation.
36. If noncompliance with the conditions exists at the end of the two-year extension period, the Minister must refuse approval of the allotment and declare the subject lands available for re-allotment. At this time, the Lands Officer advises the First Nation member and First Nation council that the Certificate of Occupation is no longer in effect and the lands are available for re-allotment.
37. **Waiving Conditions.** Where there is noncompliance with the conditions at the end of any initial or extension period during which a Certificate of Occupation is in force, the First Nation council may pass a BCR waiving fulfilment of the conditions and allotting the lands to the First Nation member. The allotment then continues as set out in Directive 03-02.

References

38. Besides the relevant sections of the legislation, more information may be found in the following:

€ *Indian Environmental Protection Manual*

€ *Indian Lands Registration Manual*

€ *Estates Procedures Manual*, September 14, 1994

Chapter 03:
Directive 03-03: Temporary Possession

Annex A: Flowchart

Issued: January 5, 1996

STEPS IN THE PROCESS: TEMPORARY POSSESSION STEPS 001 TO 031		ORGANIZATIONS INVOLVED		
		First Nation	INAC Field	INAC H.Q.
LEGEND: < = ? = Movement ' = Action 3 = Review/Inspection È = Decision - = File /Storage				
Authorization of Temporary Possession				
INAC FIELD:				
001	Where appropriate, recommends conditions to the First Nation council upon which allotment might be made contingent.	G	644 5 5	=4'
First Nation:				
002	Passes BCR granting temporary possession of the parcel of land to the First Nation member(s) following Directive 03-02 and this policy. This BCR may also allot the subject lands and must reflect the following: € permanent entitlement is conditional upon the fulfilment of the conditions prescribed therein; and € the First Nation member is granted temporary possession pending fulfilment of the conditions.	G [] []	5 5 5 5	'
003	Forwards the BCR and any supporting documentation to the Lands Officer.	G	5 4<	47
INAC FIELD:				
004	Considers the land transaction for approval having regard to the criteria in Directive 03-02.	G	5 3	5
005	Ensures Environmental Assessment has been conducted in accordance with CEAA, if applicable.	G	5 '	5
006	Reviews and reports on conditions in BCR.	G	5 3'	5
007	Ensures conditions meet the following criteria: € reasonable € capable of compliance within two years.	G [] []	5 3 5 5	'
008	Submits following documentation for Ministerial authorization: € BCR € report on conditions € any other supporting documentation € recommendation for Ministerial authorization.	G [] [] []	5 5 5 5	'
009	Obtains Ministerial authorization.	G	5 È	5
010	Forwards documentation to INAC H.Q. for registration.	G	5 ' 4 <	447
INAC H.Q.:				
011	Checks all documentation submitted for registration against the criteria in the <i>Indian Lands Registration Manual</i> .	G	5 '	5
012	Where applicable, verifies individual being granted temporary possession is registered under the <i>Indian Act</i> and is a First Nation member.	G	5 '	5
013	Registers the BCR according to requirements set out in the <i>Indian Lands Registration Manual</i> .	G	5 '	5 ?

STEPS IN THE PROCESS TEMPORARY POSSESSION STEPS 001 TO 031		ORGANIZATIONS INVOLVED		
		First Nation	INAC Field	INAC H.Q.
LEGEND: < = ? = Movement ' = Action 3 = Review/Inspection È = Decision - = File/ Storage				
014	Issues Certificate of Occupation setting out the conditions to be fulfilled by the individual and the term of the occupation.	G	--4	-/' =4 =4'
Extension of Temporary Possession				
First Nation:				
015	Where an extension of the term of Certificate of Occupation is requested, passes BCR for this purpose.	G	'	5
016	Submits request for extension with supporting BCR to Lands Officer.	G	' 4<	47 5 5
INAC Field:				
017	Reviews BCR, then forwards BCR and report with recommendations to the appropriate approving authority.	G		5 3' 5
018	Approving authority grants or refuses extension.	G		È 5
019	Where an extension is granted, submits documentation for registration.	G		' 4 < 47 5
INAC H.Q.:				
020	Checks all documentation submitted for registration against the criteria in the <i>Indian Lands Registration Manual</i> .	G		5 ' 5
021	Registers the BCR following the <i>Indian Lands Registration Manual</i> .	G		' 5
022	Issues new Certificate of Occupation.	G	-/' =	-/' =4 =4'
Expiration of Temporary Possession				
First Nation:				
023	Determines compliance with conditions and			
	€ where conditions have been met, passes and forwards to Lands Officer a BCR allotting subject lands to the First Nation member(s); or	G	' 4<	47 ?
	€ where lands were allotted in first BCR, gives Lands Officer notification of compliance with conditions; or	G	' 4<	47 ?
	€ waives conditions, passes BCR allotting the subject lands to the First Nation member(s) and forwards that BCR to the Lands Officer.	G	' 4<	47 ?
INAC Field:				
024	Where the First Nation Council passes and forwards a BCR allotting the subject lands to the First Nation member(s), processes the allotment following Directive 03-02.	G		5 '
025	Where the council advises that the member has met the conditions, during the original term or authorized extension, forwards to the appropriate approving authority a recommendation for approval of the allotment, showing compliance with conditions, along with the BCR or other supporting documentation.	G		5 '

STEPS IN THE PROCESS TEMPORARY POSSESSION STEPS 001 TO 031		ORGANIZATIONS INVOLVED		
		First Nation	INAC Field	INAC H.Q.
LEGEND: < = ? = Movement ' = Action 3 = Review/Inspection Ę = Decision - = File/ Storage				
026	Upon approval, forwards the application to register, along with relevant supporting documentation, to the Registrar of Indian Lands for registration.	G	' 44<	447 5
027	Where there is noncompliance with the conditions at the end of the initial term of occupation, or an extension period, prepares a report and submits recommendations to the First Nation council for confirmation.	G	=44 =4'	5 5 5 5
028	Where it is confirmed that the member has not fulfilled the conditions at the end of the two-year extension period, advises First Nation member and First Nation council that Certificate of Occupation is no longer in effect and the lands are available for reallocation.	G	=44 =4'	5 5 5 5 5
INAC H.Q.:				
029	Checks all documentation submitted for registration against the criteria in the <i>Indian Lands Registration Manual</i> .	G		5 '
030	Registers the BCR following the <i>Indian Lands Registration Manual</i> requirements.	G		5 '
031	Issues Certificate of Possession.	G	- =44 -/' =44	=4' 5

Directive 03-04

Transferring Individual Interests

Purpose

01. This directive explains how a locatee may transfer possession of reserve lands pursuant to section 24 of the Act. You should read this directive for information on:
 - € **Policy:** It states the principles and requirements governing the transfer of lawful possession of reserve lands.
 - € **Procedures:** It outlines the steps in the transfer process.

General

02. Generally, a First Nation member in lawful possession of reserve lands may transfer that right to possession to the First Nation or to another member of the First Nation.
03. It is the "right to possession" which the locatee can transfer under section 24 of the Act. Legal title to the land in question remains vested in Her Majesty in right of Canada.
04. Any proposed transfer under this section of the Act requires Ministerial approval. The Minister will only grant this approval where the policy and procedure requirements of this directive have been satisfied.
05. **Definitions.**
 - € **"Transferor"** means the person transferring the right to lawful possession.
 - € **"Transferee"** means the person receiving the right to lawful possession.

Authorities

06. Relevant statutory authorities include:

Indian Act, ss. 24, 28(1), 49

24. *An Indian who is lawfully in possession of lands in a reserve may transfer to the band or another member of the band the right to possession of the land, but no transfer or agreement for the transfer of the right to possession of lands in a reserve is effective until it is approved by the Minister.*

28. (1) *Subject to subsection (2), any deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void.*

49. *A person who claims to be entitled to possession or occupation of lands in a reserve by devise or descent shall be deemed not to be in lawful possession or occupation of those lands until the possession is approved by the Minister.*

Policy

07. **Transfer Criteria.** Any application to transfer the right to possession of reserve lands must meet the following criteria:

- € **Lawful Possession.** Only "lawful" possession may be transferred. Therefore, a locatee may transfer rights of possession acquired under the Act by a First Nation member pursuant to subsections 20(1) and (3) or sections 22, 24 or section 48 with section 49 approval.
- € Certain First Nations recognize **traditional or custom holdings** by individuals and grant "occupational rights at the pleasure of the First Nation council." These rights are not "lawful possession" under the Act, and therefore are incapable of transfer pursuant to section 24.
- € **Transferee.** A locatee can only transfer his or her right to possession to the First Nation or to another member of the First Nation. Pursuant to the provisions of section 28(1) of the Act, any purported transfer to an individual other than a member of that First Nation is void.
- € The **transferor** must be in **lawful possession** of the lands to be transferred.
- € The land must not be subject to any **encumbrances** inconsistent with the transfer.

