



Aboriginal Affairs and
Northern Development Canada

Affaires autochtones et
Développement du Nord Canada



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LAND MANAGEMENT

Presentation for: the First Nation Housing Conference

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Canada



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Introduction

- Aboriginal Affairs and Northern Development Canada (AANDC) provides land management services to more than 600 First Nations.
- This represents more than 2,800 reserves consisting of over 3 million hectares of reserve land across Canada.

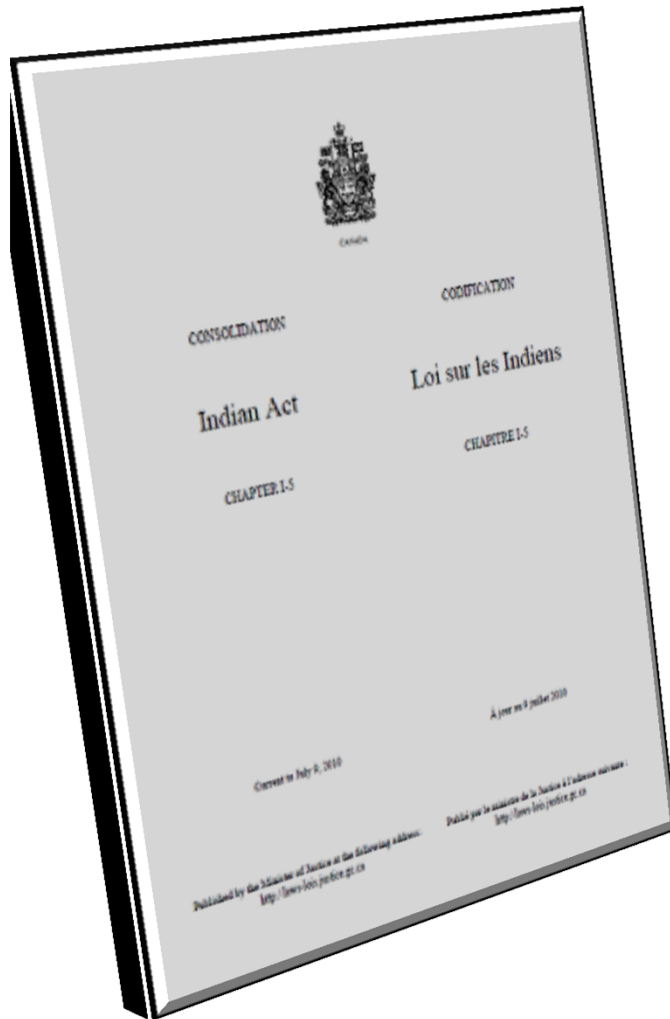


Introduction

- Land management generally includes activities related to the ownership, use and development of land for personal, community and economic purposes.
- AANDC personnel carry out provisions of the *Indian Act* and work with First Nations to:
 - Approve the allotment of reserve land to individuals
 - Prepare transactions for reserve surrenders and designations
 - Manage proposals for additions of land to reserves
 - Review and approve transfers of land between band members
 - Approve and enforce leases, licenses and permits on reserve lands



Reserve Land



Section 18 (1) Reserves to be held for the use and benefit of Indians-

Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.

Indian Act



Reserve Land

Reserve lands are different from other land:

- Legal title to reserve lands is held by the Crown rather than by individuals or organizations;
- First Nations have a recognized interest in reserve land that includes the right to exclusive use and occupation, inalienability and the communal nature of the interest;
- The land cannot be seized by legal process or be mortgaged or pledged to non-members of a First Nation; and
- The Minister must approve or grant most land transactions under the *Indian Act*.



Interest in Land

- **Collective First Nations Interest:**

- A First Nation as a whole has the right to the use and benefit of reserve land.
- The collective interest of First Nations in reserve lands cannot be transferred to another entity except by following strict statutory provisions.

- **Interest of Individual First Nations Members:**

- Individual members of a First Nation may be given allotments.
- An allotment is the right to use and occupy a parcel of reserve land. The individual allotment holder has "lawful possession" of a parcel of land and may be issued a Certificate of Possession as evidence of their right.
- An individual may transfer his or her allotment to the band or another band member, may lease the allotment to a third party, and may leave the allotment to another band member in his or her will.
- Allotments and any subsequent transfers must be approved by the Minister, as legal title to the land remains with the Crown.