08. **Transfer Document.** The transfer document proposed for registration must meet the following criteria:

- € The transfer should be submitted in the prescribed form, "Transfer of Land on an Indian Reserve." A transfer submitted in another form may be acceptable providing it conforms to all the prescribed criteria and otherwise contains all the essential information.
- € The name of the transferor as it appears on the transfer document must be identical to the name as it appears on the relevant registry abstract entry.
- € The registered names and numbers of both the transferor and transferee must be used in the transfer.
- € The transfer must include a land description which meets the requirements for legal descriptions of Indian lands and includes all known encumbrances affecting the land. Further information may be found in the *Indian Lands Registration Manual*, and in the *Interdepartmental Agreement Respecting Legal Descriptions of Indian Lands*, December 1, 1993.
- € The transfer must include a recital that the locatee makes the transfer for valuable consideration. Where the consideration is nominal, i.e. one dollar, the transfer document must include a satisfactory explanation of the consideration.
- € The transfer must include the witnessed signature of the transferor. To confirm the identity of the person signing the document, the signature should be identical to the name as it appears on the face of the document.

Example: If the transferor is described as "Harry T. Jacobs" on the face of the transfer document, he should sign his name as "Harry T. Jacobs."
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The transferee is not required to sign the document.

- € The transfer must also meet the registration and execution of instruments requirements set out in Parts I and II of the *Indian Lands Registration Manual*.

09. **Environmental Assessment.** Although it is uncommon, should the transfer include a project proposal, the Lands Officer must determine whether the Department requires an environmental assessment under the *CEAA*. If so, the environmental assessment must be conducted prior to Ministerial approval of the transfer. Transfers without a project proposal attached do not require an environmental assessment under *CEAA*. For further information on environmental assessments see Directive 03-08.
10. **Council Consent.** The Act does not require the approval of the First Nation council for a transfer of an allotment. However, some First Nations have established procedures under which locatees submit all proposed transfers for council's approval before they are sent to the department for Ministerial approval. While the Lands Officer should respect the First Nation's practices to the extent possible. However, the Lands Officer has an obligation and the authority to submit a transfer for Ministerial approval and registration without First Nation council approval where the council unreasonably delays a transfer or where the rights of the individual member are infringed upon.
11. **Reporting Unusual Circumstances.** If the Lands Officer receives a transfer document which is "correct" on its face, meeting the criteria set out in paragraphs 07 and 08, then the document should be forwarded to the relevant authority for Ministerial approval. Where, however, the Lands Officer is aware of unusual circumstances relating to a proposed transfer which may affect the validity of that transfer, a report on these circumstances should accompany the transfer document.
12. "Unusual circumstances" may include a transfer which some third party contests, or such things as medical evidence or evidence as to the capacity of the transferor.
13. Where the approving authority, having regard to the report of the Lands Officer, is not satisfied with the validity of the transfer document, Ministerial approval will be withheld. The transfer is then returned to the individual tendering the document, along with the reasons for the withholding of consent.
14. **Overturing a Transfer.** Where a third party has contested an approved transfer, the Lands Officer should advise those contesting the transfer that their remedy lies with the courts.
15. **Transfers to Minors.** Although a locatee may transfer lawful possession to a minor, the minor may be unable to effectively manage the transferred property. The locatee and the Lands Officer should therefore consider appointing a guardian to manage the minor's property.

16. **Transfers by Devisee or Heir-at-law.** Lands officers should ensure that executors or administrators are aware that the transfer of lawful possession by devise or descent is not effective until the Minister approves it pursuant to the provisions of section 49 of the Act. This information is very important where the devisee or heir-at-law is planning to immediately dispose of his or her interest in the subject lands following his or her inheritance.
17. **Transfer of Cardex Holdings.** Generally, the holder of a Cardex Holding has lawful possession under the *Indian Act*. However, First Nation members with Cardex Holdings cannot register a transfer of their interest unless they first obtain a land description which meets the requirements for legal descriptions of Indian lands.
18. **Estate Transfer of Cardex Holding.** The Department has developed special procedures to allow the transfer of a Cardex Holding from an estate to its heirs or beneficiaries. For further information, refer to the May 9, 1995 memorandum of Hubert Ryan and Barbara Craig, *Transferring Cardex Holdings to Heirs/Beneficiaries* (attached as Annex B to this directive).
19. **Transfer of Notices of Entitlement (NE).** As with a Cardex Holding, to register a transfer under section 24 of the Act, the holder of a Notice of Entitlement must obtain a proper legal description of the lands which meets the registration criteria for a transfer under this section.
20. **No Evidence of Title Issued (NETI).** To deal with the backlog of estate transfers which existed a few years ago, the Registrar permitted estate transfers of interests in reserve lands to be registered although they did not meet the prescribed registration criteria then in place. The registered documents were reflected on title, the transaction effectively transferred lawful possession, but the department did not issue any evidence of title. This practice no longer exists.
21. **Transfer to an Estate.** Currently, NETI is only used where a lawful possessor transfers an interest in reserve land to an estate. Although the transfer document must meet the registration requirements referred to in this directive, the Indian Lands Registry issues no certificate of possession, as the interest will subsequently be transferred to the estate's heirs or beneficiaries.

Process

22. This section provides an overview of the process to transfer lawful possession under section 24 of the Act. We include a detailed checklist as Annex A to this Directive. Please note that First Nations exercising delegated authorities under section 60 of the Act are responsible for taking the steps identified as the responsibility of **INAC Field** in the checklist. Consult the delegation instruments to confirm the scope of authority.

23. **Transfers by Devise or Descent.** The Department has adopted special forms and procedures for estate transfers. Refer to the *Estates Procedures Manual*, September 14, 1994 for additional information.
24. A transfer of lawful possession is usually prepared at the First Nation offices. However, individual members may request Lands Officers to assist them with the transfer of their interest. A lawyer or agent representing one or both of the parties may also prepare the transfer documentation.
25. **Search of Abstract.** When the Lands Officer receives the transfer documentation, the officer searches the Reserve General Abstract and the Reserve Parcel Abstract. These searches will confirm whether the transferor (the person granting the right to possession) is in lawful possession of the land to be transferred. The searches will also confirm whether the name of the transferor as it appears on the transfer document matches the appropriate abstract entry.
26. **Search of Membership Records.** The Lands Officer may conduct a search of the Indian Register to ensure the transferee (the person getting the interest) is a member of that First Nation and has status under the Act.
27. **Review of Transfer Document.** The Lands Officer reviews the transfer document to ensure it meets the policy requirements in this directive, including:
 - € Form of Transfer Document;
 - € Land Description and Access;
 - € Encumbrances;
 - € Consideration;
 - € Execution by Transferor; and,
 - € Registration and Execution of Instruments requirements set out in Parts I and II of the *Indian Lands Registration Manual*.
28. **Conditions.** Where the transfer is subject to conditions, the Lands Officer ensures that the Department of Justice has been consulted as to the acceptability of the conditions. If the transferee is accepting the interest subject to certain conditions, the Lands Officer must also ensure the transferee has executed the appropriate document to that effect.

29. **Environmental Assessment.** If a project proposal is included in the transfer, the Lands Officer ensures that an environmental assessment has been conducted in accordance with the CEAA.
30. **Report of Unusual Circumstances.** The Lands Officer prepares a report detailing those circumstances which question the validity of the transfer document.
31. **Approval and Registration.** The Lands Officer submits to the approving authority:
 - € the completed transfer, in duplicate;
 - € the original and any copies of the documentation evidencing lawful possession of the transferor;
 - € any supporting report; and,
 - € his or her recommendation for approval.
32. Once approved, the Lands Officer submits the transfer and supporting documentation to the Indian Lands Registry under the cover of an "Application to Register."
33. Upon registration of the transfer, the Registrar issues a Certificate of Possession in the name of the transferee.

References

34. Besides the relevant sections of the legislation further information may be found in the following:
 - € *Indian Environmental Protection Manual*
 - € *Indian Lands Registration Manual*
 - € *Estates Procedures Manual*, September 14, 1994
 - € *Interdepartmental Agreement Respecting Legal Descriptions of Indian Lands*, December 1993.

Chapter 03:
Directive 03-04: Transferring Individual Interests

Annex A: Flow Chart

Issued: January 5, 1996

STEPS IN THE PROCESS: TRANSFERRING INDIVIDUAL INTERESTS STEPS 001 TO 024		ORGANIZATIONS INVOLVED		
		First Nation	INAC Field	INAC H.Q.
LEGEND: < = ? = Movement ' = Action 3 = Review/Inspection Ę = Decision - = File /Storage				
First Nation:				
001	Prepares the documentation for the transfer of lawful possession.	G	' 5	
002	Where required, seeks the assistance of the Lands Officer to prepare the documentation.	G	' 4< 5	47 5
INAC Field:				
003	When required, provides assistance to First Nation in preparing the transfer documents.	G	5 5 : 4= 5	5 5 =4' 5
First Nation:				
004	Forwards the transfer and supporting documentation to Lands Officer.	G	' 4< 5	47 5
INAC Field:				
005	Where there has been a transfer by devise or descent (s.49), ensures that the executors or administrators are aware that lawful possession by transferees is not effective until the Minister approves the transfer.	G		5 5 ' 5
006	Searches the Reserve General Abstract and the Reserve Parcel Abstract to confirm that:	G		5 ' 5
	€ the transferor is in lawful possession of the land to be transferred;	[]		5
	€ the name of the transferor as it appears on the transfer document matches the appropriate abstract entry;	[]		5
	€ the land is not subject to any encumbrances inconsistent with the transfer.	[]		5
007	Searches the First Nation membership records to ensure that the transferee is a First Nation member, if applicable.	G		5 ' 5
008	Where the transferee is a First Nation member, but does not appear on the First Nation membership list, ensures that the First Nation has certified the individual's membership.	G		5 ' 5
009	Where the transferee is entitled to register under the <i>Indian Act</i> , but is not yet registered under that Act, ensures that the First Nation has certified that the individual is entitled to be registered under the <i>Indian Act</i> .	G		5 ' 5
010	Reviews the transfer document to ensure it meets the following requirements:	G		5 3 5
	€ it is in the prescribed form	[]		5
	€ the correct names of the transferor, the transferee and their respective First Nation numbers appear on the document	[]		5
	€ the land description meets the requirements for legal descriptions of Indian lands	[]		5
	€ the land description includes all known encumbrances affecting the land	[]		5
	€ if the land is subject to a mortgage, the mortgage has been assumed or discharged	[]		5
	€ if the land is subject to a Notice (caveat), the Notice has been removed or the party has been advised	[]		5
	€ includes a recital that the land is being transferred for valuable consideration	[]		5
				?

STEPS IN THE PROCESS TRANSFERRING INDIVIDUAL INTERESTS STEPS 001 TO 024	ORGANIZATIONS INVOLVED		
	First Nation	INAC Field	INAC H.Q.
LEGEND: < = ? = Movement ' = Action 3 = Review/Inspection Ę = Decision - = File/ Storage			
INAC Field (continued)			
010 (continued)		?	
€ where consideration is nominal, includes a satisfactory explanation for the nominal consideration	[]	5	
€ includes the witnessed signature of the transferor, preferably identical to the name as it appears on the face of the document	[]	5	
€ complies with the registration and execution of instruments requirements set out in Parts I and II of the <i>Indian Lands Registration Manual</i>	[]	5	
012 Addresses concerns of First Nation, if applicable.	G	'	
013 If the transfer is subject to conditions, ensures that the Department of Justice has been consulted about the acceptability of the conditions.	G	5	
014 If the transferee is accepting the interest subject to certain conditions, ensures that the transferee has executed a document to that effect.	G	'	
015 If a project proposal is presented, ensures that an environmental assessment has been conducted according to <i>CEAA</i> .	G	5	
016 If applicable, prepares report detailing the circumstances which question the validity of the transfer document.	G	'	
017 Submits the following to the authority approving the transfer for the Minister:	G	'	
€ completed transfer, in duplicate	[]	5	
€ original and any copies of the documentation which proves lawful possession of the transferor	[]	5	
€ supporting report	[]	5	
€ recommendation for approval	[]	5	
018 The transfer is approved or rejected by approving authority.	G	Ę	
019 Submits the approved transfer and supporting documentation to the Indian Lands Registry under the cover of an "Application to Register."	G	' 4<	447
INAC H.Q.:			?
020 Checks all documentation against the criteria set out in the <i>Indian Lands Registration Manual</i> .	G	'	5
021 Where applicable, verifies that the transferee is registered under the <i>Indian Act</i> and is a First nation member.	G	'	5
022 Registers the transfer according to the <i>Indian Lands Registration Manual</i> .	G	'	5
			?

STEPS IN THE PROCESS TRANSFERRING INDIVIDUAL INTERESTS STEPS 001 TO 024 LEGEND: < = ? = Movement ' = Action 3 = Review/Inspection È = Decision - = File/ Storage		ORGANIZATIONS INVOLVED		
		First Nation	INAC Field	INAC H.Q.
INAC H.Q. (continued)				?
023	Upon registration of the transfer, the Registrar issues a Certificate of Possession in the name of the transferee.	G		5 '
INAC Field:				5
024	Retains the registered Certificate of Possession on file and sends a copy to the transferee or forwards the C.P. to the transferee, keeping a copy of the registered Certificate of Possession on file.	G	- =44	5 5 '
			- /' =4	=4'

Chapter 03:
Directive 03-04: Transferring Individual Interests

Annex B:
Transferring Cardex Holdings
to Heirs/Beneficiaries
May 9, 1995

Issued: January 5, 1996

Directive 03-05

Reversion of Right to Possession

Purpose

01. This directive explains how the right to lawful possession of reserve lands may revert to the First Nation, or be transferred to the First Nation or a member thereof, pursuant to section 25 of the Act. You should read this directive for information on:
 - € **Policy:** It states the principles and requirements governing the transfer of lawful possession where a First Nation member ceases to be entitled to live on reserve lands.
 - € **Procedures:** It outlines the steps to take when a First Nation member in lawful possession of reserve lands ceases to be entitled to live on reserve lands.

General

02. When First Nation members cease to be entitled to live on reserve lands, subsection 25(1) of the Act mandates that they must transfer their rights of possession to the First Nation or to another member. In addition, the transfer must be completed within six months, or an extension of that period, as directed by the Minister.
03. Where a transfer under subsection 25(1) is not completed within the initial six months or an extension of that period, the right to possession of the lands reverts to the First Nation by virtue of subsection 25(2).
04. Where the land reverts to the First Nation under subsection 25(2), the individual formerly in lawful possession of the land is entitled to receive compensation for permanent improvements that he or she made on the land. This compensation is from the funds of the First Nation, in an amount agreed to by the parties or determined by the Minister.

Authorities

05. Relevant statutory authorities include:

Indian Act, c. I-5, s. 25

25. (1) An Indian who ceases to be entitled to reside on a reserve may, within six months or such further period as the Minister may direct, transfer to the band or another member of the band the right to possession of any lands in the reserve of which he was lawfully in possession.

(2) Where an Indian does not dispose of his right of possession in accordance with subsection (1), the right to possession of the land reverts to the band, subject to the payment to the Indian who was lawfully in possession of the land, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

Policy

06. **Notice.** As soon as possible, Lands Officers should provide notice of the provisions under section 25 to the First Nation council and those individuals ineligible to continue to reside on reserve lands.
07. **Transfer within the Six-Month Period.** Where a transfer pursuant to section 25(1) falls within the specified six-month period, the transfer is completed in the same manner as a transfer under section 24 of the Act (see Directive 03-04).
08. **Extensions.** The ineligible individual must submit requests for extensions before the expiry of the six-month period specified in subsection 25(1). Requests received after the six-month period will be refused.
09. A request for an extension is usually supported by a recommendation from the First Nation council. If the First Nation council does not support the request for an extension, the Lands Officer should investigate the circumstances and prepare a report containing his or her recommendation. The Lands Officer should forward this report to the approving authority, and send a copy to the First Nation council.