Interest in Land

- Non-members of a First Nation cannot hold "lawful possession" of reserve lands.
- Under the *Indian Act*, non-members can obtain rights to use or occupy reserve land by entering into **leases** or **permits**.
- All allotments, leases, and permits under the *Indian Act* are registered in the Indian Land Registry System.



Permits

- A permit is the right to use reserve lands in a **limited, specific** way for a **defined period** of time.
- Permits are issued for a variety of purposes, including: rights of way to run power lines, for agriculture, or to remove clay, sand, gravel or wild timber.
- While a lease grants exclusive possession of a parcel of land, a permit does not. More than one permit may be issued over the same parcel of land provided the uses are compatible.
- Permits are approved by the First Nation and issued by the Minister of Aboriginal Affairs and Northern Development.



Leases

- A lease grants **exclusive possession** of a parcel of reserve lands.
- Leases are issued by the Minister on behalf of the First Nation or individuals holding Certificates of Possession, and must comply with all federal laws and First Nation by-laws.
- A lease may be subleased to another party. Subleases must follow all of the terms of the original lease (known as the head lease).
- If a First Nation would like to lease a part of the reserve lands held for its collective interest, the *Indian Act* requires the land be designated first.



Designation Defined

- Designates specific parcels of land for a **specific use or purpose** (similar to ‘zoning’).
- For the purpose of being **leased** (surface or subsurface).
- Lands **do not lose reserve status**.
- When the term of designation ends, the lands **revert back** to common band lands.
- First Nation **taxation** exemption unchanged.
- First Nation **by-laws** (including taxation) continue to apply to lands.



Land Management

- First Nations with the capacity and responsibility to manage their land are better positioned to attract economic opportunities onto reserves and to support sustainable development for members.
- AANDC introduced the Reserve Land and Environment Management Program (RLEMP) in 2009. The RLEMP enhances capacity in First Nations to manage their own lands and resources and to assume responsibility for *Indian Act* land management activities.



First Nation Land Management

- The *First Nations Land Management Act* provides certain First Nations with powers to manage their reserve land and resources under their own land codes.
- It requires that First Nations develop a land code setting out the basic rules and procedures for the new land governance regime.
- Therefore, the sections of the *Indian Act* dealing with land, resources and environment no longer apply to First Nations operating under their own land codes.
- 36 First Nations are currently operating under the Act.
- In January 2012- an additional 18 First Nations became signatories to the Framework Agreement on First Nation Land Management.



Commercial & Industrial Development

- First Nations are increasingly interested in developing complex commercial and industrial development projects on reserve, such as factories, mines or condominiums.
- Federal laws do not fully regulate these type of projects on reserve lands.
- The *First Nations Commercial and Industrial Development Act* (FNCIDA) allows the federal government to make regulations for complex commercial and industrial development projects on reserves.
- Federal regulations are only made under FNCIDA at the request of participating First Nations. The regulations are project-specific, developed in cooperation with the First Nation and the relevant province, and only apply to the particular reserve lands described in the project.



Overview

- **Introduction-** AANDC provides land management services to more than 600 First Nations, representing 2,800 reserves consisting of over 3 million hectares.
- **Reserve Land-** Legal title to reserve lands is held by the Crown for the use and benefit of First Nations.
- **Interest in Land-** A First Nation as a whole has the right to the use and benefit of reserve land. Individual members of a First Nation may be given allotments
- **Permits-** Grant the right to use reserve lands in a limited, specific way for a defined period of time.
- **Leasing and Designations-** A lease grants exclusive possession of a parcel of reserve lands. If a First Nation would like to lease a part of the reserve lands held for its collective interest, the *Indian Act* requires the land be designated first.
- **Land Management-** RLEMP enhances capacity in First Nations to manage their own lands and resources . The *First Nations Land Management Act* provides certain First Nations with powers to manage their reserve land and resources under their own land codes
- **Commercial & Industrial Development-** FNCIDA allows the federal government to make regulations for complex commercial and industrial development projects on reserves.



Website Addresses:

- Land Management:

<http://www.aadnc-aandc.gc.ca/eng/1100100034737/1100100034738>

- Land Management Manual:

http://www.collectionscanada.gc.ca/webarchives/20071122053840/http://www.aainc-inac.gc.ca/ps/lts/lmm_e.html

- Indian Lands Registry System:

<http://pse5-esd5.ainc-inac.gc.ca/ILRS/home/home.aspx>

- Indian Act

<http://laws-lois.justice.gc.ca/eng/acts/I-5/>



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