10. **Transfer within Extension Period.** Where a transfer under subsection 25(1) falls within the specified extension period, the transfer is done in the same manner as a transfer under section 24 of the Act (See Directive 03-04). The transfer document should, however, contain the following recital:

WHEREAS (*name and number of member*) became ineligible to reside on the (*name of reserve*) on or about the (*date*);

AND WHEREAS an extension was granted in order to transfer the subject property pursuant to the provisions of subsection 25(1) to the (*termination date in Minister's consent to extension*);

11. **Reversion to First Nation.** Following the expiration of the initial six-month period or any authorized extension of that period, if the ineligible individual has not transferred his or her interest subsection 25(1), the possessory rights of the individual terminate and revert by operation of law to the First Nation. This reversion is subject to the payment of compensation to the ineligible individual for the value of any improvements to the land by the individual. In practice, a transfer or Ministerial Order is evidence of the reversion of a right to possession.
12. **Compensation for Improvements where Agreement Reached.** Usually, the amount of compensation payable to the individual is determined by mutual agreement between the First Nation council and the individual.
13. **Compensation for Improvements where No Agreement Reached.** Where the council and the individual cannot agree, the Minister must exercise his discretionary powers pursuant to subsection 25(2) of the Act. A comprehensive investigation is conducted as soon as possible to identify the improvements to the subject property. The report on this investigation should include:
- € the reaction of the parties to the proposed action;
 - € identification of the improvements and confirmation of ownership; and,
 - € the value of the improvements, determined either by independent appraisal where possible, or by a mutually acceptable sum agreed upon by the individual and the First Nation council.
 - € where the First Nation council disputes the value of the improvements, details of the dispute with recommendations for its resolution.

14. **Documentation.** The documents required to prove the reversion of the individual's rights to the First Nation will depend upon the circumstances surrounding the reversion.
 - € **Transfer.** Where the individual and First Nation council have agreed on the compensation for permanent improvements, a transfer is completed as set out in Directive 03-04.
 - € **Ministerial Order.** Where they reach no agreement, the matter is resolved by Ministerial Order.

Process

15. This section provides an overview of how to do a reversion of the right to possession under section 25 of the Act. We include a detailed checklist as Annex A to this Directive. Please note that First Nations exercising delegated authorities under section 60 of the Act are responsible for taking the steps identified as the responsibility of **INAC Field** in the checklist. Consult delegation instruments to confirm the scope of authority.
16. **Notice.** The Lands Officer provides notice of the operation of section 25 to the individual who is ineligible to continue to reside on reserve lands and to the First Nation council. Usually the Lands Officer will become aware of the individual's ineligibility to reside on the reserve during informal discussions with First Nation members.
17. **Extensions.** The ineligible individual submits a request for an extension, accompanied by any supporting recommendation of the First Nation council, to the Lands Officer before the expiry of the six-month period specified in subsection 25(1).
18. The Lands Officer reviews the request and forwards it, accompanied by his or her recommendation, to the authority approving the extension for the Minister.
19. **Transfer by Individual.** Where an individual transfers his or her right to possession to a member of the First Nation or to the First Nation itself within the specified six-month period, or an authorized extension period, the transfer is completed according to section 24 of the Act (see Directive 03-04) and the policies of this directive.

20. **Reversion where Parties Agree to Compensation.** Where a right to possession reverts to the First Nation, and the individual and First Nation council have agreed on the compensation for permanent improvements, a transfer is completed in the same manner as a transfer under section 24 of the Act (see Directive 03-04).
21. **Reversion where Parties do not Agree to Compensation.** Where a right to possession reverts to the First Nation, and the council and the ineligible individual have not agreed on the compensation for permanent improvements, the Lands Officer prepares an investigative report on the improvements to the subject property to determine the compensation to be paid to the individual.
22. **Appraisal.** The Lands Officer arranges for an appraisal to value the permanent improvements to the land. A review by Public Works and Government Services Canada is advisable.
23. **Verify Available Funds.** The Lands Officer checks whether adequate funds are available to the First Nation to pay appropriate compensation. Where it appears that the required First Nation funds may not be available the Lands Officer discusses the available options with the Regional Director of LTS.
24. The Lands Officer submits the investigative report, with his or her recommendations, to the authority approving the compensation to be paid to the individual. The officer also sends a copy to the First Nation council.
25. **Ministerial Order.** If a Ministerial Order is required, the Lands Officer prepares the Order setting out the compensation to be paid to the individual for improvements to the subject property and confirming that the right to possession of the land has reverted to the First Nation. The Lands Officer sends the Order for approval and registration.
26. If the matter has been resolved by Ministerial Order, a copy of the registered Order is forwarded to the First Nation council with the advice that the subject lands are available for re-allotment.
27. **Payment of Compensation.** After the Order is issued, the First Nation council arranges for payment of compensation from First Nation funds.
28. The Lands Officer ensures that the First Nation council complies with the terms of the Order. If necessary, the Lands Officer recommends to the Regional Director of LTS possible steps to take to ensure compliance. Discussions with Legal Services may also be appropriate.

References

29. Besides the relevant sections of the legislation, further information may be found in the following:

€ *Indian Lands Registration Manual*

Chapter 03:

Directive 03-05: Reversion of Right to Possession

Annex A: Flow Chart

Issued: January 5, 1996

STEPS IN THE PROCESS: REVERSION OF RIGHT TO POSSESSION STEPS 001 TO 019		ORGANIZATIONS INVOLVED		
		First Nation	INAC Field	INAC H.Q.
LEGEND: < = ? = Movement ' = Action 3 = Review/Inspection E = Decision - = File /Storage				
INAC Field:				
001	Provides notice of options under section 25 of the Act to First Nation council and to the individual who is ineligible to continue to reside on reserve lands.	G	=44'	
002	Where ineligible individual arranges a transfer pursuant to section 25(1) within the stipulated six-month period, completes the transfer following Directive 03-04.	G	5 5 '	
REQUEST FOR EXTENSION				
First Nation:				
003	Before expiry of the six-month period specified in subsection 25(1), the First Nation council forwards to the Lands Officer a request for an extension, accompanied by its supporting BCR.	G	' 4 <	447 5
004	In the alternative, before the expiry of the six-month period specified in subsection 25(1), the ineligible individual forwards to the Lands Officer a request for an extension of the period within which he or she must transfer the rights to possession.	G	' 4 <	44 < 5 5 5
INAC Field:				
005	Reviews the request from the First Nation council or individual.	G		3 5
006	Forwards request and his or her recommendation, to the approving authority.	G		' 5
007	Request for extension granted or denied by the approving authority.	G		E 5
008	Where a transfer pursuant to section 25(1) which falls within an authorized extension period is approved, completes transfer according to Directive 03-04, ensuring that the transfer document includes the proper recital.	G		5 5 '
REVERSION TO FIRST NATION - COMPENSATION AGREED				
First Nation:				
009	Where right to possession of the subject lands reverts to the First Nation, and the individual and First Nation have reached an agreement with respect to compensation for permanent improvements, prepares documentation for transfer of lawful possession with assistance of Lands Officer if necessary.	G	'	5
010	Completes transfer of interest in land in accordance with Directive 03-04.	G	'	
INAC Field:				
011	Where right to possession of the subject lands reverts to the First Nation, and the individual and First Nation have reached an agreement with respect to compensation for permanent improvements, provides assistance to First Nation in preparation of transfer documents, when required.	G		' 5
012	Completes transfer of interest in land in accordance with Directive 03-04.	G		'

Directive 03-06

Correcting and Cancelling Certificates

Purpose

01. This directive explains how to cancel Certificates of Possession, Certificates of Occupation or Location Tickets pursuant to section 26 or cancel them pursuant to section 27 of the Act. You should read this directive for information on:
 - € **Policy:** It states the principles and requirements governing the correction or cancellation of a Certificate of Possession, a Certificate of Occupation or a Location Ticket.
 - € **Procedures:** It outlines the steps to be taken to correct or cancel a Certificate of Occupation, a Certificate of Possession, or a Location Ticket.

General

02. Section 26 of the Act provides for the correction of a Certificate of Possession, a Certificate of Occupation or a Location Ticket where the Minister believes that:
 - € through mistake, the Certificate or Location Ticket has been issued to or in the name of the wrong person;
 - € the Certificate or Location Ticket contains any clerical error or misnomer;
or,
 - € the Certificate or Location Ticket contains a wrong description of any material fact therein.
03. In the above circumstances, the Minister may cancel the Certificate or Location Ticket and issue a corrected Certificate in its place.
04. Unlike section 26, which contemplates that after a Certificate has been cancelled a revised or amended Certificate will be issued, the sole discretion vested in the Minister by virtue of section 27 is to cancel the offending Certificate.

05. Under section 27, the Minister may cancel a Certificate of Possession, Certificate of Occupation or a Location Ticket, with the consent of the holder, where:
- € through mistake, the Certificate or Location Ticket has been issued to or in the name of the wrong person;
 - € the Certificate or Location Ticket contains any clerical error or misnomer;
 - € the Certificate or Location Ticket contains a wrong description of any material fact therein.
06. The Minister may cancel a Certificate of Possession, Certificate of Occupation or a Location Ticket without the consent of the holder where the Minister believes that the Certificate or Location ticket was issued through fraud or error.

Authorities

07. **Relevant statutory authorities include:**

Indian Act, ss. 26, 27

26. Whenever a Certificate of Possession or Occupation or a Location Ticket issued under The Indian Act, 1880, or any statute relating to the same subject-matter was, in the opinion of the Minister, issued to or in the name of the wrong person, through mistake, or contains any clerical error or misnomer or wrong description of any material fact therein, the Minister may cancel the Certificate or Location Ticket and issue a corrected Certificate in lieu thereof.

27. The Minister may, with the consent of the holder thereof, cancel any Certificate of Possession or Occupation or Location Ticket referred to in section 26, and may cancel any Certificate of Possession or Occupation or Location Ticket that in his opinion was issued through fraud or in error.

Policy

08. **Notice.** The individual(s) or the First Nation may request corrective action under section 26 or 27, or the department may initiate the correction. Whenever corrective action is initiated, the Lands Officer should give notice to both the individual(s) and the First Nation council.
09. Section 26 of the Act is a remedial section intended to allow correction where a Certificate or Location Ticket has been issued incorrectly through "clerical" error or misdescription. This section of the Act, therefore, should not be used where there is a dispute between the parties unless it is clearly justified and the Department of Justice has approved the action.

10. **Amended BCR.** Where the parties agree that a Certificate or Location Ticket has been issued based on wrong information in a First Nation council Resolution (BCR), the Department requires an amended BCR before undertaking corrective action.
11. **Fraud or Error.** Although the provisions of section 27 are seldom used, where circumstances show that a Certificate or Location Ticket has been issued through fraud or in error, the Lands Officer should consult with the Department of Justice, the First Nation council, and where appropriate, the individual(s) concerned, prior to undertaking corrective action pursuant to this section.
12. Where the Department of Justice has recommended that the Certificate or Location Ticket should not be cancelled, or where Justice is unable to determine whether the Certificate or Location Ticket should be cancelled, the Lands Officer should advise the parties to the dispute that if they are unable to settle the issue between themselves, their remedy lies with the courts.
13. Where, in consultation with the Department of Justice, the Department determines that a certificate has been issued through fraud or in error, and the First Nation council agrees with the determination, the Lands Officer should obtain a BCR from the First Nation council providing the required information.
14. Where the First Nation council does not provide a BCR because it does not agree that a Certificate or Location Ticket has been issued through fraud or error, but such is the determination of the Department of Justice, the Lands Officer requests the corrective action and the Indian Lands Registry executes the correction through a Ministerial order.

Process

15. This section provides an overview of how to correct or cancel Certificates of Possession or Occupation or Location Tickets under section 26 or section 27 of the Act. We include a detailed checklist in Annex A to this Directive. Note that First Nations exercising delegated authorities under section 60 of the Act are responsible for taking the steps identified as the responsibility of **INAC Field** in the checklist. You should consult delegation instruments to confirm the scope of authority.
16. **Review.** The Lands Officer reviews the circumstances to decide whether correction or cancellation of the Certificate or Location Ticket is the appropriate action. This would usually occur at the request of the First Nation council or an individual member.

17. **Notice.** Where corrective action is being considered under section 26 or 27, the Lands Officer provides notice of the action to the individual(s) and to the First Nation council.
18. **BCR/Transfer Correct.** Where a BCR or transfer is correct, but the issued Certificate of Possession or Occupation or Location Ticket contains an error, the Lands Officer notifies the Indian Lands Registry of the mistake and requests a correction.
19. Upon receiving a request for correction, the Indian Lands Registry reviews the request. Where it agrees with the proposed action, the Registry draws up a Ministerial Order which cancels the old interest and Certificate or Location Ticket, and issues a new Certificate.
20. The Order is executed for the Minister and is registered. The incorrect Certificate or Location Ticket is then cancelled and a new Certificate is issued.
21. **BCR Incorrect - Parties Agree.** Where the Certificate or Location Ticket is incorrect due to an error in the BCR and the First Nation council and individual(s) agree that the documentation contains a mistake, the individual receiving the allotment executes a transfer back to the First Nation. This transfer is then processed following Directive 03-04.
22. Once the transfer is complete, the First Nation council passes a new BCR, correctly allotting the subject property.
23. After passing the BCR, the First Nation council submits it to the Lands Officer for review. The allotment is then completed following Directive 03-02.
24. **Transfer Incorrect - Parties Agree.** Where a Certificate or Location Ticket is incorrect due to an error in a transfer, and all parties agree that the documentation contains a mistake, a new transfer is prepared and executed. This transfer is then processed following Directive 03-04.
25. **BCR/Transfer Incorrect - Parties Disagree.** Where a Certificate or Location Ticket is in error because the BCR or transfer is incorrect and the First Nation council and/or individual(s) do not agree that there is a mistake in the documentation, the Lands Officer should consult with the Department of Justice. Where appropriate, the Lands Officer should also consult with the First Nation council and the individual(s).

26. Where, after consultation, the Department of Justice determines that the Certificate or Location Ticket should not be cancelled and reissued, or where Justice is unable to determine whether the Certificate or Location Ticket should be cancelled, the Lands Officer informs the parties of this decision. At that point the matter is a private dispute between the parties. The Lands Officer should advise the parties to the dispute that if they are unable to settle the issue between themselves, their remedy lies with the courts.
27. Where, after consultation, the Department of Justice agrees that the Certificate or Location Ticket should be cancelled, the Lands Officer forwards to the Indian Lands Registry a request for correction of a Certificate or Location Ticket along with any supporting documentation.
28. Upon receipt and review of the request, where the Indian Lands Registry agrees that cancelling the Certificate or Location Ticket is appropriate, the Registry prepares a Ministerial Order which cancels the allotment or transfer and the Certificate or Location Ticket and orders the issuance of a corrected Certificate.
29. After the order is prepared, it is signed for the Minister and registered. The old interest and Certificate or Location Ticket is cancelled and a new Certificate is issued.
30. **Cancellation of a Certificate under Section 27.** To cancel a Certificate or Location Ticket, with the consent of the holder, pursuant to section 27, follow the steps outlined in paragraphs 15 to 24, with the following modifications:
 - € Where an interest and Certificate or Location Ticket are cancelled according to paragraphs 19 and 20, no corrected Certificate is issued.
 - € Once the transfer back to the First Nation is completed in paragraph 21, we take no further steps.
31. **Fraud or Error.** In all cases where it appears the Certificate or Location Ticket was issued through fraud or in error, the Lands Officer consults with the Department of Justice before requesting cancellation of the Certificate or Location Ticket.

References

32. For more information you should read:
 - € *Indian Lands Registration Manual*

Chapter 03:

**Directive 03-06: Correcting and Cancelling Certificates
of Possession or Occupation**

Annex A: Flow Chart

Issued: January 5, 1996

STEPS IN THE PROCESS CORRECTING AND CANCELLING CERTIFICATES OF POSSESSION AND OCCUPATION STEPS 001 TO 009		ORGANIZATIONS INVOLVED		
		First Nation	INAC Field	INAC H.Q.
LEGEND: < = ? = Movement ' = Action 3 = Review/Inspection Ë = Decision - = File/ Storage				
TRANSFER INCORRECT - PARTIES AGREE				
First Nation				
004	Where transfer incorrect and parties agree the documentation contains an error, a new transfer is executed correctly conveying the subject lands. The transfer and supporting documentation are then forwarded to the Lands Officer (see Directive 03-04).	G	' 4< 447 5 5	
INAC Field				
005	Reviews transfer and forwards it, along with supporting documentation, for approval. Once approved, forwards transfer to Indian Lands Registry for Registration (see Directive 03-04).	G	5 5 3-4<	447 5
INAC H.Q.				
006	Registers transfer and, where applicable, issues Certificate (see Directive 03-04).	G		5 5
		- 44	=4-/' 4	=44'
B.C.R./TRANSFER INCORRECT-PARTIES DISAGREE or FRAUD/ERROR				
INAC Field				
004	Where BCR or transfer incorrect and parties do not agree the documentation contains an error, or where it appears Certificate or Location Ticket issued through fraud or in error, reviews circumstances in consultation with Department of Justice, and where appropriate, the parties.	G		
005	After consultation with Department of Justice, forwards request for corrective action or cancellation to Indian Lands Registry or informs parties no corrective action to be taken.	G	3 5 5	
INAC H.Q.				
006	Reviews request.	G	5 =4-4<	447 5
007	Where in agreement with proposed action, drafts and approves Ministerial Order.	G		5 3
008	Registers Ministerial Order in accordance with the <i>Indian Lands Registration Manual</i> .	G		5 '
009	If applicable, issues new Certificate.	G		5 ' 5
		- 44	=4-/' 4	=44'

Directive 03-07

Compensation for Improvements

Purpose

01. This directive explains how to use section 23 of the Act, which provides payment to a locatee to compensate for permanent improvements made to reserve lands, where the locatee is lawfully removed from those lands. You should read this directive for information on:
 - € **Policy:** It states the principles and requirements governing the compensation of a First Nation member in the circumstances set out in section 23.
 - € **Procedures:** It outlines the steps to take to set and pay compensation.

General

02. Section 23 of the Act provides for compensation to a First Nation member for permanent improvements made on reserve lands from which the individual has been lawfully removed.
03. In those circumstances, the First Nation member may be compensated, at the discretion of the Minister, for the value of those improvements, either from the funds of the First Nation or from the individual who goes into possession.

Authorities

04. **Relevant statutory authorities include:**

Indian Act, s. 23

23. An Indian who is lawfully removed from lands in a reserve upon which he has made permanent improvements may, if the Minister so directs, be paid compensation in respect thereof in an amount to be determined by the Minister, either from the person who goes into possession or from the funds of the band, at the discretion of the Minister.

Policy

05. **Investigation.** Where a potential case of removal from reserve lands comes to the attention of a Lands Officer, the officer should investigate it as soon as possible. The Lands Officer should not delay an investigation of the underlying circumstances because litigation has been commenced between a First Nation council and an individual member concerning removal from reserve lands.
06. Because the department does not administer traditional or custom land holdings or occupational rights at the pleasure of the First Nation, the Lands Officer should refer disputes involving this type of tenure to the First Nation council.
07. **Litigation.** It is the Minister who must make the various determinations under section 23 of the Act. Therefore, it would be inappropriate to state that the Department will take notice of a court judgment before it is rendered. The effect of such actions would be to abdicate the discretionary powers of the Minister to the court system. Likewise, although the Minister has no authority to preclude the parties from commencing litigation, it should not be encouraged as a means of determining the rights between the various parties involved in a dispute concerning compensation for improvements.
08. **Settlement by Mutual Agreement.** The First Nation council and the individual member should have a reasonable opportunity to settle the matter of compensation by mutual agreement.
09. The department should offer assistance by providing services such as determining the value of improvements.
10. If a settlement seems unlikely, the Lands Officer should advise the First Nation council and individual member that the Minister may exercise his discretionary powers.

Process

11. This section provides an overview of the process where, pursuant to section 23 of the Act, a First Nation member may be entitled to compensation for permanent improvements made to reserve lands where the First Nation member is subsequently lawfully removed from those lands. We include a detailed checklist at the end of this directive. Please note that First Nations exercising delegated authorities under section 60 of the Act are responsible for taking the steps identified as the responsibility of **INAC Field** in the attached checklist. Consult delegation instruments to confirm the scope of authority. In summary, the process involves the following major steps:

Process (continued)

- € **Investigation of Removal from Reserve Lands.** When reported to a Lands officer, he or she investigates potential cases of removal.
- € **Facilitate Settlement between First Nation and Individual.** The Lands Officer offers Departmental services to assist in settlement.
- € **Exercise of Discretion.** Where settlement is unlikely, the Lands Officer advises the parties to the dispute that the Minister may exercise his powers.
- € **Appraisal.** An appraisal should value the permanent improvements to the land. A review by Public Works and Government Services Canada is advisable.
- € **Verify Available Funds.** If applicable, check whether adequate funds are available to the First Nation to pay appropriate compensation.
- € **Ministerial Order.** If a Ministerial Order is required, the Lands Officer prepares the order setting the compensation payable to the individual being removed for improvements to the subject property, and identifying the source of the compensation (i.e. First Nation funds or those of the individual going into possession). The Lands Officer normally consults the Department of Justice on the drafting of the Order. The Lands Officer forwards the Order for approval.
- € **Payment of Compensation.** Upon issuance of the order, the Lands Officer arranges to pay compensation from First Nation moneys, if applicable.
- € If the matter has been resolved by Ministerial Order, a copy of the order is forwarded to the First Nation council, the individual being removed, and where affected by the order, the individual(s) going into possession.

References

12. For more information you should read:

- € *Indian Lands Registration Manual*

Chapter 03:

Directive 03-07: Compensation for Improvements

Annex A: Flow Chart

Issued: January 5, 1996

STEPS IN THE PROCESS: COMPENSATION FOR IMPROVEMENTS STEPS 001 TO 008		ORGANIZATIONS INVOLVED		
		First Nation	INAC Field	INAC H.Q.
LEGEND: < = ? = Movement ' = Action 3 = Review/Inspection Ę = Decision - = File /Storage				
First Nation:				
001	Negotiates with individual in occupation about compensation for improvements to the subject land.	G	' 4<	47
INAC Field:				
002	Eases settlement between First Nation and individual by offering departmental assistance.	G		5
003	Where no settlement, prepares an investigative report including:	G		5
	€ identification of improvements and confirmation of ownership;	[]		5
	€ value of the improvements determined by appraisal or agreement;	[]		5
	€ availability of First Nation funds;	[]		5
004	Submits an investigative report, with his or her recommendations, to the authority approving the compensation for permanent improvements payable to the individual being removed, and sends a copy to the First Nation council, and where applicable, the individual(s) going into possession.	G		5
005	Consult with Regional Justice about the proposed order.	G	644	=44'
006	Where compensation issue settled by Ministerial Order, prepares order and submits for approval.	G	5	'
007	Forwards copy of Ministerial Order to First Nation, the individual being removed and where applicable, the individual(s) going into possession.	G	5	5
First Nation:				
008	Arranges compensation payment from First Nation funds to the individual being removed, if applicable.	G	54	=44'
INAC Field:				
009	Where payment of compensation is pursuant to a Ministerial Order, ensures compliance with the terms of the Order.	G	'	5

Directive 03-08

Environmental Assessment under the CEAA

Purpose

01. The Department will not usually require an environmental assessment (EA) under the *Canadian Environmental Assessment Act* (CEAA) in an allotment situation. However, in some situations, an assessment may be required. This directive explains when an assessment is required, and how to meet the Department's obligations under the CEAA. You should read this directive for information on:

- € **Policy:** How to decide whether an environmental assessment is required, particularly for the transactions of allotment (s. 20(1)), temporary possession (s. 20(4)) or a transfer of lawful possession (s. 24).
- € **Process:** How to complete the steps required to meet the environmental assessment requirements under the CEAA and complete the screening form.

Where there are any discrepancies between this Directive and the Act, the Act supersedes and should be referred to for clarification.

General

02. **Definitions.** In this directive:

- € "**Alternate means of carrying out a project**" means different ways of doing the same project; for example, alternate means of carrying out a hydroelectric power plant project might include 24-hour operation or peak demand operation.
- € "**Alternatives to a Project**" means functionally different ways of achieving the same end; for example, alternatives to a hydroelectric power plant might include importing power or conserving energy.
- € "**Environmental Assessment (EA)**" means an assessment of the environmental effects of a project conducted according to the CEAA and its regulations.

Definitions (continued)

- € **"Follow-up Program"** means a program for verifying the accuracy of the environmental assessment of a project, and determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the project.
 - € **"Mitigation"** means the elimination, reduction, or control of the adverse environmental effects of the project, including restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means.
 - € **"Project"** means in relation to a physical work, any proposed construction, operation, modification, decommissioning, abandonment, or other undertaking in relation to that physical work; or any proposed physical activity, not relating to a physical work, that is prescribed in the *Inclusion List Regulations*.
 - € **"Proponent"** means the person, body, federal authority, or government that proposes the project.
 - € **"Responsible Authority"** means a federal authority that is required pursuant to subsection 11(1) of the CEAA to ensure that an environmental assessment of a project is completed.
 - € **"Screening"** means an environmental assessment that is conducted pursuant to section 18 of the CEAA, and that includes a consideration of the factors set out in subsection 16(1).
 - € **"Screening report"** means the report that summarizes the results of the screening.
 - € **"Trigger"** means an action by a federal authority that initiates the need for an environmental assessment.
 - € **"Valued Ecosystem Component (VEC)"** means an environmental component identified as having scientific, social, cultural, economic or aesthetic value.
03. **The requirement for an environmental assessment (EA) is triggered** pursuant to section 5(1)(c) of the CEAA when DIAND grants an interest in land pursuant to section 20(1), 20(4), or 24 of the *Indian Act* where a project proposal is included in the transaction to be approved or authorized by the Minister.

04. When DIAND intends to grant an interest in land where a project proposal is included, DIAND is then the responsible authority and must ensure that an environmental assessment is completed before taking any action that enables the project to continue.
05. Depending on the project, the environmental assessment process may take the form of a screening, a comprehensive study, a mediation, and/or an assessment by a review panel.
06. Most projects reviewed will likely undergo a screening rather than a comprehensive study, mediation or assessment by panel. Each environmental assessment for an allotment under subsection 20(1), a grant of temporary possession under subsection 20(4), or a transfer of lawful possession under section 24 of the *Indian Act*, that includes a project proposal will begin with a screening, unless it is on the Comprehensive Study List. In some situations, mediation or an assessment by panel may follow the screening or the comprehensive study.
07. **The environmental assessment is to be carried out as early in the planning process as possible**, before the Department makes any irrevocable decisions. Specifically, the assessment and screening report will identify whether:
 - € environmental effects need to be mitigated;
 - € the project plan needs to be modified;
 - € further assessment must be done through mediation or panel review;
 - € the Lands Unit can provide federal support for the project (that is, take action that enables the project to continue); or,
 - € the Lands Unit cannot exercise any power or perform any function that would permit the project to be carried out.
08. Screenings will vary in time, length and depth of analysis, depending on the proposed project and the possible extent of environmental effects.

Authorities

09. Statutory authorities governing this policy are the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 and the regulations thereunder, namely the *Law List Regulations*, *Inclusion List Regulations*, *Comprehensive Study List Regulations*, and the *Exclusion List Regulations*.

Policy

10. Pursuant to the CEAA, a federal authority must carry out an environmental assessment **before** it exercises any prescribed power or authority, duty or function, which would enable a project as defined under the CEAA to proceed either in whole or in part. An environmental assessment must therefore be carried out before:
 - € Ministerial approval of an allotment in those situations where a project proposal is attached;
 - € Ministerial authorization of temporary possession in those situations where a project proposal is attached;
 - € Ministerial approval of transfers of rights to possession in those situations where a project proposal is attached.
11. The department must ensure that the environmental assessment is done, however, the proponent will usually do and pay for the actual assessment.

Process

12. An environmental assessment is required where you have a **trigger for a project**, as defined under the CEAA.
13. Where an allotment under subsection 20(1), a grant of temporary possession under subsection 20(4), or a transfer of lawful possession under section 24 of the *Indian Act* includes a project proposal, this triggers the requirement for an environmental assessment under the CEAA. If you are unsure if an environmental assessment is required, consult with the Environment Unit.
14. The following is the step-by-step process to follow when the Lands Unit receives an allotment under subsection 20(1), a grant of temporary possession under subsection 20(4), or a transfer of lawful possession under section 24 of the *Indian Act* which includes a project proposal.
15. **Comprehensive Study:** If the proposed activity relates to any of the following types of projects, consult with your Environmental Unit to decide whether a comprehensive study is required. The projects are:
 - € Projects in or on National Parks and Protected Areas
 - € Electrical Generating Stations and Transmission Lines

Comprehensive Study (continued)

- € Water Projects (i.e. Diversion Projects)
 - € Oil and Gas Projects
 - € Minerals and Mineral Processing
 - € Nuclear and Related Facilities
 - € Industrial Facilities
 - € National Defence
 - € Transportation
 - € Hazardous Waste Management
16. Where an activity is a project and has a trigger, but is included in the *Exclusion List Regulations*, an environmental assessment is not required. **Annex A** contains a list of excluded projects drawn from the Exclusion List Regulations. Usually, anything other than a minor modification to an existing work will require an environmental assessment. If you are unsure, consult with your Environmental Unit.
17. The Lands Officer must ensure that a screening report is completed. The LTS Screening Report is attached at **Annex B**. At a minimum, the report must contain:
- € a description of the project;
 - € a description of the Valued Ecosystem Components (VECs);
 - € a summary and determination of the significance of the adverse environmental effects including the cumulative effects and any effects of malfunctions or accidents;
 - € a description of the proposed mitigation measures;
 - € comments received from the public, if applicable;
 - € a statement and rationale for the screening conclusion; and,
 - € identification of the contact person.

18. If the Lands Officer deems it necessary, the screening report may include additional information, such as:
- € the need for the project, alternatives to the project and alternate means of carrying out the project;
 - € a record of consultations with expert federal departments;
 - € a description of any necessary follow-up programs; and,
 - € additional supporting information, such as results of environmental studies.
19. Once the screening process has been carried out the Lands Officer has the option of allowing public review and comment on the screening report. If the project warrants, the Lands Officer may obtain comments and solicit information from other federal departments. If other responsible authorities are likely to have a trigger, the Lands Officer must notify the affected departments.
20. **Screening Decision Recommendations.** Following the screening process, a conclusion is made about the expected effects of the project. Based upon the conclusion, the Lands Officer makes a screening decision recommendation as outlined below.
- € **Effects not Likely Significant.** If the project is not likely to cause significant adverse environmental effects, considering appropriate mitigation measures, action may be taken that enables the project to continue (**Screening Report Decision Code 1**).
 - € **Effects Significant - Project Cannot Proceed.** If the project is likely to cause significant adverse environmental effects, that cannot be justified taking into account appropriate mitigation measures, action may not be taken that enables the project to continue (**Screening Report Decision Code 2**).
 - € **Effects Uncertain - Public Review Warranted.** If it is uncertain whether the project is likely to cause significant adverse environmental effects, notify your environmental unit and your senior management for referral of the project to public review (**Screening Report Decision Code 3**).

Screening Decision Recommendations (continued)

- € **Effects Likely Significant - Public Review Warranted.** If the project is likely to cause significant adverse environmental effects that may or may not be justified, notify your environmental unit and your senior management for referral of the project to public review (**Screening Report Decision Code 3**).
 - € **Public Concerns - Public Review Warranted.** If public concerns warrant a public review (panel or mediation), notify your environmental unit and your senior management for referral of the project to public review (**Screening Report Decision Code 3**).
21. Only after a public review can the responsible authority support the conclusion that a project is likely to cause significant adverse environmental effects that can be justified. If referred for public review, the final decision on the project must await the results of the public review.
22. If it has been determined that a project receives approval, the responsible authority must:
- € ensure that the mitigation measures identified during the environmental assessment are carried out; and,
 - € ensure that any required follow-up program is carried out.
23. When the responsible authority decides to take action with respect to a project, it must also make available to the public:
- € the action it has decided to take
 - € any mitigation measures that are to be carried out; and,
 - € the results of a follow-up program.

Implementation

24. The Department requires environmental assessments under the CEAA as of January 19, 1995.

References

25. Besides the CEAA and its regulations, you may consult:
- € The Responsible Authority's Guide to the *Canadian Environmental Assessment Act*, prepared by the Federal Environmental Assessment Review Office (FEARO).
 - € The Participant's Manual for Environmental Assessment (the DIAND Environmental Assessment training course).
 - € Your Environmental Unit.

Chapter 03:

Directive 03-08: Environmental Assessment under the CEAA

Annex A: CEAA - Excluded Projects

Issued: January 5, 1996

Annex A

CEAA - Excluded Projects

(Section references refer to the CEAA *Exclusion List Regulations*, Schedule I)

s. 1:

maintenance or repair of an existing physical work.

s. 2:

the continued operation, in the same manner as before, of a physical work, the previous operation of which has been earlier screened as having insignificant impacts, and for which applicable mitigation measures have been implemented.

s.3:

construction or installation of a building with a footprint of less than 100 square metres (1075 square feet), and a height of less than 5 metres (16.5 feet), located greater than 30 metres (100 feet) from a water body, which would not likely pollute a water body.

s. 4:

expansion or modification of an existing building that would not increase the footprint or height of the building by more than 10%, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 5:

certain scientific data collection activities (see the CEAA *Exclusion List Regulations*, Schedule I, section 5 for specifics) that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 6:

construction, installation, expansion or modification of a ramp, door or handrail to facilitate wheelchair access.

s.7:

certain temporary exhibition structure construction activities (see the CEAA *Exclusion List Regulations*, Schedule I, section 7 for specifics).

s. 8:

construction of a sidewalk, boardwalk or parking lot with 10 or less spaces, that is beside an existing building, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

Excluded Projects (continued)

- s. 9:
expansion or modification of a sidewalk, boardwalk or parking lot that would not increase its area by more than 10%, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.
- s. 10:
expansion or modification of an existing fence that would not increase its length or height by more than 10%, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.
- s. 11:
hydrant or hook-up construction, installation, expansion or modification, if it is to be part of an existing farm or municipal system of distribution, and if there is no crossing of a water body, other than in the air or above the water, involved.
- s. 12:
sign construction, installation, expansion or modification, if within 15 metres of an existing building, where no side of the sign would have an area greater than 25 square metres.
- s. 13:
radiocommunication antenna construction, installation, expansion or modification, if it would be greater than 30 metres (100 feet) from a water body, which would not likely pollute a water body, and if it is either: affixed to an existing building; less than 15 metres from an existing building; or has a footprint of less than 25 square metres.
- s. 14:
certain temporary field camps to be used for less than 200 person-days, where the construction, installation, expansion or modification would not be carried out in or within 30 metres (100 feet) of a water body, and which would not likely pollute a water body.
- s. 15:
road expansions or modifications, to occur on an existing road right of way, that would not lengthen the road, that would not widen the road by more than 15%, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.
- s. 16:
demolition of an existing building with a floor area less than 1000 square metres (10,750 square feet) that would be greater than 30 metres (100 feet) from another building, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

Excluded Projects (continued)

s. 17:

construction, installation or modification of Canada-U.S. international boundary monuments.

s. 18:

modification of an existing irrigation structure that would not likely pollute a water body.

s. 19:

construction, expansion or modification of a domestic or farm water supply well, pump house, water-tank loading facility or dugout on agricultural land that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 20:

construction, expansion or modification of an agricultural centre pivot or side roll sprinkler that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 21:

construction or installation of electrical transmission lines of 130 kV or less, other than international transmission lines, within existing rights of way, that would not likely pollute a water body, and with no support structures in or on a water body.

s. 22:

expansion or modification of existing telecommunication or electrical transmission lines, other than international lines, within existing rights of way, that would not lengthen the line by more than 10%, that would not likely pollute a water body, and with no support structures in or on a water body.

s. 23:

construction or installation of electrical transmission line switching stations associated with telecommunication or electrical transmission lines of 130 kV or less, other than international transmission lines, within existing rights of way, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

s. 24:

expansion or modification of an existing telecommunication or electrical transmission line switching station, within existing rights of way, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

Excluded Projects (continued)

s. 25:

construction, installation, expansion or modification of an international electrical transmission line of 50 kV or less, within existing rights of way, that would not extend more than 4 kilometres (2.5 miles) outside of Canada, that would not likely pollute a water body, and with no support structures in or within 30 metres (100 feet) of a water body.

s. 26 - s. 30:

certain nuclear facility-related activities (see the *CEAA Exclusion List Regulations*, Schedule I, sections 26 to 30 for specifics).

s. 31:

expansion or modification of an existing drainage structure, not connected to a water body, on forested land, that would not lengthen the structure by more than 10%, and that would not be carried out in a place in the Yukon Territory or the Northwest Territories.

s. 32:

construction, expansion, modification or demolition of a land-located fishing or land-located small pleasure-craft-related structure with a floor area less than 100 square metres (1075 square feet) and a height of less than 5 metres (16.5 feet) that would not likely pollute a water body.

s. 33:

construction, installation, expansion or modification of a fish habitat improvement structure, not involving heavy machinery.

s. 34:

modification of a wharf, other than a floating wharf, or a land-accessible breakwater, carried out at or above the structure's high water mark, not involving dredging, and that would not likely pollute a water body.

s. 35:

re-installation, expansion or modification of a floating wharf that would not increase its area by more than 10%.

s. 36:

wharf demolition not involving explosives, and that would not likely pollute a water body.

Excluded Projects (continued)

- s. 37:
expansion or modification of existing pavement or gravel areas within airport boundaries that would not increase the pavement or gravel area by more than 10%, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.
- s. 38:
modification of existing aircraft manoeuvring lights or navigation aids.
- s. 39:
construction, installation, expansion or modification of an automatic warning structure at a railway level crossing.
- s. 40:
construction, installation, expansion or modification of a railway traffic control signal structure on an existing railway right of way.
- s. 41:
modification of that part of an oil and gas pipeline, sewer or drain that crosses under a railway or a road within the railway or road right of way.
- s. 42:
modification of that part of a culvert, not connected to a water body, that crosses under a railway or a road within the railway or road right of way.
- s. 43:
modification, other than a deviation, of a railway track or bed, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.
- s. 44:
railway road crossing modifications carried out with an existing right of way that would not be subject to an order under subsection 202(1) of the *Railway Act*, that would be greater than 30 metres (100 feet) from a water body, and which would not likely pollute a water body.

Chapter 03:

Directive 03-08: Environmental Assessment under the CEEA

Annex B: LTS Screening Report

Issued: January 5, 1996

CEAA - Environmental Assessment Process
Indian and Northern Affairs Canada, LTS - SCREENING REPORT

First Nation Name and Reserve: _____
 Project Title: _____
 Region: _____
 EA Start Date: _____ Amendment: _____

Project No: _____
 EA Trigger: _____
 (Subsection of CEAA)
 If Yes, Previous Screening Date: _____

Instructions:

1. Check N/A, U, I, or S for each VEC in Part A.
2. On Page 2, provide a description of the potential significant effects.
3. Also on Page 2, identify mitigation measures that will be implemented.
4. Indicate the information sources used in Part B (including maps, plans, etc.), and indicate location/file of unattached referenced documents.
5. Indicate the screening decision recommendations by selecting one of the 4 decision codes in Part C.

NOTE: This completed form constitutes a documented record of decision and is a legal document.

PART A: SCREENING					PART B: INFORMATION SOURCES		
Valued Ecosystem Components	Summary of Effects*				Sources	Used	Attached
	N/A	U	I	S			
Ground Water					First Nations		
Surface Water					Feasibility Study		
Air Quality					Engineering Design		
Noise					Terrain Analysis Study		
Land/Soil					Environmental Study		
Flora					Site Reconnaissance		
Fauna					Published Literature		
Habitat					Consultations/Meetings		
Special Places**					Correspondence		
Health and Safety					Other Government Agencies		
Socio-economic					Other (specify)		
Aesthetics							

*Effects (N/A=not applicable; U=unknown; I=insignificant; S=Significant)
 **Special Places (Cultural, Traditional, Historical, Scientific)

Part C: Screening Decision Codes.

Choose appropriate decision code from list below, enter here _____.

- 01 Effects not likely significant and public concern does not warrant further assessment - project proceeds
- 02 Effects likely significant and cannot be justified - project does not proceed
- 03 Screening determined mediation or public panel needed
- 04 Comprehensive Study determined mediation or public panel needed

Recommended By

 Officer/First Nation/Consultant Signature Date

Approved by

 Manager Signature Date

ENVIRONMENTAL ASSESSMENT SUMMARY

Project Description (and, if considered necessary, Alternatives to the Project):

Surrounding Environment:

Environmental Concerns/Effects (Including Cumulative Impacts):

Mitigation/Follow Up Programs:

Rationale for Screening Decision:
