

PART I - ADDITIONS TO RESERVE

9.1 INTRODUCTION

9.1.1 Purpose

This chapter provides policy and procedural guidelines for assessing proposals for an addition to an existing reserve or the creation of a new reserve. It consolidates and supersedes the following policies relating to additions/new reserves: Additions to Reserve Policy, Chapter 9, DIAND Land Management and Procedures Manual, approved October 9, 1987; New Bands/New Reserves Policy Program Directive 20-1, Vol. 1, Chapter 3, approved December 22, 1987; New Bands/New Reserves/New Communities Policy, Indian and Inuit Affairs Procedures Program Directive 20-2, Vol 1, Part 3, Chapter 1, approved December 22, 1987.

As part of the overall analysis of proposals, both the region *and* the band should be aware of the departmental requirement that all proposed acquisitions will be subject to an environmental review under the terms of this policy (see section 9.3, "Site-Specific Considerations").

9.1.2 Definitions

- Addition to Reserve: The granting of reserve status to land which is generally contiguous (adjacent) to an existing reserve.
- Band: A group of Indians which has been granted band status by the Minister, pursuant to section 17 of the *Indian Act* (the Act).
- New Reserve: The granting of reserve status to land which is not generally contiguous to an existing reserve.
- Reserve Community: The locality in which band members reside on a reserve, comprised of physical infrastructure, permanent services and installations.
- Urban Municipality: City, town or village or other built-up area.
- Rural Municipality: Municipality which falls outside the definition of an urban municipality.

Note: Within the context of this chapter, the terms "additions proposal", "proposed addition", "addition to reserve" or "added to reserve" are used as generic references to the expansion of an existing reserve or to the creation of a new reserve, depending on the context.

9.1.3 RDG or DM Approval in Principle

Departmental officials must not take any action which could reasonably be perceived as committing the department to an addition to reserve or the creation of a new reserve without the prior written approval of either the Regional Director General or the Deputy Minister (RDG or DM Approval in Principle), as the case may be.

Subject to the following limitations, RDG's have been delegated the authority to approve in principle requests for an addition to reserve or the creation of a new reserve without prior written concurrence from the Deputy Minister. Proposals which cannot be funded from within existing, approved, regional budget allocations or which fall outside the policy justifications and criteria outlined in this chapter are beyond RDG authority and must receive DM Approval in Principle in order to proceed. While proposals affecting provinces and municipalities may generally be approved at the RDG level, see section 9.3.2 "Provincial/Municipal Considerations" for specific circumstances requiring HQ review and/or DM approval.

It should be noted that both the Yukon and Northwest Territories have few reserves and their system of land tenure for Indian communities is generally based on lands "reserved by notation". Additions to reserve proposals within these regions are subject to the terms of the policy set out in this chapter, including the policy related to delegated regional authority. However, all land acquisition proposals which are outside the scope of this chapter should continue to be submitted to Headquarters for consideration.

Note: The approval of either the RDG or the Deputy Minister constitutes a recommendation to the Minister and it is only the Governor in Council (by Order in Council) which can grant reserve status to land.

9.2 POLICY JUSTIFICATIONS FOR RESERVE STATUS

A proposal to add land to reserve or create a new reserve will be considered by the RDG or the Deputy Minister where one or more of the following policy justifications can be met. It should be noted that all policy justifications are subject to the site-specific considerations outlined in section 9.3 of this chapter.

9.2.1 Treaty Land Entitlement/Specific Claims and Other Obligations

Land will be added to a reserve, or a new reserve created, where the department recognizes a lawful obligation to do so in satisfaction of a treaty or land claim settlement, other legal obligation (e.g., court order) or where there is a specific ministerial commitment mandated and resourced on a case-by-case basis. The latter type of obligation includes a proposal for an addition to reserve or new reserve which may be approved in order to avert a land claim and/or legal action against the federal government. This type of proposal should only proceed where the Department of Justice advises there is a reasonable chance of success should a claim or court action proceed, the proposal is cost effective vis-à-vis the cost of the claim or court action and the department has obtained a release approved by the Department of Justice for potential claims and/or compensation from the band.

While the quantum of land to be added would normally be established as part of the settlement of a treaty or land claim, specific site selections are subject to review and approval on an individual basis under the terms of this policy (see section 9.3, "Site-Specific Considerations"), unless otherwise provided for in a treaty or land claims agreement.

9.2.2 Provincial Land Offerings

There may be instances where a province has an interest in offering land to a band and the band wishes to have the land added to reserve. The department may consider an additions proposal which involves the provision of land from a province to a band under the following specific circumstances.

9.2.2.1 Provincial Land Offerings - Land Claims

The department may consider adding land to reserve or creating a new reserve to facilitate a land claim settlement between a province and a claimant band. However, it should be consulted by the parties at the outset of negotiations on its position in view of the following considerations:

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- i) Reserve status should only be considered where other forms of land tenure are either unfeasible or inappropriate;
- ii) The question of offsetting claims or obtaining a release for a related claim the band may have against Canada (this question should be put to Specific Claims for review); and
- iii) The cost implications associated with the transfer of the land to reserve status, as well as those related to planned development, should normally be borne by the province.

9.2.2.2 Provincial Land Offerings - Social/Economic Purposes

The department may consider adding provincial land to reserve or creating a new reserve for social or economic purposes where the following considerations are satisfied:

- i) Existing departmental policy relating to social or economic need will be applied; and
- ii) The province has agreed to pay for the costs of infrastructure and related support once the lands are granted reserve status or the department has either agreed to cost share or pay for infrastructure and ongoing program costs (see funding requirements applicable to all proposals set out in paragraph ii), section 9.3.1).

Where a proposal is based on economic purposes, the department should encourage the province and the band to explore other arrangements, e.g., fee simple title held by a band owned corporation or the execution of resource-sharing agreements with respect to the development of provincial Crown lands.

Note: A proposal which proceeds under the above policy justifications must also meet the site-specific considerations set out in section 9.3.

9.2.3 S.35 Expropriations/Transfers

Where the site-specific considerations outlined in section 9.3 have been met, the department will normally give favourable consideration to requests to grant reserve status to lands which are provided in exchange for reserve lands expropriated or transferred under section 35 of the Act. Where the expropriation or transfer is subject to a right of reversion in favour of the Crown, RDG or DM Approval in Principle under the terms of this policy will not be required for the proposal to re-establish the land as reserve when the land ceases to be needed by the

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relevant authority. However, an Order in Council is still necessary to effect the actual return of the land to reserve status.

9.2.4 Return of Unsold Surrendered Land

9.2.4.1 Contiguous Land

Under most circumstances, a proposal to return to reserve status unsold surrendered land which is contiguous to an existing reserve will be recommended for approval. Where a proposal will result in substantially increased program costs, a transfer of title to a band corporation may be a more appropriate alternative.

9.2.4.2 Non-Contiguous Land

A proposal involving unsold surrendered land which is not contiguous to an existing reserve will be considered on a case-by-case basis and may result in one of the following:

- i) the land may be granted reserve status, provided there are no foreseen financial implications regarding program delivery; or
- ii) the land may be exchanged for Crown land adjacent to the reserve, which could then be given reserve status; or
- iii) the land may be held under some other form of land tenure, e.g., title in a band corporation.

9.2.4.3 Additional Considerations

Where a proposal proceeds under this policy justification, the following additional considerations apply:

- i) in all cases, regions must inform bands that the return of unsold surrendered land to reserve status does not commit the department to the expenditure of monies for the provision of programs and services;
- ii) where more than one parcel is to be returned to reserve status, every effort should be made to ensure that the parcels are contiguous to one another; and
- iii) the site-specific considerations set out in section 9.3 must be addressed.

Note: Reference should be made to Chapter 4 of this Manual for procedures relating to the termination of surrenders.

9.2.5 Social Need

Social need may be defined as the band's requirement for additional land in order to service the members of the band *as a community*. Under this policy justification, land may be added for community purposes such as housing, schools, churches, burial grounds, recreational areas and community buildings. It should be noted that the site-specific considerations outlined in section 9.3 must also be reviewed in determining the viability of a proposal.

The band's need for additional land must be demonstrated through the application of accepted demographic and community planning principles. In each case, the degree to which existing reserve land is unsuitable for community development or is being otherwise used must be determined. The following factors will be considered in determining band requirements:

- i) data on the future requirements of land for community purposes, based on a demographic analysis (future projections should cover at least 15 years but generally not more than 25 years);
- ii) where the proposal is based on housing requirements, a review of existing and projected housing density;
- iii) the potential of the existing reserve base to meet future land requirements, taking into account:
 - a) the topography of the reserve (size, location, soil, etc.);
 - b) existing land use;
 - c) existing land use plans or zoning by-laws *which are being actively implemented* (these should be considered in determining how much land is available for residential purposes); and
 - d) existing patterns of land holding on the reserve (where there are large areas of reserve land which are held by a few individuals and are suitable for community development purposes, an internal land reallocation may be required before the department will consider adding land to the existing reserve land base, especially where this would be the least cost option);

- iv) the possibility of exchanging an unused or unsuitable portion of the reserve for other land.

Where a land reallocation is required by the department and the band and the locatee cannot agree on a voluntary sale of the land, the Minister may, pursuant to subsection 18(2) of the *Act* and with the consent of the band council, authorize the "expropriation" of locatee land in accordance with the policy and procedures set out in Part A, Chapter 3 of this Manual.

9.2.6 Geographic Reasons

While the fact that a parcel of land is located near or contiguous to a reserve does not in itself justify an addition on geographic grounds, there may be instances where a *relatively small* parcel of land should be added to enhance the physical integrity of the reserve. Where, for example, a parcel of privately owned land located within the boundaries of a reserve becomes available, it may be purchased and added to the reserve for geographic reasons. Where this type of proposal is not opposed by other levels of government and it accords with the site-specific considerations outlined in section 9.3, the department will normally give it favourable consideration.

9.2.7 Relocations

As indicated below, relocation proposals are based on emergency situations or other circumstances which necessitate the relocation of a reserve community from its existing site. Relocations may involve the acquisition of land for the purposes of enlarging an existing reserve or creating a new reserve, or may simply require the resettlement of a community on another portion of the existing reserve. Relocation proposals which do not involve the acquisition of land should be submitted directly to the ADM of Indian Services for consideration. *In all cases consideration must be given to the long-term economic/employment potential of alternative relocation sites.*

9.2.7.1 Natural Disasters

The department will continue to provide the necessary assistance (including the provision of reserve land by adding to or creating a new reserve or by relocating a reserve community within an existing reserve) where a natural disaster (e.g., flooding) threatens the immediate safety of a community's residents, or where such a disaster has already occurred. When relocation is the most viable long-term option according to the criteria set out below, the department will assist the band in relocating the community on an urgent basis. The department should, however, seek to mitigate the threat by taking preventive or remedial action before considering relocation.

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A proposed relocation must be assessed according to the site-specific considerations outlined in section 9.3, as well as the following considerations which are unique to proposals resulting from a natural disaster:

- i) the risk involved if the community remains at the original site;
- ii) the nature and extent of future risk;
- iii) the extent of preventive or remedial action required;
- iv) the cost of undertaking preventive or remedial measures compared to the cost of relocation; and
- v) the overall benefits to the community for each option.

Where a natural disaster has occurred, the department and the band should immediately assess options available for re-establishing the community. If the possibility of a recurrence is high and on-site mitigation is limited, relocation should be seriously considered. The department will assist the band in re-establishing the community to its pre-disaster state as quickly as possible.

9.2.7.2 Restricted Reserve Development

The department may consider proposals involving the relocation of a reserve community (by adding to or creating a new reserve or by relocating a reserve community within an existing reserve) where, in addition to satisfying the site-specific considerations outlined in section 9.3, the following criteria are met:

- i) the normal physical development at the existing reserve location is restricted due to adverse topographic or soil conditions, or results from other exceptional circumstances related to health and safety; and
- ii) the development of the community at the proposed reserve site is *the most cost effective option*.

The cost effectiveness of a proposal should be determined by comparing a detailed analysis of the costs associated with relocating the community to the costs of meeting the community's needs at the existing reserve. A land exchange option should be considered in all proposals and a net increase in the reserve land base should only be considered where a specific rationale to justify the increase is provided and approved.

9.2.8 Economic Reasons

Proposals to add land to reserve for economic reasons will not be approved if the economic benefit could be substantially achieved under another form of land tenure (e.g., non-reserve land owned by a band corporation). The tax advantage associated with reserve status is not in itself considered to be sufficient justification for reserve status under this heading. Where a proposal under this heading is justified, however, the site-specific considerations listed under section 9.3 must also be addressed.

9.2.9 Landless Bands/Landless Indian Communities

The department will consider requests to provide a reserve land base for landless bands or landless Indian communities on a case-by-case basis in accordance with the criteria outlined below in sections 9.2.9.1 and 9.2.9.2.

Note: As a review of the circumstances leading to the expansion or creation of a reserve may be required in the future, the decision making process must be thoroughly documented.

9.2.9.1 Landless Bands

In addition to satisfying the site-specific considerations which are set out below in section 9.3, a request for a reserve land base under this policy justification must meet the following criteria:

- i) the request should originate (by way of BCR) from *an officially recognized band* which does not have a land base (the request may also form part of a proposal to create a new band under Chapter 11, in which case the request will originate from a community which will only become an officially recognized band once the Ministerial Order creating the new band has been signed);
- ii) the requesting band must have an *existing, viable and ongoing community* located at the site of the proposed reserve *or* it must be able to justify a relocation from an *existing, viable and ongoing community* to a new site under the relocation provisions of this policy (long-term cost to the department will be a major factor under a relocation justification - see section 9.2.7);
- iii) where appropriate, a provincial contribution to the necessary capital and ongoing O & M should be sought and negotiated by the band; and

- iv) all other options must have been diligently pursued and eliminated, e.g., the provision of land from an existing reserve which has been set aside for another band.

9.2.9.2 Landless Indian Communities

Proposals under this heading are divided into two categories: those involving a community which is contiguous to an existing reserve and those where the community is physically separate from an existing reserve. Each proposal will be dealt with separately as follows.

9.2.9.2.1 Contiguous Communities

The department will consider proposals for an addition to reserve in order to facilitate reserve residence for a landless community composed of mainly status Indians living off, but contiguous to, an existing reserve. In addition to satisfying the site-specific considerations set out below in section 9.3, the proposal must meet the following criteria:

- i) the proposal must originate (by way of BCR) from the band for whose benefit the existing reserve has been set aside;
- ii) most of the residents of the off-reserve community must be status Indians comprising an *existing, viable and ongoing community* located at the site of the proposed reserve;
- iii) there must be documented evidence that a majority of the residents of the off-reserve community support the proposal (such support may be indicated in a manner satisfactory to the members of the community in accordance with community customs);
- iv) where appropriate, a provincial contribution to the necessary capital and ongoing O & M should be sought and negotiated by the band; and
- v) all other options must have been diligently pursued and eliminated, e.g., the relocation of the contiguous community to the existing reserve.

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Note: It is recommended that the members of the off-reserve community undertake membership in the band for whose benefit the existing reserve has been set aside by the time the land is added to reserve. Otherwise, community residents should be advised that they will be treated as third parties and that their interests will be addressed accordingly.

9.2.9.2.1 Non-Contiguous Communities

The department will consider proposals to provide reserve land for a landless community which is physically separate from an existing reserve and which is composed mainly of status Indians who want to become affiliated with an existing band. This type of community generally does not wish to form a new band but does want security of tenure and to enjoy the advantages of reserve residency, e.g., taxation exemptions, access to federal programs and services and the extension of band administration and by-laws to the community.

In addition to satisfying the site-specific considerations set out below in section 9.3, the proposal must meet the following criteria:

- i) the proposal must originate (by way of BCR) from the band for whose benefit the existing reserve has been set aside;
- ii) most of the residents of the off-reserve community must be status Indians comprising an *existing, viable and ongoing community* located at the site of the proposed reserve;
- iii) there must be documented evidence that a majority of the residents of the off-reserve community support the proposal (such support may be indicated in a manner satisfactory to the members of the community in accordance with community customs);
- iv) where appropriate, a provincial contribution to the necessary capital and ongoing O & M should be sought and negotiated by the band; and
- v) all other options must have been diligently pursued and eliminated, e.g., a release of land from the band to which most of the members of the off-reserve community belong.

Note: It is recommended that those community residents who are not members of the existing band undertake to obtain band membership by the time the reserve is created. Otherwise, community residents should be advised that they will be treated as third parties and that their interests will be addressed accordingly.

9.3 SITE-SPECIFIC CONSIDERATIONS

9.3.1 General Considerations

A proposal for an addition to reserve or the creation of a new reserve which satisfies one (or more) of the above policy justifications must also be considered in light of the following factors.

- i) **An environmental review in accordance with Part II of this chapter must be completed before the land will be acquired for the purpose of adding it to an existing reserve or creating a new reserve (see section 9.6.6.1 for timing requirements). Where the land is already federal Crown land, an environmental review must be done before the land is granted reserve status. Regions should advise bands accordingly.**
- ii) **All short-term and long-term financial implications (e.g., for environmental site investigation, land acquisition, appraisals, surveys, capital, band support, operation and maintenance and other program requirements) and the source of all necessary funds should be identified from within existing, approved, regional budget allocations. Proposals which cannot be funded from within a region's approved budget may, on an exceptional basis, be submitted to Headquarters for consideration. However, proposals which require an increase to the department's A-base will generally not be approved, except in cases of claims settlements or treaty/legal obligations, or where the proposal has been specifically mandated by the Minister and resourced on a case-by-case basis. Accordingly, the region must confirm the source of any additional funding that may be required.**

It should be noted that an estimate of the costs of a site investigation (which may be required following step 3 of the environmental review under section 9.6 of this chapter), should be included as part of the submission to the RDG or DM, where the department has determined it will pay for such costs. As an estimate of the costs of a required clean-up is normally available following a site investigation, and a site investigation can only be undertaken once RDG or DM approval has

been received, it normally does not form part of the submission to the RDG or the DM (see sections 9.6.1.1 and 9.6.6.1 for details).

- iii) The proposal must satisfy a cost-effectiveness test by showing that the associated costs are reasonable in terms of the number of people who will benefit and that it is cost-effective in relation to the following options:
- a) the availability of suitable surplus federal Crown lands from the Department of Public Works;
 - b) an exchange of an unused or unsuitable portion of the reserve for other suitable land (e.g., provincial Crown land) should be considered;
 - c) the acquisition of provincial Crown land and a provincial contribution toward the capital and ongoing costs associated with the proposal (such contribution to be sought and negotiated by the band);
 - d) the acquisition of private land;
 - e) the use of other reserves set aside for the band;
 - f) title to land held by a band corporation or the band's ability to contribute to a land purchase by the department; or
 - g) the acquisition of land contiguous to the existing reserve.
- iv) Title to the land being acquired should be as free as possible from land use restrictions, restrictive covenants, reversionary rights and third party interests. If necessary, a limited degree of encumbrance may be acceptable, provided that it does not affect the proposed land use. Additionally, any third party interests on the land to be acquired must be specifically identified and mechanisms for dealing with them must be determined *prior* to the proposed acquisition by the department.
- v) Where necessary, public access to the land, as well as access to public utilities, must be arranged.
- vi) The implications of the proposal on other federal government departments must be considered and confirmation of the capacity of such other departments to assume any additional costs must be received.

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- vii) Every effort should be made to ensure that the land to be acquired forms contiguous parcels.
- viii) Every effort should be made to ensure that parcel boundaries follow natural water boundaries.
- ix) If title to mines and minerals is not included in the land to be added to reserve, ensure that the band is aware of the exclusion.
- x) The long-term business, resource, employment and taxation potential of the proposed reserve site(s) must be considered in relation to its impact on the economic self-reliance of the band.

9.3.2 Provincial/Municipal Considerations

9.3.2.1 Provincial Considerations

In all cases, consultation in writing with the relevant province must be undertaken with respect to the potential implications of the proposal for provincial programs and services. Such consultation should culminate in written correspondence setting out the issues discussed and whether/how they were addressed. If the region wishes to proceed with a proposal notwithstanding the fact that provincial concerns have not been resolved, the proposal should be forwarded to the ADM of LRT for review, along with the region's recommendations.

9.3.2.2 Municipal Considerations

Where land to be granted reserve status is located within the boundaries of a municipality (either rural or urban, see definitions under section 9.1.2), the municipality must be informed in writing of the proposal and asked to identify its views and concerns (if any) in a written response. Normally, the issues which the region can expect to be raised are:

- i) measures to compensate for the municipality's tax loss once the land attains reserve status;
- ii) arrangements for the provision of, and payment for, municipal services;
- iii) by-law application and enforcement on the reserve (band by-laws which relate to activities which may affect neighbouring municipal lands or residents should be consistent with the municipality's by-laws); and

- iv) a joint consultative process for matters of mutual concern (such as land use planning) and a dispute resolution mechanism, where possible.

Any reasonable concerns of the municipality (rural or urban) with respect to the above-noted issues must be addressed, e.g., by means of a letter from either the mayor or city manager or by way of a municipal resolution or, where requested by the municipality, through a written agreement between the municipality and the band (the department will not normally be a party to such agreements). Prior to the execution of a band-municipality agreement by the parties and before further processing of a proposal by the region, the agreement should be reviewed by the Department of Justice, the HQ Additions Committee and the ADM of Lands, Revenues and Trusts (LRT).

A reserve will not normally be established where a municipality has requested a formalized agreement with a band but an agreement has not been reached. However, the DM may choose to proceed with a proposal in the following circumstances:

- a) the Department of Justice advises there is a legal obligation to proceed; or
- b) the band is prepared to enter into an agreement on the concerns raised by the municipality, the municipality is unwilling to respond in good faith and any of the following conditions exist:
 - i) the proposed reserve does not adjoin an urbanized/developed area and is not located in an area which is covered by an approved urban use development plan; or
 - ii) the land has traditionally and up to the present time been used for Indian purposes, or was once part of an Indian reserve which was surrendered and remains unsold; or
 - iii) the proposal involves an addition to an existing reserve, as opposed to the creation of a new one.

9.4 PROCEDURES

9.4.1 General Considerations

The procedures for acquiring land for an addition to a reserve or a new reserve vary slightly depending on whether the land to be acquired is federal land under DIAND's control, federal land under the control of some other department, provincial Crown land or land which is privately owned.

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Generally, the following steps apply to all acquisitions where the land is being added to reserve.

As previously noted in section 9.1.3, regional officials must not take any action which would indicate departmental concurrence in a proposal for an addition to reserve or the creation of a new reserve without prior Approval in Principle from the RDG or the DM, as the case may be.

9.4.2 Step 1: BCR Request

A band council resolution (BCR) is required to formally initiate the process of adding land to reserve or creating a new reserve. Where a proposal is based on the Landless Indian Communities policy justification, evidence that a majority of the off-reserve community supports the proposal must also be submitted (see section 9.2.9.2).

Note: At the outset of a proposal the region should advise the band of the departmental requirement that every additions proposal will be subject to an environmental review under the terms of this policy. It is also advisable that the region commence the environmental review as soon as possible following receipt of the band's BCR in order to prevent undue delays in processing a proposal (see Part II of this chapter, "Environmental Considerations").

9.4.3 Step 2: Regional Analysis and Recommendation

District and regional officials, including members of the Regional Additions Committee (comprising representatives from LRT, Indian Services, Finance and other programs as required), must thoroughly analyze the proposal in light of the policy justifications and site-specific considerations outlined above. For purposes of such analysis and for briefing the RDG or the DM, the Committee shall utilize the Additions Proposal Checklist (attached as Appendix A to this chapter). All program representatives on the Committee should provide input to the Checklist in view of the implications of the proposal for their respective programs.

The Committee will then forward its report and recommendation to the RDG for consideration. A recommendation from the RDG to the Assistant Deputy Minister (ADM) of LRT must be prepared for proposals which are outside the authority delegated to the region or for other proposals, which, in the opinion of the RDG, should be reviewed by the DM.

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9.4.4 Step 3: HQ Review

Where DM approval of a proposal is sought, the region's report and recommendations will be forwarded by the ADM of LRT to the HQ Additions Committee. The Committee will review the region's submissions in light of the policy justifications and site-specific considerations set out above. It will then prepare a recommendation from the ADM's of LRT and Indian Services to the DM.

9.4.5 Step 4: RDG or DM Approval in Principle

At this stage, a proposal will be either rejected or approved in principle by the RDG or the DM. Where an approval is subject to conditions (including any related to environmental concerns or issues, eg., where clean-up of a contaminated site may be required), these conditions must be satisfied before the department will proceed with the acquisition. Where the region foresees serious difficulty in implementing any conditions imposed by the DM, it should request a revised mandate from the DM (via the ADM of LRT) before negotiations are undertaken.

9.4.6 Step 5: Conditional Agreement

Once RDG or DM Approval in Principle has been received, the band, with the assistance of departmental officials and the Department of Justice, may proceed to negotiate a conditional agreement with the landowner to acquire the land. The agreement must include any relevant conditions attached to the Approval in Principle, as well as those relevant terms and conditions related to the environment in accordance with Part II and Appendix C of this chapter.

Where privately owned land is involved, the Department of Justice must be notified so that it can appoint an agent to search title to the property. Any necessary appraisals must be carried out and a survey of the property may also be required (these expenses to be borne by the party paying for the costs of acquiring the land).

Program officials should be aware of the requirements of the *Treasury Board Real Property Management Policy Manual*, and the *Federal Real Property Act* and its regulations governing acquisitions section 8.2, Chapter 8 of this Manual. Due to the time involved in obtaining Treasury Board approval, it may be necessary to negotiate an option to purchase if the subject land is privately owned.

9.4.7 Step 6: Treasury Board Approval

Where the price of the land to be acquired exceeds \$75,000, Treasury Board approval must be obtained before the acquisition can proceed (this requirement and others are more fully explained in section 8.2, Chapter 8 of this Manual).

Note: Proposed acquisitions involving other federal interests or urban land no longer require the approval of the Treasury Board Advisory Committee on Federal Land Management (TBAC/FLM), as the TBAC/FLM has been disbanded as of March 1991.

9.4.8 Step 7: Conclude Acquisition

Upon fulfilment of any conditions attached to RDG or DM approval, including those related to environmental concerns or issues, and once the proposed acquisition has received any necessary Treasury Board approvals, the region may proceed to acquire title to the property and carry out any required surveys.

9.4.9 Step 8: Order In Council

Once the acquisition and surveying is complete, Headquarters will prepare a submission to the Governor in Council to set the land apart as reserve.

PART II - ENVIRONMENTAL CONSIDERATIONS

9.5 INTRODUCTION

In response to growing public awareness and concern over environmental issues, the federal government has undertaken significant responsibility in the environmental field with the enactment of the *Canadian Environmental Protection Act (CEPA)*, the issuance of the *Environmental Assessment and Review Process Guidelines Order, 1984 (EARP)* and the development of the Green Plan. Accordingly, the department must ensure that its transactions are conducted in accordance with applicable environmental laws, regulations and policies.

9.5.1 Purpose

There are real and substantial environmental hazards associated with the land acquisition process. Among these hazards are buried wastes, controlled substances, underground storage tanks, contaminated soil, surface and groundwater pollution, process effluent discharge, waste accumulation, soil gas accumulation and toxic spills. Therefore, land cannot be acquired and added to reserve "blindly", that is, before its environmental status has been assessed.

However, *EARP* is designed to address the *potential, future* adverse impacts of proposals upon the environment. It cannot therefore be utilized to determine any impacts which present or past activities have inflicted upon the environment and which may have *actually* contaminated all or part of the land to be acquired and added to reserve. The environmental review procedures set out below are intended to fill this gap.

The general principle underlying the environmental review is that before land is acquired for the purpose of adding it to reserve, the department must take all reasonable precautions to ensure that reserve populations are not exposed to health risks due to land contamination and that the department does not inadvertently assume potential liabilities. Similarly, where the land is already federal Crown land, an environmental review must be done before the land is granted reserve status. Should the department acquire land without having conducted an environmental review of an additions proposal it may be required under CEPA to clean up a site which is later found to be contaminated. Additionally, the Crown may ultimately be liable to third parties for harm or damage resulting from the spread of contaminants to adjoining properties. Therefore, while not all additions proposals will have attendant environmental problems, they must all be subject to an

environmental review and those which can be described as environmentally sensitive should be handled with particular care.

Environmentally sensitive proposals involve lands that have, or have had, some commercial or industrial use which normally adversely affects the environment. Obvious examples of such land use include pulp and paper mills, mining operations, electroplating operations, metal finishing plants, metal smelting, chemical or petroleum product processing/storage operations, timber treatment operations, railwayyards, industrial sites, military sites and power-generating stations. Agricultural land which has been treated with pesticides, herbicides and other chemicals may also fall under this category.

While the environmental review process described below may be time consuming and may, in limited cases, be costly for the department, these costs are minimal in comparison to the potential health risks which may be borne by reserve populations and to the costs of clean-up which may have to be paid by the department if contaminated lands are unknowingly acquired and added to reserve.

See Appendix C to this chapter for list of federal/provincial environmental statutes, regulations and guidelines which are relevant to property transfers. These should be reviewed for every acquisition.

9.6 ENVIRONMENTAL REVIEW

In view of the above, it must be stressed that for each proposed addition to reserve a clear determination of any attendant environmental issues and liabilities must be made utilizing the following environmental review procedures before the department will proceed with the acquisition.

9.6.1 Procedures - Overview

- Step 1: Obtain general information on site history and land use (past and present) from current owner (e.g., provincial or municipal government, private owner, band).
- Step 2: Conduct a preliminary site visit.
- Step 3: Conduct searches of relevant public records and government authorities.
- Step 4: Draft appropriate legal clauses in land acquisition agreements to identify and allocate potential liability.

Step 5: Assess the environmental history and current land use, i.e., determine whether a site investigation is necessary and recommend whether to proceed with or terminate the transaction.

Step 6: Assess the environmental status of the land, i.e., determine whether clean-up is necessary and recommend whether to proceed with or terminate the transaction.

9.6.1.1 Timing Requirements

Not all six steps must be undertaken for every transaction. Steps 1 - 3 should be undertaken at the *outset* of a proposal (to avoid processing delays) and information gathered from these procedures should be submitted as part of the submission to the RDG or DM. However, steps 5 and 6 will only be undertaken where required (based on information gathered from steps 1 - 3), and should only be implemented once RDG or DM Approval in Principle has been obtained. Similarly, step 4, which involves ensuring that the appropriate legal clauses have been inserted in the land acquisition documents, should only be undertaken during the negotiation process following RDG or DM approval. The steps, which are explained in more detail below, must be well documented and the documentation kept on file.

Where steps 1 - 3 do not indicate that the land to be acquired is either actually, likely or suspected to be contaminated, there is no further need to continue with the balance of the environmental review procedures. There may, however, be instances where steps 1 - 3 reveal only minor, insignificant contamination, e.g., a domestic garbage dump is located on the site of the proposed reserve or standard pesticide/herbicide use has been identified as part of normal farming practices. In cases where the lands officer is satisfied that the problem is localized and may be easily and inexpensively cleaned up, or where the contamination is insignificant and consistent with the current and proposed use of the land, a site investigation may not be necessary (see section 9.6.7.1, paragraph 2, for specific requirements). Where, however, even a minor clean-up is contemplated, the estimated costs of the clean-up should be included in the submission to the RDG or the DM.

Similarly, if steps 1 - 3 indicate that a site investigation under step 5 is required and a determination has been made that the department should pay for the attendant costs (see section 9.6.6 for details), a consultant's estimate of the costs of the site investigation should be included as part of the submission to the RDG or the DM (see section 9.3.1, paragraph ii). As a site investigation can only be undertaken once RDG or DM approval has been received and an estimate of clean-up costs will in such circumstances only be

forthcoming following a site investigation, clean-up costs will normally not form part of the submission to the RDG or the DM.

Due to the fact that an Agreement of Purchase and Sale or Agreement in Principle, as the case may be, is not negotiated until either RDG or DM approval has been obtained, the region should seek the vendor's co-operation before proceeding to step 1, i.e., the vendor should agree, preferably in writing, to provide requested information within its control, permission for departmental officials to access government information (where required by law) and physical access to the property (thereby enabling the region to successfully complete steps 1 - 3). See Appendix E to this chapter for precedent clauses which may assist the lands officer in making requests for co-operation.

9.6.2 Step 1: Land Use History

The first step of the environmental review is to obtain the information outlined below on existing *and* previous land use. It is important not to base an assessment of the potential risk for contamination solely on current property use. While the vendor will generally be the primary source of information, the band council, local residents and provincial, regional, municipal or township authorities can also provide valuable data on the following:

- a) name and description of business;
- b) legal description of property and lot size;
- c) description of all structures which are or once were on the land, (e.g., buildings, equipment, storage facilities, fuel tanks, etc.);
- d) description of all present and former land uses, including land use by third parties (e.g., lessees); and
- e) existing maps, surveys and/or aerial photos indicating buildings, facilities, equipment, man-made features, storage facilities and any natural features.

The band council must always be questioned on past and present land uses and its concerns, if any, should be identified. Moreover, as the department must disclose the information it obtains from all sources concerning the environmental status of the proposed addition (see sections 9.6.7.1 and 9.9), records of correspondence between the band council and the department must be retained on file.

See Environmental Review Checklist, Part I, attached as Appendix D to this chapter.

9.6.3 Step 2: Preliminary Site Visit

Even where there are no indications of contamination based on the land use history, the site visit is an important part of the environmental review as it may identify visible (although undocumented) signs of contamination. A tour of the property and facilities should include a surveillance of the adjacent land use. Additionally, photographs of the land should be taken to further document current site conditions. Someone from the regional/district office of DIAND or a band member, who is familiar with the subject property, would be a good candidate for conducting the site visit.

Typical signs of contamination which should be identified during the site visit are soil discolouration, soil depressions/mounds and dead or decaying trees, plants and grass. Surface water, such as ponds, streams, creeks, ditches, rivers, and lakes should also be noted, along with any significant colour, odour and other signs of water pollution, e.g., dead aquatic life. Information obtained from the land use history should be used to assist the person conducting the site visit, e.g., the site history may alert the person to look for buried waste drums which may be visible as mounds on the surface of the property or to further investigate a pile of innocuous looking debris which may be highly contaminated.

Various means of viewing the site should be adopted where appropriate, i.e., it will generally be necessary to use a vehicle to cover the territory involved and a means of air transportation may be required in some instances. Spot checks may also be appropriate in cases involving huge tracts of land, possibly based on aerial maps and/or photographs. The important thing is that a *reasonable viewing* of the property is undertaken. The particular form this will take will depend on the circumstances of each case.

The person who visits the site must document the results of the site visit (by completing and signing the Site Visit Checklist attached as Appendix E to this chapter).

9.6.4 Step 3: Searches of Public Authorities and Government Records

The third step of the process involves conducting the following searches of federal, provincial or local authorities:

- a) routine real estate/title and execution searches (e.g., can reveal ownership by entity known to have a "bad environmental reputation");
- b) business/company searches (e.g., they will confirm the legal name of a corporate entity under which government records may be accurately searched); and

- c) searches of government authorities, such as the federal and provincial environment ministries, the federal Department of Transport and the municipal works and fire departments of the relevant municipality (e.g., the federal and provincial environment ministries maintain records of reported spills as well as all orders, approvals and prosecutions issued under their legislation; the federal Department of Transport has records of who transports/stores dangerous goods; municipal works departments keep records of all sewer discharge violations and local fire departments maintain reports of spills and leaks of hazardous materials).

See Appendix F to this chapter for further detail and sample letter of inquiry.

Generally, local or district environment ministry staff will respond to inquiries concerning outstanding complaints, orders and prosecutions, although permission to obtain access to this information may be required in certain jurisdictions (e.g., the province of Alberta requires permission from the vendor before such information will be released). See Appendix E for relevant sample clauses.

9.6.5 Step 4: Contractual Provisions

The fourth step involves ensuring that the appropriate legal clauses have been included in the relevant land acquisition documentation (i.e., a conditional Agreement of Purchase and Sale to be negotiated following RDG or DM approval of a proposed acquisition), in order to address the following:

- a) access to vendor's records and reports concerning the land, both in the vendor's possession and with third parties (e.g., government authorities);
- b) access to vendor's property by the department or the band for the purpose of conducting a site investigation;
- c) assumption of site investigation and clean-up costs, i.e., the department, the vendor or the band will pay, depending on the circumstances outlined in sections 9.6.6.1 and 9.6.7.1;
- d) the right to terminate the transaction at the sole discretion of the Minister in all cases, except where the department has a prior legal or other obligation to acquire a particular tract of land;
- e) vendor's representations and warranties concerning the environmental status of the land;

- f) allocation of liability as between the vendor and the department; and
- g) release of liability from the band (to be obtained in limited circumstances only, see sections 9.6.7.1 and 9.7).

As stated above, in the case of land acquisitions from private vendors, it is suggested that the clauses outlined in Appendix E be included (with appropriate modifications to suit individual circumstances), in the agreement of purchase and sale. However, when land is being transferred from a province, the only formal documents involved are Orders in Council. An Agreement in Principle or similar documentation should therefore be drafted with appropriate changes to the clauses in order to implement the suggested provisions (e.g., Purchaser = Minister; terminate = withdraw, etc.).

9.6.6 Step 5: Preliminary Assessment/Site Investigation

The fifth step, which will only be followed where the criteria set out below under section 9.6.6.1 have been met, involves the scientific testing and analysis of the property in order to determine:

- a) whether the site is contaminated and, if so, the type and extent of the contamination (including the type and extent of contamination impacting on neighbouring property);
- b) the need for clean-up and the extent of any remedial action required; and
- c) where clean-up is required, the estimated cost of cleaning up the site.

At this stage, a technical consultant should be hired to inspect the property and facilities. The technology utilized by the consultant will be determined by the site-specific data gathered in steps 1 - 3 above, as well as by an initial inspection which is normally conducted by the consultant. A fairly standard site investigation will involve the collection and analysis of surface and subsurface samples, e.g., soil and water samples, ground and surface water in and about storage/disposal sites, fuel tanks and points of effluent discharge.

The consultant's report should be prepared detailing the results of the investigation and addressing the issues of clean-up and costs thereof. As the consultant's reporting obligation is to his/her client, where the vendor hires the consultant a clause should be inserted in the relevant land transaction documentation stating that both the department and the relevant band will receive a copy of the report. Similarly, where the band hires the consultant, the department must ensure that it receives a copy of the report. Where the

department has not hired the consultant, the lands officer should, in writing, request a copy of the report from the consultant, as this may give the department legal recourse against the consultant in the event environmental hazards are later discovered which were not disclosed in the report.

See Appendix E for sample clauses.

The completed environmental report should contain the following information:

- a) a detailed summary, with maps and charts, of all findings, including descriptions of the property, facilities, procedures and methodologies used;
- b) identification of type, source and extent of any contamination on site;
- c) identification of any actual or projected health and/or environmental risks associated with contamination on site; and
- d) where appropriate, a plan of remedial action, including options, estimated cost of clean-up and recommendations.

9.6.6.1 Criteria

As the site investigation process can be costly, time-consuming and complex, it should only be implemented where steps 1 - 3 identify:

- a) *specific and potentially significant environmental problems associated with the site*, e.g., the site history, the preliminary site visit, records of toxic spills or government regulatory action reveal that a problem may or does exist; or
- b) *likely or suspected significant contamination*, e.g., the land has been used for environmentally sensitive activities.

Note: It should be stressed that where potentially significant contamination is only suspected, a site investigation must be conducted.

There may be cases where insignificant is identified during the first three steps of the environmental review and, depending on the nature of the contamination (e.g., insignificant contamination caused by the use of herbicides and pesticides during the course of normal farming practices, a small number of car bodies and standard miscellaneous domestic waste, etc.) further investigation may not be necessary and the proposal may proceed.

However, each case must be carefully examined on a case-by-case basis in order to determine both the nature and the degree of contamination once any contamination has been identified.

See Environmental Review Checklist, Part IV, attached as Appendix D to this chapter for possible recommendations.

Even where the need for a site investigation has been established, the site investigation will only be conducted if one of the following criteria have been met:

- i) the vendor or the band has agreed to pay for the cost of the site investigation; or
- ii) the department has a legal obligation to acquire the specific property or there is a specific ministerial obligation mandated and resourced on a case-by-case basis, or the department is otherwise willing to proceed with the acquisition and is willing to either contribute to or to assume the cost of the site investigation.

Where the criteria outlined above have not been satisfied, the department should exercise its option to terminate the Agreement or withdraw from the transaction, as the case may be. Accordingly, the option to terminate/withdraw *must* be one of the provisions of the land acquisition documents (see section 9.6.2 and Appendix E for sample clauses).

9.6.7 Step 6: Final Assessment/Monitoring Clean-Up

9.6.7.1 Final Assessment

The consultant's report, which is produced during step 5, will identify the type and extent of any contamination on the property to be acquired, as well as the need for and projected cost of clean-up. Based on a review of the report, the lands officer must choose one of the following:

1. Where there is no contamination the department may proceed with the transaction.
2. Where insignificant contamination has been identified (actual or projected health and/or environmental risks are minimal) the land may be purchased on an "as is" basis, *as long as the band is fully apprised of the condition of the property and has, by BCR, approved the addition to reserve on an "as is" basis and released the department from liability for any existing and future environmental claims which*

may arise in connection with the current environmental status of the subject property, as determined as of the date the land is added to reserve or a new reserve is created.

Note: Although clean-up will not always be required in cases of "insignificant contamination", there may be instances where the band wishes to remediate the land using a relatively low-cost method, e.g., the band can remove an offending domestic garbage dump by way of a bulldozer. However, even where a minor clean-up is involved, the lands officer must address the issues of who is expected to assume responsibility and costs before proceeding further with the proposal.

3. Where significant contamination exists and clean-up is required, the department must exercise its option to terminate the agreement unless:

- i) the department has a prior legal obligation to acquire the specific property concerned, there is a specific ministerial obligation mandated and resourced on a case-by-case basis, or the department is otherwise willing to either contribute to or to assume the cost of clean-up;
- ii) the vendor has agreed to assume the cost of clean-up; or
- iii) *the band is fully apprised of the condition of the property and has, by way of a band vote, approved the addition to reserve on an "as is" basis, agreed to pay for clean-up and released the department from liability for existing and future environmental claims which may arise in connection with the current environmental status of the subject property, as determined as of the date the land is added to reserve or a new reserve is created.*

Where significant contamination is indicated, the proposal may in *limited cases* proceed without a clean-up if the existing use and environmental status of the land is consistent with the proposed use of the land by the band. However, the region cannot proceed without the advice of headquarters Lands Advisory and Legal Services, as there are potentially increased liabilities associated with this type of proposal which must be carefully considered. In all instances where the band is accepting the land on an "as is" basis, it is essential that the band is fully apprised of the condition of the property, that the band receives a copy of the environmental review checklists, other pertinent correspondence or documentation and any consultant's report which may have been prepared. The band council must also be advised of any concerns identified in the course of the environmental review and where relevant,

must be advised that where the proposed use changes, the band should consider the findings of the review. As the department must ensure that accurate information is conveyed to the band, it may in some cases be advisable for the lands officer to obtain a second opinion on the environmental status of the land (i.e., a review of the consultant's report by an environmental expert may be sufficient).

9.6.7.2 Monitoring Clean-Up

Once it has been determined that a clean-up of land is required, the lands officer must ensure that the property is given a "clean bill of health" *before* the land is acquired by the department. Accordingly, where either the vendor or the band undertakes the clean-up, the department must obtain satisfactory evidence that a clean-up has been completed. The responsible party should confirm the clean-up by letter to the department, accompanied by a consultant's report detailing the procedures used and the final results of the clean-up operation. Where the department is responsible for clean-up, the lands officer must ensure that a satisfactory clean-up has been completed. In all cases, the clean-up should be well documented and the documentation retained on file.

See Appendix D for Environmental Review Checklist which will summarize the information gathered from steps 1 - 3 and 5 - 6. Also, see Appendix E for sample clause addressing the question of clean-up.

9.7 TREATY LAND ENTITLEMENT/SPECIFIC CLAIMS

Proposed acquisitions to fulfil specific claims and treaty land entitlement (TLE) obligations are to be treated in the same manner as any other type of acquisition, and the procedures outlined in section 9.6 apply equally to specific claims/TLE land. Accordingly, where a band is acquiring land with a view to transferring the land to Canada for addition to reserve, an environmental review in accordance with this policy should be conducted *prior to the land purchase* (and not when the land is to be transferred to Canada).

Note: Where appropriate, a release should be obtained from the band relieving the department from liability for existing and future environmental claims which may arise in connection with the current environmental status of the subject property, as determined as of the date the land is added to reserve or a new reserve is created.

9.8 ACQUISITIONS OF PRIVATE VS PUBLIC LAND

Where the department is acquiring privately owned land, the allocation of environmental costs will normally be determined during negotiations over the purchase price. For example, the vendor may lower the price if the department agrees to assume responsibility for any required site investigation and/or clean-up. Alternatively, the vendor may undertake to hire consultants and present the department with an environmental report and a "clean bill of health", in which case there would be no abatement of purchase price.

On the other hand, where land is provincially held and is usually transferred for a nominal cost, there is little room for negotiation of the respective parties' liabilities. It should be stressed that the department will not agree to assume environmental investigation and clean-up costs simply because a province refuses to do so. In these circumstances, the question of who bears the costs will primarily depend on whether the department has an obligation to acquire a specific parcel of land, the projected costs involved and, possibly, the band's interest in acquiring the land concerned.

Experience to date suggests that the provinces are unwilling to guarantee the environmental status of land and to assume responsibility for site investigation or clean-up costs. A province will typically advise that there are no *known* environmental problems associated with the land. It should be emphasized that departmental officials cannot safely rely on this type of statement and that they must inquire behind the statement, i.e.: Did the province make diligent inquiries concerning the environmental condition of the land? Is the province's position reasonable in light of the information that was available to it? In any case, the position of the province is simply one factor in the overall environmental review process and cannot be the sole basis for recommending that a transaction proceed.

9.9 RELEASE OF LIABILITY

A release of liability by a band should not be used to replace the environmental review procedures outlined above but should only be utilized under the circumstances outlined in sections 9.6.7.1 and 9.7.

Ultimately, the following precautions are more effective than releases in avoiding future liability:

1. Ensure that departmental officials exercise due diligence and reasonable care by undertaking an environmental review, the scope of which will depend on the circumstances in each case.

2. Ensure that the band council receives a copy of the environmental review checklists, other pertinent correspondence or documentation and any consultant's report(s) which may have been prepared. The band council must also be advised of any concerns arising out of the environmental review. This will assist the band in making an informed decision as to whether to accept or reject the land as an addition or new reserve and is particularly important where the band may be interested in accepting the land on an "as is" basis.
3. Where required, ensure that the band council passes a BCR or conducts a band vote accepting the environmental status of the land prior to the Crown taking title to, or assuming the administration and control of, the land (see sections 9.6.7.1 and 9.7).
4. Ensure that the band is encouraged to seek independent professional advice, e.g., legal, environmental, etc., particularly where the band may be interested in accepting the land on an "as is" basis.

ADDITIONS PROPOSAL CHECKLIST

A. PROPOSAL:

New Reserve _____
 Reserve Addition _____
 Land Exchange _____
 Landless Band _____
 Contiguous Community _____
 Non-Contiguous Community _____
 Relocation within an Existing Community _____

PROCEDURE

Has the band involved submitted a B.C.R. outlining its request and the basis for the proposal? _____

B. POLICY JUSTIFICATION

<Check the applicable policy section references from Chapter 9 of the Land Management and Procedures Manual. Proceed to Section C and address policy specific questions.>

Section

Treaty/Legal Obligation 9.2.1 _____
 Provincial Land Offerings 9.2.2 _____
 Expropriation 9.2.3 _____
 Return of Unsold Surrendered Lands 9.2.4 _____
 Social Need 9.2.5 _____
 Geographic Reasons 9.2.6 _____
 Relocations 9.2.7 _____
 Economic Reasons 9.2.8 _____
 Landless Bands/Indian Communities 9.2.9 _____

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YES NO N/A

COMMENTS

POLICY SPECIFIC QUESTIONS

C.1 Treaty/Legal Obligation

Are there any acknowledged land entitlements (treaty or specific land claim) owing to the band, against which the proposed acquisition should be set off?

If so, describe:

Is there an existing legal or ministerial obligation to add land to reserve or create a new reserve?

If so, describe:

If the proposal involves the avoidance of a land claim or other legal action against the federal government, describe and indicate whether:

- a) The Department of Justice has been consulted on the chance of success should the claim/legal action proceed and on the cost effectiveness of the proposal vis-à-vis the cost of a claim/legal action?
- b) The Department of Justice has approved a release for potential claims/compensation from the band?

C.2. Provincial Land Offerings

C.2.1 Land Claims

Is the addition of land to reserve or the creation of a new reserve proposed to facilitate a land claims settlement between a province and a claimant band?

If so, describe:

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MMZ
CQ

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YES NO N/A

COMMENTS

Have the parties consulted the department during the course of negotiations on its position in view of the following considerations:

- a) Whether other forms of land tenure are either unfeasible or inappropriate.
- b) The cost implications associated with the transfer of the land to reserve status and those related to planned development should normally be borne by the province.
- c) The question of off setting claims or obtaining a release for a related claim the band may have against Canada (has Specific Claims been consulted on this question?)

Indicate results of consultation:

C.2.2 Social/Economic Purposes

Has existing departmental policy relating to social or economic need been applied to this proposal?

Has the province agreed to pay for the costs of infrastructure and related support once the lands are granted reserve status?

Alternatively, has the department agreed to either cost share or pay for infrastructure and ongoing program costs which can meet the funding requirements applicable to all proposals (as set out in section 9.3.1, Chapter 9, Land Management and Procedures Manual)?

C.3 Expropriation

Is the expropriation or transfer subject to a right of reversion in favour of the Crown?

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YES NO N/A

COMMENTS

C.4 Return of Unsold Surrendered Lands

Are the unsold surrendered lands contiguous to the existing reserve(s)?

Are the unsold surrendered lands situated within the boundaries of municipalities (and therefore subject to the special considerations set out in section 9.3.2.2, Chapter 9, Land Management and Procedures Manual)?

If the unsold surrendered lands are not contiguous to the existing reserve:

a) Has consideration been given to an exchange with the province for land near the reserve if reserve status cannot be conferred?

b) Are there any financial implications regarding program delivery?

c) Have other forms of land tenure (e.g., title in a band corporation) been considered?

Does the land to be added form contiguous parcels?

Is the band aware that the return of unsold surrendered land to reserve status does not obligate the department to expend monies on programs and service?

C.5 Social Need (e.g., Housing or Other Community Purposes)

Identify need for additional land, e.g., housing, schools, recreation or other community purpose:

Has a study been done on existing supply and future requirements of land for community purposes based on demographic analysis?

Does the analysis cover at least 15 years but not more than 25 years?

1421

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YES NO N/A

COMMENTS

Where the proposal is based on housing requirements, has a review of existing and projected housing density been performed?

Has an analysis been done of the potential of the existing reserve base to meet future requirements under the following headings:

Topography of the reserve
(including description of size, location and nature):

Existing land use (appropriate land use, over/under utilization):

Have existing land use plans or zoning by-laws which are actively being implemented been considered in determining how much land is available for residential purposes?

Has a land exchange been considered?

If not, why not?:

Has a reallocation of the band or locattee land for housing purposes been explored?

If not, why not?:

If an allocation is required:

Will it be voluntary?

or

Are there plans to "expropriate" the land under the provisions of subsection 18(2) of the *Indian Act*?

In cases of "expropriation" have the requirements of Chapter 3 of the Land Management and Procedures Manual been met?

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YES NO N/A

COMMENTS

If the lands were to be expropriated, the following compensation is proposed as payment to the individual in lawful possession (i.e., alternate land or financial compensation):

C.6 Geographic Reasons

Would the addition of this parcel of land enhance the physical integrity of the reserve?

Size of parcel in relation to existing reserve:
(e.g., is it relatively small?)

Is the land privately owned?

C.7 Relocation

C.7.1 Natural Disasters

Does this proposal involve the relocation of a reserve community by:

a) Adding to or creating a new reserve?

b) Relocating a community within an existing reserve?

Has the immediate safety of a community's residents been threatened?

The risk involved if the community remains at the original site is:

The nature and extent of future risk is:

The extent of preventive or remedial action required is:

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100

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YES NO N/A

COMMENTS

The cost of undertaking preventive or remedial measures compared to the cost of relocation is:

The overall benefits to the community for each option are:

Has the long-term economic/employment potential of alternative relocation sites been considered?

Explain:

Note: Proposals which do not involve the acquisition of land should be submitted directly to the ADM of Indian Services for consideration.

C.7.2 Restricted Reserve Development

Does this proposal involve the relocation of a reserve community by:

a) Adding to or creating a new reserve?

b) Relocating a community within an existing reserve?

Has the normal physical development at the existing reserve location been restricted due to adverse topographic or soil conditions or other exceptional circumstances related to health and safety?

If so, the following is a description of the adverse topographic or soil conditions or other exceptional circumstances related to health and safety:

Is the development of the new community at the proposed reserve site the most cost effective option (based on an assessment of the costs associated with

APD

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YES NO N/A

COMMENTS

relocating the community compared to the costs of meeting the community's needs at the existing reserve site)?

Has a land exchange option been considered?

If not, why not?:

Is there a net increase in the reserve land base?

If so, the following rationale is provided to justify the increase in reserve land base:

Has the long-term economic/employment potential of alternative relocation sites been considered?

Explain:

Note: Proposals which do not involve the acquisition of land should be submitted directly to the ADM of Indian Services for consideration.

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C.8 Economic Reasons

Identify economic need:

Could the proposed economic benefit be substantially achieved under another form of land tenure (e.g., non-reserve land owned by a band corporation)?

If not, why not?

Signature

YES NO N/A

COMMENTS

C.9 Landless Bands/Landless Communities

C.9.1 Landless Bands

The current governing arrangement is (e.g., a municipality with limited self-governing powers, part of a local improvement district, or controlled by the province of the off-reserve community):

Has an officially recognized band which does not have a land base submitted the request for approval by way of band council resolution? (Indicate whether the request forms part of a proposal to create a new band under Chapter 11, in which case the request will originate from a community which will only become an officially recognized band once the Ministerial Order creating the new band has been signed.)

Does the band have an existing, ongoing and viable community on the site of the proposed reserve or can it justify a relocation from its existing community under section 9.2.7 (Chapter 9, Land Management and Procedures Manual)?

Have all other viable options been explored, e.g., the provision of land from another band? Explain:

C.9.2 Landless Indian Communities (Contiguous/Non-Contiguous)

Indicate whether the landless community is contiguous or non-contiguous to an existing reserve:

Has a B.C.R. been received from the band for whose benefit the existing reserve has been set aside?

Are most of the residents of the off-reserve community status Indians comprising an existing, viable and ongoing community?

Have other options been explored? Explain:

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YES NO N/A

COMMENTS

The current ownership situation is:

Owned by Occupant _____

Rented by Occupant _____

Owned by Others _____

- Private Landlord _____

- Housing Corporation _____

Mortgaged by Occupant through:

- Private Lender _____

- Financial Institution _____

- Other _____

The following action is proposed to resolve the ownership question if the community attains reserve status:

The cost (capital and ongoing) of resolving the ownership question is:

Are there any ongoing operations and maintenance (i.e., non-capital) obligations with respect to the existing housing stock which the department would likely need to assume, e.g., maintenance of rental units?

If so, the annual cost is expected to be:

Would it be necessary to finance major renovations or to replace existing stock to ensure compliance with relevant building codes/standards?

If necessary, the cost of financing major renovations or replacement of existing stock is estimated to be:

Are the existing road, water and sewer systems compatible with those on the reserve community?

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YES NO N/A

COMMENTS

Is there documented evidence that members of both the on-reserve and off-reserve communities support the request? If so, describe the nature of the evidence:

Are there "non-status" families resident in the community?

The members of the landless band or community propose to protect "non-status" individual rights as property owners or tenants by:

Where necessary, have the community members undertaken to obtain membership of the appropriate band?

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Composite of the Off-Reserve Community

Status and Potential Status Residents					
Age	Residence	Application Under Review	Residence Status Under Review	Residence Status Under Review	Member or Individual Eligible for Membership
0-5					
6-12					
13-17					
18-26					
27-45					
46-64					
65+					

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No. of Families	No. of Families	No. of Families

Number of housing units included in the current off-reserve community. _____

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YES NO N/A

COMMENTS

If not, would upgrading the system(s) be required to ensure compailbility?

If upgrading is required, the cost is estimated to be:

Based on an assessment of other community services (fire protection, garbage disposal, infrastructure) the additional, annual O&M costs to extend band services are:

The savings to the province or municipality are:

Based on an assessment of the condition of all other community capital assets from a health and safety perspective, could these assets continue to be used if the community became a reserve?

If so, the following capital and O&M costs are required to bring these assets up to standard:

Are there any apparent obstacles to or cost involved in transferring ownership of all capital assets to the federal government/band?

If so, the obstacles are:

The following arrangements are now in effect for elementary/secondary education:

The following educational facilities are available (including their condition):

The region proposes to amalgamate the current off-reserve and on-reserve student bodies by:

The cost of amalgamating the current off-reserve and on-reserve student bodies is:

The following arrangement(s) will be made for the instruction of students who are not status Indians, or who are status Indians from families, the heads of which are not status Indians:

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The responsibility (i.e., of the federal or provincial government) for payment of the costs of such an arrangement is:

YES NO N/A

COMMENTS

Are there any costs involved in the transfer of existing educational facilities from current ownership to federal or band ownership?

If so, the costs are:

Would the facilities require alteration/renovation to ensure they meet relevant health and safety standards?

If so, the costs are:

The following arrangements are now in effect for the delivery of social services to community members:

The region proposes that social services be delivered in future to status residents and their families by:

Social Services will be provided to non-status residents by:

The cost of providing these social services is:

Would there be savings to the province for social services if the community attains reserve status?

Has the potential application of these savings been discussed with the province?

The following arrangements are currently in place to police the community:

The following policing changes are anticipated if the community attains reserve status and the costs of implementing such changes are:

Are there any impediments to the proposed changes?

52

YES NO N/A

COMMENTS

If so, they are identified as follows:

The following assessment of the financial impact of the increase in "on-reserve" population and increased program responsibilities is based on the Band Support Funding Formula:

D. SITE-SPECIFIC CONSIDERATIONS

D.1 Site Description:

Acreage:

Location:

Topography:

Relationship to existing Reserves, towns, municipalities
(as defined by the municipal limits):

Has the required plan or sketch of the property and the property's relationship to existing reserve been included in the submission (i.e., National Topographical System Map or a copy of an existing C.L.S.R. Plan or Regional Surveyor's Sketch plan outlining the subject area)?

Where more than one parcel is to be added to reserve, are the parcels contiguous?

Do the boundaries of parcels follow natural water boundaries?

<In the case of a proposed land exchange (e.g., expropriation under section 35), also include a full description of the exchange property involved as per above headings.>

APP

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D.2 Mines and Minerals

Are mines and minerals included?

If not, is the band aware of the exclusion?

YES NO N/A

COMMENTS

D.3 Third Party Interests

Are there third party interests?

If so, they will be addressed in the following manner:

D.4 Access

Has legal access been provided to the property?

Is there public access to the land?

If there is currently no public access to the land, access will be accomplished in the following manner:

Have provisions been made for access to public utilities, if required (i.e., water, sewer, etc)?

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D.5 Costs

<Provide assumptions for the cost forecasts, including a description of the reliability of estimates. Provide explanation if it is neither feasible nor practical to quantify certain expected or possible areas of cost increase that have been identified.

Identify and explain existing and proposed funding sources for all costs set out in the financial analysis. Additionally, funding to be provided by provinces or other entities should be identified, depending upon its significance.>

<u>DIAND</u>	<u>Yr 1</u>	<u>Yr 2</u>	<u>Yr 3</u>	<u>Yr 4</u>	<u>Yr 5</u>	<u>Total</u>	<u>Source of Funding</u>
(In constant \$000 dollars)							
Education							
Social							
Economic							
Development							
Capital:							
- Residential							
- Non-Residential							
Facility O&M							
Band Support							
Cost of land purchase							
- land costs							
(Including acquisition)							
- appraisals							
- survey costs							
- land registration costs							

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DIAND	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Total	Source of Funding
-------	------	------	------	------	------	-------	-------------------

- tax adjustment costs
- resolution of third party interests
- environmental costs (i.e., site investigation/clean-up)

DIAND Total

YES NO N/A

COMMENTS

The costs associated with existing public access (e.g., O&M) are:

The costs involved in providing new public access to the land are:

Are costs associated with the proposal available from within the existing, approved regional budget?

If not, provide explanation:

Additional information relating to the above costs is provided below (including significant capital costs expected for a period of up to 20 years beyond the above forecast period, identification of the type or class of estimate, year of estimate, source of estimate (DIAND or consultant):

D.6 Alternative Land Options to Band Request/Cost Effectiveness

Have the following alternate land options been explored and costed?

- the acquisition of land contiguous to the existing reserve
- a land exchange
- the acquisition of provincial Crown land (with provincial contribution to capital and O&M)

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	<u>YES</u>	<u>NO</u>	<u>N/A</u>	<u>COMMENTS</u>
- the availability of potentially suitable surplus federal Crown land (i.e., has the Department of Public Works been approached and have Area Screening Reports been reviewed?)	_____	_____	_____	
- the acquisition of private land	_____	_____	_____	
- the use of other reserves set aside for the band	_____	_____	_____	
- title to land held by band corporation	_____	_____	_____	
- the ability of the band to either purchase the land or contribute to the purchase	_____	_____	_____	
Are the alternatives cost effective?	_____	_____	_____	
Has the long-term business, resource, employment and taxation potential of the proposed reserve site (as well as that of any alternate sites) been carefully considered?	_____	_____	_____	
Discuss:				

D.7 Provincial/Municipal Considerations

D.7.1 Provincial Considerations

Has the province been consulted in writing with respect to the implications of the proposal on provincial programs and services?

Has the province expressed any concerns?

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YES NO N/A

COMMENTS

Has written correspondence been received from the province setting out the issues discussed and how all reasonable concerns have been resolved?

If there are any reasonable concerns which have not been resolved, provide rationale for proceeding with the proposal:

D.7.2 Municipal Considerations

Has the municipality been advised of the proposal in writing?

Has the municipality (rural or urban) raised any of the following concerns:

- a) Measures to compensate the municipality for loss of tax revenue;
- b) The provision of, and payment for, municipal services;
- c) By-law application and enforcement on the reserve (conformity with municipal by-laws);
- d) A joint consultative process for matters of mutual concern or plan function (i.e., land use planning, an arbitration process and a dispute resolution process).

Has the municipality (rural or urban) expressed any other specific or general concerns?

If so, how have all reasonable concerns been resolved?

If the municipality wishes to have a formal agreement with the band, has such an agreement been reached?

If an agreement has been reached between the band and the municipality, have the Department of Justice, the HQ Additions Committee and the ADM of LRT been consulted? If so, provide comments:

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YES NO N/A

COMMENTS

If an agreement has not been reached between the band and the municipality, can the proposal still proceed for any of the following reasons:

- a) the proposed reserve does not adjoin an urbanized area and the proposed reserve site is not covered by an approved urban use development plan; or
- b) the proposed reserve site has been traditionally used and is currently being used for Indian purposes, or was once part of an Indian reserve which was surrendered and remains unsold; or
- c) the proposal involves an addition, as opposed to a new reserve; or
- d) the Department of Justice has advised there is a legal obligation to proceed?

If the land were to be included as reserve, the estimated tax loss to the municipality is:

Are there existing or planned agreements for municipal type services?

A listing of the existing or planned agreements covering municipal type services follows:

**D.8 Views of Other Levels of Government/Other
Federal Agencies (e.g., National Health and Welfare)**

Have other federal government departments (i.e., National Health and Welfare) been consulted regarding the implications on their programs/resources of including the community as reserve?

The implications for other federal government departments are identified below:

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YES NO N/A

COMMENTS

Has confirmation been received of the capacity of such other departments to assume the identified costs?

D.9 Present and Proposed Use of Land to be Acquired

Present use of the subject land:

Proposed use of the subject land:

A description of the planned use of any existing assets (e.g., buildings, bridges, infrastructure, etc.) follows:

Does the proposed use conform with approved land use plans/zoning by-laws of the band or of the adjoining municipality?

D.10 Environmental Considerations

Have steps 1-3 of the Environmental Review as outlined in section 9.6 (Part II, Chapter 9, Land Management and Procedures Manual) been completed?

Indicate results (i.e., is a site investigation under Step 5 of the Environmental Review required)?

If so, provide explanation (and cost estimate under section D.5):

Note: Once RDG or DM approval has been obtained, step 4 must be implemented as part of the negotiation process, while steps 5 and 6 should only be followed where required by section 9.6 of Chapter 9.

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YES NO N/A

COMMENTS

D.11 Other Comments

<Insert any other related comments that cannot be addressed under the above headings>

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CHECKLIST.ADD
APRIL 3, 1991

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ADDITIONAL COMMENTS

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APPENDIX B - GOVERNMENT LAND PURCHASE REGULATIONS

14/6/78 Canada Gazette Part II, Vol. 112, No. 11 Gazette du Canada Partie II, Vol. 112, N° 11 SOR/DORS 78/482

Registration
SOR/78-482 26 May, 1978

Enregistrement
DORS/78-482 26 mai 1978

FINANCIAL ADMINISTRATION ACT

LOI SUR L'ADMINISTRATION FINANCIERE

Government Land Purchase Regulations

Règlement sur l'achat de terrains par le gouvernement

P.C. 1978-1749 25 May, 1978

C.P. 1978-1749 25 mai 1978

His Excellency the Governor General in Council, on the recommendation of the Treasury Board, pursuant to section 34 of the Financial Administration Act, is pleased hereby to revoke the Government Land Acquisition Regulations made by Order in Council P.C. 1966-514 of 17th March, 1966¹, as amended², and the Government Land Option Regulations made by Order in Council P.C. 1973-3789 of 4th December, 1973³, as amended⁴, and to make the annexed Regulations relating to the Purchase of Land by Government Departments in substitution thereof.

Sur avis conforme du conseil du Trésor et en vertu l'article 34 de la Loi sur l'administration financière, il pla Son Excellence le gouverneur général en conseil d'abroge Règlement sur l'acquisition de terrains par le gouvernement établi par le décret C.P. 1966-514 du 17 mars 1966¹, dan forme modifiée², ainsi que le Règlement sur la prise d'opt sur des terrains par le gouvernement établi par le décret (1973-3789 du 4 décembre 1973³, dans sa forme modifiée⁴ e leur substituer le Règlement relatif à l'achat de terrains par ministères, ci-après.

REGULATIONS RELATING TO THE PURCHASE OF LAND BY GOVERNMENT DEPARTMENTS

RÈGLEMENT RELATIF À L'ACHAT DE TERRAIN PAR LES MINISTÈRES

Short Title

Titre abrégé

1. These Regulations may be cited as the *Government Land Purchase Regulations*.

1. Le présent règlement peut être cité sous le titre *Rèment sur l'achat de terrains par le gouvernement*.

Interpretation

Définitions

2. In these Regulations,

2. Dans le présent règlement,

"appraisal", in respect of land, means a written, signed opinion of the value of land made as of a specified date that evaluates the property rights involved according to a concept of value that is appropriate in the opinion of the Minister; (valuation)

"évaluateur indépendant" désigne une personne qui, aux ter du paragraphe 2(1) de la Loi sur la pension de la Fime publique, n'est pas un employé de la Fonction publique qui

"department" means any of the departments named in Schedule A to the Financial Administration Act and any other division or branch of the Public Service of Canada designated by the Governor in Council as a department for the purposes of that Act; (ministère)

a) est un évaluateur de biens immobiliers, accrédité un organisme provincial, national ou international d' luation de biens immobiliers, ou

"independent appraiser" means a person, other than a person employed in the Public Service, as defined in subsection 2(1) of the Public Service Superannuation Act, who is

b) est établi en affaires et possède de l'expérience à d'évaluateur de biens immobiliers;

(a) a real estate appraiser accredited by a provincial, national or international real estate appraisal organization, or

(c) est personnel appraiser

(b) established in business and experienced as an appraiser of real estate;

évaluation par rapport aux terrains désigne un avis cert signé relatif à la valeur du terrain, rédigé à une date pr et qui évalue les droits de propriété concernés un concept de valeur qui, de l'avis du ministre, est approp (appraisal)

(c) (evaluator independent)

ministères désigne l'un des ministères énumérés à l'annex de la Loi sur l'administration financière de toute di division ou direction de la Fonction publique du Can désignée par le gouverneur en conseil comme étant ministère aux fins de la loi; (département)

¹ SOR/66-141, Canada Gazette Part II, Vol. 100, No. 7, April 11, 1966
² SOR/67-127, Canada Gazette Part II, Vol. 101, No. 11, July 12, 1967
³ SOR/73-713, Canada Gazette Part II, Vol. 107, No. 24, December 24, 1973
⁴ SOR/78-34, Canada Gazette Part II, Vol. 108, No. 1, January 12, 1978

¹ DORS/66-141, Gazette du Canada Partie II, Vol. 100, n° 7, 11 avril 1966
² DORS/67-127, Gazette du Canada Partie II, Vol. 101, n° 11, 12 juillet 1967
³ DORS/73-713, Gazette du Canada Partie II, Vol. 107, n° 24, 24 décembre 1973
⁴ DORS/78-34, Gazette du Canada Partie II, Vol. 108, n° 1, 12 janvier 1978

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"land" means real property and includes any buildings or other structures thereon and any interest therein. (*terrain*)
 "Minister", in respect of land, means the Minister presiding over the department for the purposes of which the land is being acquired by the Crown; (*ministre*)
 "optioned land" means land that is subject to an agreement entered into by the Minister pursuant to paragraph 11(a) (*terrain faisant l'objet d'une option*)

Application

3. These Regulations apply to the purchase of land by the Crown for the purposes of any department.

Prohibition

4. No contract for the purchase of land by the terms of which payments are required, in the aggregate, in excess of \$75,000 shall be entered into unless entry into the contract has been approved by the Treasury Board.

Acquisition by Purchase

5. The Minister may

- (a) without the approval of the Treasury Board, purchase land where the price of and other consideration for the land do not, in the aggregate, exceed \$75,000; and
- (b) with the approval of the Treasury Board, purchase land where the price of and other consideration for the land, in the aggregate, exceed \$75,000.

Appraisals

6. Prior to every purchase of land pursuant to paragraph 5(a), the Minister shall obtain at least one appraisal.

7. Prior to every request to the Treasury Board for the approval of the purchase of land, where the price of and other consideration for the land, in the aggregate, exceed \$75,000, the Minister shall, unless the Treasury Board authorizes otherwise, obtain at least two appraisals, one of which shall be obtained from an independent appraiser.

Terms of Contract

8. The Minister may, in a contract for the purchase of land, agree to pay:

- (a) in addition to the price of the land, such amounts as he may approve in respect of the reasonable legal fees and disbursements of the vendor, reasonably incurred; and
- (b) interest on the unpaid purchase price, where, in his opinion, completion of the purchase is unreasonably delayed through no fault of the vendor, for such period as the Minister may approve, at a rate calculated for that period not greater than one and one-half per cent above the average accepted tender rate of Government of Canada three month Treasury Bills, as announced each week by the Bank of Canada on behalf of the Minister of Finance, which rate shall be that which is announced immediately preceding the date on which the contract was executed.

ministres, par rapport aux terrains, désigne le ministre qui préside au ministère pour lequel le terrain est acquis par la Couronne; (*Minister*)

«terrain» désigne des biens immobiliers et comprend les immeubles ou autres structures y érigés et tout intérêt y afférent; (*land*)

«terrain faisant l'objet d'une option» désigne un terrain sujet à une entente conclue par le ministre aux termes de l'alinéa 11a). (*optioned land*)

Application

3. Le présent règlement s'applique à l'achat de terrains par la Couronne pour un ministère.

Interdiction

4. Nul contrat d'achat de terrain impliquant des déboursés de plus de \$75 000 ne peut être conclu, à moins qu'il ne reçoive l'approbation du conseil du Trésor.

Acquisition par voie d'achat

5. Le ministre peut

- a) sans l'approbation du conseil du Trésor, acheter un terrain impliquant les déboursés qui n'excèdent pas \$75 000, et
- b) avec l'approbation du conseil du Trésor, acheter un terrain impliquant des déboursés de plus de \$75 000.

Évaluations

6. Avant de procéder à l'achat d'un terrain aux termes de l'alinéa 5a), le ministre doit obtenir au moins une évaluation.

7. Avant d'adresser au conseil du Trésor une demande d'approbation pour l'achat d'un terrain impliquant des déboursés de plus de \$75 000, le ministre doit, sauf autorisation du conseil du Trésor, obtenir au moins deux évaluations dont l'une effectuée par un évaluateur indépendant.

Conditions du marché

8. Le ministre peut, dans un contrat d'achat de terrain, convenir de payer

- a) en sus du prix du terrain, les sommes qu'il peut approuver concernant les frais légaux et les déboursés raisonnablement encourus par le vendeur; et
- b) l'intérêt sur le prix d'achat qui reste à payer, lorsque, selon lui, la prise de possession est différée sans la faute du vendeur, pour la période approuvée par le ministre, à un taux qui ne dépasse pas de plus d'un et demi pour cent le taux d'offre moyen compté des bons du Trésor de trois mois du gouvernement du Canada, tel que publié chaque semaine par la Banque du Canada au nom du ministre des Finances, lequel taux doit être celui qui est annoncé immédiatement avant la date du contrat.

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Purchase of Land Subject to Charges

9. The Minister may acquire land subject to such reservations, encumbrances or encroachments as, in his opinion, do not affect the use of the land for the purpose for which it is acquired.

Payment

10. No payment may be made in respect of a purchase of land

- (a) before delivery of a good title satisfactory to and to be obtained through the Deputy Minister of Justice; and
- (b) in the case of a purchase under paragraph 5(a), unless the Minister is satisfied that the recommended purchase price is justified in relation to the appraisal.

Optioned Land

11. Subject to section 12, the Minister may

- (a) enter into an agreement for the acquisition of an option to purchase land of any value; and
- (b) pay such amounts as may be payable by the Crown under the agreement for the acquisition of that option.

12. (1) The Minister may enter into an agreement described in paragraph 11(a) only if

- (a) the aggregate of the amounts referred to in paragraph 11(b) does not exceed \$7,500 or ten per cent of the purchase price of the optioned land, whichever is the lesser amount;
- (b) the form of the agreement is satisfactory to the Deputy Minister of Justice;
- (c) the purchase price of the optioned land is a fixed amount and includes any amounts referred to in paragraph 11(b);
- (d) the option is for a period of not less than forty-five days; and
- (e) in any case where the aggregate of the amounts referred to in paragraph 11(b) is \$1,000 or more, the Deputy Minister of Justice is satisfied that the person granting the option has valid title to the optioned land.

(2) Notwithstanding paragraphs (1)(a) and (d), the Treasury Board may authorize the Minister to enter into an agreement described in paragraph 11(a) where the aggregate set out in paragraph (1)(a) or the period of the option set out in paragraph (1)(d) is exceeded.

13. (1) The Minister may, in an agreement described in paragraph 11(a), in consideration of a right granted to the Minister to enter on and make soil and other tests of the optioned land, agree with the person granting the option

- (a) to indemnify and save harmless that person from all claims and demands;
- (b) to repair and make good or to pay compensation for any damage done to any land of that person other than the optioned land; and
- (c) in the event that the option is not exercised, to repair and make good or to pay compensation for any damage done to the optioned land

Achat de terrains grevés de charges

9. Le ministre peut acquérir un terrain grevé de réserves d'hypothèques ou de servitudes si, selon lui, elles ne nuisent pas à l'utilisation prévue du terrain.

Paiement

10. Aucun paiement ne peut être fait pour un achat de terrain

- a) avant la délivrance d'un titre légitime, jugé satisfaisant par le sous-ministre de la Justice et obtenu par son entremise; et
- b) dans le cas d'un achat selon l'alinéa 5a), à moins que le ministre ne soit convaincu que le prix d'achat recommandé se trouve justifié en fonction de l'évaluation.

Terrains faisant l'objet d'une option

11. Sous réserve de l'article 12, le ministre peut

- a) conclure un contrat d'acquisition d'une option d'achat sur un terrain de quelque valeur que ce soit; et
- b) verser les sommes qui peuvent être payables par la Couronne en vertu de ce contrat.

12. (1) Le ministre peut conclure un accord selon l'alinéa 11a) seulement si

- a) le total des sommes visées à l'alinéa 11b) ne dépasse pas le moindre de \$7 500 ou dix pour cent du prix d'achat du terrain faisant l'objet de l'option;
- b) la forme du contrat agréé au sous-ministre de la Justice;
- c) le prix d'achat du terrain faisant l'objet de l'option est fixé et comprend les sommes visées à l'alinéa 11b);
- d) l'option porte sur une période d'au moins quarante-cinq jours; et
- e) dans tous les cas où l'ensemble des sommes visées à l'alinéa 11b) est de \$1 000 ou plus, le sous-ministre de la Justice est convaincu que la personne qui consent l'option possède un titre valide sur le terrain faisant l'objet de l'option.

(2) Nonobstant les alinéas (1)a) et d), le conseil du Trésor peut autoriser le ministre à conclure un contrat décrit à l'alinéa 11a) lorsque le total visé à l'alinéa (1)a) ou la période d'option visée à l'alinéa (1)d) sont dépassés.

13. (1) Le ministre peut, dans un contrat visé à l'alinéa 11a), en considération du droit qui lui est accordé de pénétrer sur le terrain faisant l'objet d'une option pour y effectuer des sondages de sol et autres tests, convenir avec la personne qui accorde l'option

- a) de garantir cette personne contre toutes réclamations et revendications;
- b) de réparer et de compenser, ou de verser une indemnité pour les dommages causés à d'autres terrains appartenant à cette personne autre que le terrain faisant l'objet de l'option; et

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resulting from the exercise by the Minister of the right to enter.

(2) The Minister may, subject to the approval of the Deputy Attorney General, pay compensation under paragraph (1)(b) or (c)

(a) without the approval of the Treasury Board, in an amount not exceeding \$5,000; and

(b) with the approval of the Treasury Board, in an amount exceeding \$5,000.

14. Any option described in paragraph 12(e) that, under the applicable laws, is registerable in the office of the registrar for the county, district or registration district, shall be so registered forthwith after the execution thereof.

Transitional Provisions

15. Where approval has, prior to the coming into force of these Regulations, been granted by the Governor in Council or the Treasury Board for the purchase of any parcel of land or for the payment of compensation in respect of any expropriation, such approval shall, notwithstanding these Regulations, continue to operate unless it is superseded by an approval granted under these Regulations.

16. In respect of any expropriation of land effected before the repeal of *Expropriation Act* chapter 106 of the Revised Statutes of Canada, 1952, sections 8 and 9, subsection 10(2) and sections 11 to 13 of the *Government Land Acquisition Regulations* that were in force immediately before the coming into force of these Regulations shall continue to apply.

c) à l'occasion du non-exercice de l'option, de réparer et de compenser ou de verser une indemnité pour les dommages causés au terrain faisant l'objet de l'option, qui résulte de l'exercice par le ministre du droit de pénétrer.

(2) Le ministre peut, sous réserve de l'approbation du sous-procureur général, verser une indemnité en vertu des alinéas (1)b) ou c)

a) sans l'approbation du conseil du Trésor, si le montant ne dépasse pas \$5 000, et

b) avec l'approbation du conseil du Trésor, si le montant dépasse \$5 000.

14. Une option visée à l'alinéa 12e) qui, en vertu des lois applicables, doit être enregistrée au bureau du registraire du comté, du district ou du district d'enregistrement, doit être ainsi enregistrée dès la signature de l'écrit qui la constate.

Dispositions transitoires

15. Lorsque le gouverneur en conseil ou le conseil du Trésor a donné son approbation, avant l'entrée en vigueur du présent règlement, pour l'achat d'une parcelle de terrain ou le versement d'une indemnité d'expropriation, cette approbation nonobstant le présent règlement, reste en vigueur jusqu'à son remplacement par une approbation donnée en vertu du présent règlement.

16. Pour une expropriation de terrain effectuée avant l'abrogation de la *Loi sur les expropriations* (chapitre 106 des Statuts révisés du Canada, 1952), les articles 8 et 9 et le paragraphe 10(2) ainsi que les articles 11 à 13 du *Règlement sur l'acquisition de terrains par le gouvernement*, qui étaient en vigueur immédiatement avant l'entrée en vigueur du présent règlement, continuent de s'appliquer.

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APPENDIX C - LIST OF ENVIRONMENTAL REGULATIONS AND LEGISLATION PERTINENT TO ENVIRONMENTAL AUDITS IN CANADA

CANADA

Canadian Environmental Protection Act, 1988
Environmental Assessment and Review Process Guidelines Order, 1984

ALBERTA

Clean Air Act RSA 1980, C. c-12
Clean Air Act: Clean Air Regulations Alta.Reg. 33/73
Clean Air Act: (General) Regulations Alta.Reg. 215/75
Clean Air Act: Clean Air (Maximum Levels) Regulations Alta.Reg. 218/75
Clean Air Act: Application For Approval of Natural Gas Compressors ERCB IL-80-30 Dec/80
Clean Water Act RSA 1980, c.C-13
Clean Water Act: Clean Water (Authority Designation) Regulations Alta. Reg. 200/77
Clean Water Act: Clean Water (General Regulations Alta. Reg. 35/73
Clean Water Act Clean Water (Industrial Plants) Regulations Alta. Reg. 36/73
Department of The Environment Act RSA 1980,c.D-19
Stop Order Appeal Regulation Alta. Reg. 9/74
Hazardous Chemicals Act RSA 1980, c.H-3
Hazardous Chemicals Act: hazardous Waste Regulation Alta. Reg. 505/87
Transportation of Dangerous Goods Control Act SA 1982, c.T6.5
Transportation of Dangerous Goods Control Regulation Alta. Reg. 383/85
Transportation of Dangerous Goods Control Act: Administry Regulation Alta. Reg. 37/86
Water Resources Act RSA 1980, c.W-5

BRITISH COLUMBIA

Cowichan River Estuary Environmental Assessment Procedures BC Reg. 486/77
Fraser River Estuary Environmental Assessment Guidelines
Fraser River Estuary Environmental Assessment Procedures BC Reg. 202/77
Environment Management Act SBC 1981, c.14
Environment Impact Assessment Regulation OC 1762/81
Environmental Appeal Board Procedure Regulation BC Reg. 1/82
Sanitary Regulations BC Reg. 142/59
**Pollution Control Objectives For Food - Processing Agriculturally Oriented, and Other
Miscellaneous Industries**
Pollution Control Objectives For Municipal Type Waste Discharges In British Columbia
Transport of Dangerous Goods Regulation BC Reg. 103/85
Transport of Dangerous Goods Act SBC 1985, c.17
Waste Management Act SBC 1982, c.41
Waste Management Act: Instructions For Applying For A Permit
Special Waste Regulations BC Reg. 63/88
Criteria for Managing Contaminated Sites In British Columbia, 1988

MANITOBA

The Environment Act S.M. 1987-88, c.26
Classes of Development Regulation Man.Reg. 164/88
Guidelines For Various Air Pollutants (Manitoba Department of Mines, resources and
Environmental Management, January 1978)
Hazardous Materials Designation Regulation Man. Reg. 15/81
Licensing Producers Regulation Man. Reg. 163/88
Private Sewage Disposal Systems And Privies Regulation Man. Reg. 95/88R
Storage and Handling of Gasoline and Associated Products Regulations Man. Reg. 97/88 R
Dangerous Goods Handling and Transportation Act CCSM c.D12
Classification Criteria For Products, Substances and Organisms Regulation Man. Reg. 282/87
Dangerous Goods Handling and Transportation Act: Environmental Accident Reporting
Regulation Man. Reg. 439/87
Dangerous Goods Handling and Transportation Act: Federal Regulations Adoption Regulation
Man. Reg. 172/85
Dangerous Goods Handling and Transportation Act: Generator Registration And Carrier
Licencing Regulation Man. Reg. 175/87
Dangerous Goods Handling and Transportation Act: Manifest Regulation Man. Reg. 139/88
Dangerous Goods Handling and Transportation Act: PCB Storage Site Regulation Man. Reg.
474/88
Manitoba Hazardous Waste Management Corporation Act CCSM c. H15
Protection of Water Sources regulation Man. Reg. 326/88 R
Rivers And Streams Act
Transboundary Pollution Reciprocal Access Act

NEW BRUNSWICK

Clean Environment Act RSNB 1973 c.C-6
Air Quality Regulation NB Reg.83-208
Clean Environment Act: Appeal Regulation NB Reg.84-179
Clean Environment Act: Environmental Impact Assessment Regulation NB Reg 87-83
Clean Environment Act: Water Quality Regulation NB Reg.82-126
Petroleum Product Storage And Handling Regulation NB Reg. 87-87
Transportation of Dangerous Goods Act SNB 1986c T-11.01
Transportation of Dangerous Goods Act: NB 89-67

NEWFOUNDLAND

Dangerous Goods Transportation Act SN 1962 c.45
Dangerous Goods Transportation Regulations Nfld. 304/85
Department of the Environment Act S.N. 1981 c.10

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Department of Consumer Affairs and Environment Act: Air Pollution Control Regulations Nfld Reg. 26/81
Department of Consumer Affairs and Environment Act: Environmental Control (Water And Sewage) Regulations Nfld. Reg. 156/80
Department of the Environment Act Storage And Handling Of Gasoline And Associated Products Regulations Nfld. Reg. 258/82
Environmental Assessment Act: Environmental Assessment regulations Nfld. Reg. 225/84
Department of The Environment and Lands Act: Mobile PCB Destruction Facility Regulations Nfld. Reg. 102/89
Waste Material Disposal Act SN 1973 No.82
Waste Material (Disposal Act), 1973: Storage of PCB Wastes Regulations Nfld. Reg. 230/88

NORTHWEST TERRITORIES

Environmental Protection Ordinance RONWT 1974 c.E-3
Transportation of Dangerous Goods Act SNWT 1982 (3 rd sess.) c.19
Transportation of Dangerous Goods regulations NWT Reg. 048-85

NOVA SCOTIA

Dangerous Goods and Hazardous Wastes Management Act SNS 1986, c.7
Asbestos Waste Regulation NS reg 238/88
Dangerous Goods and Hazardous Wastes Management Act: PCB Storage Regulation NS Reg. 225/88
Dangerous Goods and Hazardous Wastes Management Act: Dangerous Goods Storage Regulations NS Reg. 97/89
Dangerous Goods and Hazardous Wastes Management Act: Petroleum Storage Regulations NS Reg. 33/88
Dangerous Goods and Hazardous Wastes Management Act: Waste Oil regulations NS Reg 212/88
Environmental Assessment Act SNS 1986, c.11
Environmental Assessment Regulations NS Reg. 34/89
Environmental Protection Act SNS 1973, c.8
Environmental Protection Act: General (Suspension or Cancellation of a Permit) Regulations NS Reg. 221/88
Environmental Protection Act: Suspension or Cancellation of a Permit Regulations NS Reg. 116/88
Water Quality Standards (Suspension or Cancellation of Permit) Regulations NS reg. 74/86
An Act Respecting the Transportation of Dangerous Goods SNS 1982, c.3
Dangerous Goods Transportation Act General Regulations NS Reg. 152/85
Water Act RSNS 1967, c.335

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Dangerous Goods Transportation Act, 1981 SO 1981, c.69
Dangerous Goods Transportation Act: General Regulation O. Reg. 460/89
Energy Act: Fuel Oil Code RRO 1980, Reg. 288
Environmental Protection Act O. Reg. 435/89
Environmental Protection Act RSO 1980, c.141
Environmental Protection Act: Effluent Monitoring- Inorganic Chemical Sector O. Reg. 359/89
Environmental Protection Act: Air Pollution Control (General) Regulations RRO 1980, Reg. 308
Environmental Protection Act: Ambient Air Quality Criteria Regulation RRO 1980, Reg. 296
Environmental Protection Act: Boilers Regulation O. Reg. 16/86
Environmental Protection Act: Effluent Monitoring - General O. Reg. 695/88
Environmental Protection Act: Spills Regulation O. Reg. 618/85
Environmental Protection Act: Waste Management Regulation RRO 1980 O. Reg. 309
Environmental Protection Act: Waste Management PCB Regulation O. Reg. 11/82
Environmental Protection Act: Guidelines For The Treatment And Disposal Of Liquid Industrial Wastes In Ontario Dec, 1978
Environmental Protection Act: Guidelines For Protection Measures At Chemical Storage Facilities, Oct 1978
Ontario Water Resources Act RSO 1960, c.361
Ontario Water Resources Act: Water Management - Goals, Objectives, Policies and Implementation Procedures of the Ministry Of The Environment Nov, 1978 revised May 1984
Objectives For The Control Of Industrial Waste Discharge In Ontario
Gasoline Handling Act, RSO 1980, c.185
Gasoline Handling Code, Regulation 439/80
Guidelines for the Decommissioning and Cleanup of Sites in Ontario, January 1989
Occupational Health and Safety Act: Regulation Respecting Asbestos on Construction Projects and in Buildings and Repair Operations 654/85
Manual for an Improved Lakefill Quality Control Program, December 1988
Parameters Listing System (PALIS), March 1989

PRINCE EDWARD ISLAND

Dangerous Goods (Transportation) Act Regulations EC 319/85
Dangerous Goods (Transportation) Act SPEI 1981, c.9
Environmental Protection Act RSPEI 1974, c.EA.1
Environmental Protection Act: Petroleum Storage Tanks regulations PEI Reg. EC435/86

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Environment Quality Act RSQ 1977, c.Q-2
Environment Quality Act: Hazardous Waste Regulation OC 1000-85
Environment Quality Act: Quality Of The Atmosphere Regulation RRQ 1981, c.Q-2, r.20
Highway Safety Code Transport Of Dangerous Substances regulation OC 19-86
Transport Act Regulation Respecting The Transport Of Waste RRQ 1981, c. T-12, r.16
Contaminated Sites Rehabilitation Policy

SASKATCHEWAN

Air Pollution Act RSS 1978 c. A-17
Air Pollution Control Regulation Reg. 211/75
Clean Air Regulations RRS C-12.1, Reg.1
Dangerous Goods Transportation Act SS 1984-84 c. D-1.2
Dangerous Goods Transportation Regulations RRS D-1.2 Reg.1
Environmental Spill Control Regulations RRS 1981 c. D-14, Reg.1
Environmental Management and Protection Act SS 1983-84 c.E-10.2
Hazardous Substances Regulations Sask. Reg. 983/88
PCB Waste Storage Regulations RRS 1989, c.E-10.2 REg.6
Water Pollution Control and Waterworks Regulations RRs, c. E-10.2 Reg.4
Environmental Assessment Act SS 1979-80 c.E10.1
Municipal Public Works Act RSS 1978 c.M-32
Waste Management Regulations Sask. Reg. 198/72
Water Quality Objectives Feb. 1977.

YUKON

Dangerous Goods Transportation Act SYT 1985, c.13
Dangerous Goods Transportation Regulation DIC 1986/118
Public Health Ordinance: Private Sewage Disposal Systems Regulations Commissioner's Order
1974-75

PART I - LAND USE HISTORY

2. General physical description and present use of subject property, adjacent properties and any structures located on these properties (append photographs, aerial photographs, surveys and site maps, if available):

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

- [illegible]

[Handwritten signature]

4. List owner and/or occupant and land uses from 1900 to present (use separate page if additional space is required):

Property (e.g.,	Owner/Occupant or Third Parties	Occupant's interest in property (leasehold, licence)	Use of Site by Owner/Occupant
_____ to 19____	_____	_____	_____
_____ to _____	_____	_____	_____
_____ to _____	_____	_____	_____
_____ to _____	_____	_____	_____
_____ to _____	_____	_____	_____
1900 to _____	_____	_____	_____

5. Indicate the proposed or intended use of this site (if known):

YES NO UNKNOWN

6. Is the zoning inconsistent with the intended land use?

7. Has the property ever been used for industrial manufacturing, (e.g., gasification works or high technology equipment)?

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8. Are there transformers, capacitors or other electrical equipment, including fluorescent light fixtures, present on site that were installed prior to 1980?

— — —

If yes, has this equipment been tested for the presence of polychlorinated biphenyls (PCBs)?

— — —

Test Results: _____

9. Is there urea formaldehyde foam insulation or asbestos-containing materials (e.g., pipe insulation) present on site?

— — —

10. Is there any reason to suspect that any of the following substances have been or are being used, stored or disposed of on site?

— — —

(a) pesticides/herbicides

— — —

(b) chemicals

— — —

(c) petroleum products

— — —

(d) radioactive materials

— — —

(e) chlorofluorocarbons (CFCs)

— — —

(f) polychlorinated biphenyls (PCBs)

— — —

(g) wastes of any type

— — —

If yes, describe nature and extent:

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11. Are there, or have there ever been, underground or aboveground tanks, drums or storage containers located on site?

If yes, state their former/present contents and if they have not been removed, indicate their age, the date of the last test and... test results:

12. Is there evidence or knowledge of spills or leaks occurring on site (e.g., dark, stained soil or concrete)?

If yes, describe: _____

13. Is there evidence or knowledge of spills or leaks occurring on adjacent properties?

If yes, is there evidence that these spills or leaks have affected or are likely to affect the subject property?

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14. Are there any waste streams other than
to sanitary sewer or municipal solid
waste systems? _____

If yes, describe: _____

15. Has large-scale equipment or vehicle
maintenance ever been conducted on site? _____

If yes, describe: _____

PART II - GOVERNMENT AND OTHER SEARCHES

16. Name(s) and position(s) of government
contact(s) and date(s) contacted:

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17. Have any permits, licences, orders or approvals relating to the environment been granted by the federal, provincial or municipal authorities? If yes, are they in good standing?

18. Have any legal proceedings relating to the environment (e.g., warnings, actions, applications, investigations, orders, rulings, or fines) been commenced/issued against a present/former owner/occupant of the subject property? If yes, provide details:

19. List results of title, execution and any company searches which may have been done:

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PART III - CONTACTS/SITE VISIT

20. Persons contacted/interviewed and their connection to the subject property:

21. Site visit completed by
(append site visit checklist):

Name: _____

Title: _____

Date: _____

PART IV - RECOMMENDATIONS

22. Following Steps 1 - 3, I have determined that:

- i) No contamination is indicated;
transaction may proceed. _____
- ii) Insignificant (low level) contamination
of an acceptable nature is indicated;
transaction may proceed without a site
investigation (follow criteria and guidelines
in Ch. 9, Lands Manual). _____
- iii) Insignificant (low level) contamination of
an uncertain nature is indicated; transaction
may not proceed without a site investigation
to determine full nature and extent of contamination.
(follow criteria and guidelines in Chapter 9,
Lands Manual). _____
- iv) Significant contamination is indicated; transaction
may not proceed without a site investigation to
determine full nature and extent of contamination, _____

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following which clean-up will likely be required
(follow criteria and guidelines in Chapter 9, Lands Manual).

23. Provide rationale for either
proceeding/not proceeding with a site
investigation:

24. If a site investigation and clean-up
are required, who assumes the costs?:

25. Following a site investigation, I have
determined that:

- i) No contamination is indicated; transaction
may proceed.
- ii) Insignificant (low level) contamination of an
acceptable nature is indicated; transaction may proceed
without a clean-up (follow criteria and guidelines in
Ch. 9, Lands Manual).
- iii) Significant contamination is indicated; transaction may not
proceed without a clean-up (follow criteria and guidelines
in Chapter 9, Lands Manual).

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Indicate name of consultant(s), date site investigation was commenced/completed and append copy of consultant(s) report(s):

26. Where a clean-up is required, indicate name of consultant(s), date clean-up was commenced/completed and append copy of consultant(s) report(s):

ADDITIONAL COMMENTS (If the answer was yes for any question from 6-15 please describe the exact location, give precise details below and append relevant attachments (maps, surveys, plans, sketches, etc.).

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Note: List all supporting documents below.

SUPPORTING DOCUMENTS

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Name and title

Date _____

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APPENDIX E - SITE VISIT CHECKLIST

Legal description of property and
municipal address, if any:

Owner notified
of site visit?:

Date of notification?:

Indicate whether the following have been observed on the subject property and
provide details where appropriate:

REMARKS

<input type="checkbox"/> Buildings	<hr/>
<input type="checkbox"/> Storage, repair, maintenance facilities	<hr/>
<input type="checkbox"/> Outhouses	<hr/>
<input type="checkbox"/> Miscellaneous structures	<hr/>
<input type="checkbox"/> Sewers, drains, septic systems	<hr/>
<input type="checkbox"/> Waste streams (other than to sanitary sewer or municipal solid waste systems)	<hr/>
<input type="checkbox"/> Storm and sanitary sewer discharge	<hr/>

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_____	Surface or under-ground tanks, drums or storage containers	_____
_____	Tank vent pipes	_____
_____	Tank fill lines	_____
_____	Electrical transformers or capacitor equipment (including fluorescent lighting)	_____
_____	Landfill	_____
_____	Incinerators	_____
_____	Hazardous waste generators	_____
_____	Garbage dumps	_____
_____	Scrap yard (e.g., scrap metals, car bodies)	_____
_____	Polluted ditches, streams, creeks, rivers, ponds, lagoons, lakes	_____
_____	Groundwater wells	_____
_____	Spills (e.g., oil, chemical)	_____
_____	Soil/asphalt stains	_____
_____	Soil depressions or mounds	_____
_____	Vegetation stress	_____
_____	Wildlife stress	_____
_____	Other	_____

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_____ North _____

_____ South _____

_____ East _____

_____ West _____

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Date of site visit: _____

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APPENDIX F - SEARCHES

(I) TITLE SEARCH

The title search is an important vehicle for obtaining information and should be utilized as follows:

Does the search reveal ownership, in the chain of title, by any person or corporation which is either known to, or which may (directly or indirectly) deal with toxic substances?

Does the search reveal any orders registered by any government authority relating to the use, handling, storage or disposal of toxic substances?

Does the search reveal any court orders affecting the land use or requiring action?

Does the search reveal the land is situated on a known:

- toxic waste site
- sewage treatment plant
- generating station
- PCB storage site
- garbage-burning, incinerator, hospital, shredding or disinfecting plant
- landfill site
- chemical or toxic waste-producing company
- old municipal hydro-electric commission site
- other

Does the search indicate that any activity which might result in toxic waste is being or has been carried on at the site, e.g., research, chemical activity, manufacture or storage of toxic substances?

In some circumstances, the search of adjoining lands may assist in the identification of environmental problems associated with acquiring a parcel of land. This type of search may identify adjoining land owners whose businesses indicate further inquiries should be made.

(II) EXECUTION SEARCH

The execution search is useful for identifying any outstanding judgments registered against the subject property. For instance, it may reveal that a plaintiff who has been

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injured by a chemical spill on the property has been awarded damages. In the event the defendant (e.g., the current property owner) fails to pay the damages owing, the land may be seized and sold to satisfy the judgement. An unsuspecting purchaser may therefore find that the property it has just purchased is subject to seizure and sale.

Accordingly, in all cases where the land to be acquired is owned by a private vendor, an execution search should be completed prior to closing.

NOTE: Both the title search and the execution search will be completed by agents of the Department of Justice.

(III) COMPANY SEARCH

This type of search is useful where lands are held or occupied by a corporate entity, e.g., a numbered company. It will confirm the legal name under which government records may be searched and will also disclose the nature of the business concerned and the identity and addresses of the directors (helpful should follow-up inquiries appear to be warranted).

NOTE: The Department of Consumer and Corporate Affairs or its provincial counterpart should be contacted in this regard.

(IV) SEARCHES OF GOVERNMENT RECORDS

The government bodies which will usually be contacted are the local municipality (e.g., public works, fire department, etc.), the Ministry of Health, Environment Canada, and the provincial Ministry of the Environment. The Department of Transport and the Ministry of Labour should also be contacted in appropriate cases.

Government searches can be critical. For instance, the investigation and enforcement branch of the Ontario Ministry of the Environment (MOE) investigates public complaints and prosecutes offenders. A MOE search can reveal the following possible actions taken with respect to a particular property:

- Certificates of approval/permits issued
- Preventive clean-up and repair orders
- Detention and removal orders
- Stop orders
- Restraining and prohibition orders
- Notices of intent (to issue control orders)
- Control orders
- Director-issued orders

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Enclosed is a copy of the vendor's authority to release information known to the Ministry, (or a copy of the agreement containing a clause to this effect).

Would you kindly answer the following questions about the subject property in the spaces provided below and return a copy of this letter in the enclosed stamped, self-addressed envelope.

	<u>Yes</u>	<u>No</u>
1. Does the Ministry have any records or information with respect to this property?	_____	_____
2. Does the Ministry have any records with respect to this property under the name of the current owner or any previous owner listed above?	_____	_____
3. Is the Ministry aware of any activity on this property for which any necessary approvals have not been given?	_____	_____
4. Does the Ministry have any records of contamination or possible contamination of the site by:		
- Radioactive substances	_____	_____
- PCBs	_____	_____
- CFCs	_____	_____
- Pesticides	_____	_____
- Herbicides	_____	_____
- Other chemical or hazardous substances	_____	_____
- waste of any type	_____	_____
5. Please indicate whether the Ministry has:		
- investigated the property	_____	_____

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- granted any approval(s) for use of property as (insert current or proposed use, e.g. a waste disposal site) _____
- issued an action request _____
- instituted enforcement proceedings or prosecuted individuals or companies with respect to any reporting or regulatory violations _____
- obtained any court order(s) in respect of the property _____

IN AREAS WHERE THERE IS NO MUNICIPAL WATER SERVICE

- 6. Is the Ministry aware of any water quality or water quantity problems associated with this property or any adjacent properties? _____
- 7. Is the Ministry aware of any sewage problems associated with this property or any adjacent properties? _____

NOTE: 1) If the answer to any of the above question is "Yes", please provide details and append same to the copy returned to our office.

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- 2) If the local Health Unit administers water quality issues on your behalf, please forward a copy of this letter to the Unit for completion.

Signed on behalf of the Ministry
of the Environment - please indicate name and title

Thank you for your assistance in this matter.

Yours very truly,

Enclosure: Copy of vendor's authority to release information or copy of agreement containing a clause to this effect.

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MUNICIPAL /REGIONAL AUTHORITIES

In addition to provincial authorities, a letter of inquiry with appropriate variations should be sent to the municipality or region in which the property is located.

The letter to the municipality or region should make the following inquiries:

- | | <u>Yes</u> | <u>No</u> |
|--------------------------------------------------------------------------------|------------|-----------|
| 8. Are there any sewage or water surcharge agreements affecting this property? | _____ | _____ |
| 9. Is there any record of non-compliance with any sewage control by-law? | _____ | _____ |

NOTE: 1) A copy of a letter of inquiry should be directed to the local office of the Ministry of Health, particularly if the water system for the property is not a municipal water system.

2) In appropriate cases, a letter of inquiry should be directed to the Ontario Ministry of Labour, particularly with respect to the *Occupational Health and Safety Act*, (R.S.O. 1980, c. 321).

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APPENDIX G - SAMPLE LEGAL CLAUSES

TERMS AND CONDITIONS

1. Examination of Records and Full Disclosure

- (i) The Vendor agrees to provide to the Minister all records, laboratory test results and any other data and material relating to the history and use of the Property in the possession or under the control of the Vendor for inspection by the Minister with the right to make copies thereof, within _____ days of the signing of the Agreement of Purchase and Sale.
- (ii) The Vendor further agrees to reply to specific inquiries made by the Minister relating to any aspect of the Property within ____ days from the date on which the Vendor receives the request for information.
- (iii) The Minister agrees to preserve and maintain the confidentiality of any of the data, material and information referred to in sub-paragraphs (i) and (ii), unless he is otherwise obligated or directed under any federal or provincial statute or regulation, and agrees to return all documents related thereto if the transaction is terminated prior to closing and upon the Vendor's written request thereafter.
- (iv) The Minister shall have access to and shall have the right to inspect all files, records, documents, orders and approvals of the Ministry of the Environment and of any other body having jurisdiction relating to the Property. The Vendor further agrees to sign any specific authorization required by any such body upon written request by the Minister.

2. Access for Testing and Inspections

The Minister shall have access to the Property for the purposes of conducting any inspections, tests and investigations as are deemed necessary by the Minister to ascertain and document the environmental condition of the Property.

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3. Environmental Investigation

- (i) The Vendor agrees to hire, at its sole cost, an independent environmental consultant, whose hiring shall be approved by the Minister, to conduct an environmental investigation of the Property as described below.
- (ii) The environmental consultant shall:
 - (a) conduct such necessary tests and investigations as are agreed to by both the Vendor and the Minister;
 - (b) provide the Vendor, the Minister and the Band with a final environmental report summarizing all findings (including maps, charts and diagrams), describing procedures and methodologies used and identifying type, source and extent of any contamination found on or adjacent to the Property;
 - (c) provide remediation plans which will restore the natural environment of the Property in compliance with the most recent guidelines of the (relevant provincial) Ministry of the Environment and any existing federal guidelines and estimated clean-up costs for any contaminated sites identified on the Property.

4. The Vendor shall, within ____ days of receipt of the consultant's final environmental report, unless a later date is mutually agreed upon by the Parties, provide the Minister and the Band with a remediation plan as described in sub-paragraph 3(c) for any contaminated sites identified on the Property.

5. Within ____ days of receipt of the consultant's final environmental report pursuant to sub-paragraph 3(b), or a remediation plan pursuant to sub-paragraph 3(c), the Minister shall elect to:
- (i) proceed with the agreement of Purchase and Sale;
 - (ii) approve the remediation plan, upon consultation with the Band, and proceed with the Agreement of Purchase and Sale, subject to implementation of the remediation plan or any portion thereof; or
 - (iii) terminate the Agreement of Purchase and Sale; and

shall notify the Vendor in writing of his election.

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6. (i) The Vendor covenants that he will, prior to closing and at his sole expense, prevent, ameliorate or eliminate all environmental effects arising from his use of the Property and the use of the Property by his predecessors in title and that he will restore the natural environment of the Property in compliance with the most recent guidelines of the (relevant provincial) Ministry of the Environment and any existing federal guidelines.
- (ii) The Vendor further covenants that he will, ____ days prior to closing, provide the Minister with written confirmation that he has complied with sub-paragraph (i), such confirmation to include any environmental consultants' reports which may be prepared in satisfaction of the Vendor's obligation pursuant to sub-paragraph (i).

7. Right to Terminate

- (i) By written notice to the Vendor at any time prior to closing, the Minister, in his sole discretion, may terminate this Agreement of Purchase and Sale if the Vendor fails to comply with any obligation imposed upon the Vendor by the terms of this Agreement or if the Minister, in his sole discretion, determines that an environmental or health hazard exists on the Property.
- (ii) Upon the giving of written notice to the Vendor pursuant to sub-paragraph 7(i), the Agreement of Purchase and Sale shall be terminated, the deposit shall forthwith be returned to the Minister with(out) interest and the Minister and the Vendor shall thereafter be under no obligation or liability the one to the other in respect of anything contained herein or arising herefrom.

NOTE: In all cases, except where the department has a prior legal obligation to acquire a particular tract of land, the above termination clauses must be inserted in the relevant land transaction documentation.

8. Remediation

The Minister may, at his sole discretion, proceed with the transaction, subject to the agreement of the Vendor and the Minister as to the nature and extent of any required site investigation or clean-up and as to the liability therefor.

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9. Indemnity

The Vendor covenants and agrees to indemnify and hold harmless the Minister from and against all costs, claims, demands, suits, actions, professional, consultant or legal fees (on a solicitor and client basis) and damages to which the Minister may be put or may suffer arising or resulting, directly or indirectly, from:

- (i) any misrepresentation by or on behalf of the Vendor;
- (ii) any warranty or representation of the Vendor proving to be false or untrue in whole or in part; and
- (iii) any failure of the Vendor to perform any of the Vendor's covenants contained herein.

This covenant and agreement shall not merge in but shall survive closing.

NOTE: Security for the indemnity should be obtained where a private Vendor is involved.

REPRESENTATIONS AND WARRANTIES

The following are several suggested representations and warranties which should be obtained from the vendor:

10. Disclosure

- (i) The Vendor warrants and represents unto the Minister that the Vendor will make complete disclosure of all material facts and circumstances relating to the environmental conditions which, to the Vendor's knowledge, have existed or will exist on the Property and which in any manner might affect the future use of the Property or which may result in the Minister being legally required to prevent, ameliorate or eliminate adverse environmental conditions or to restore the natural environment.
- (ii) The Vendor further warrants and represents unto the Minister that there are not now, and will not on closing be, any outstanding, pending or threatened orders, directives or other requirements of the (relevant provincial) Ministry of the Environment and Environment Canada or any other body having jurisdiction relating to the Property and that the Vendor is not now, and will not on closing be,

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13. No Law Suits, Actions

The Vendor warrants and represents unto the Minister that it has no notice or knowledge of any law suits, actions, fines, orders, penalties, rulings, liabilities, pending or threatened against the Vendor, its officers, directors, agents, employees or any third parties relating to the environmental condition of the Property or to the violation, actual or alleged, of any federal or provincial environmental, health or safety statutes, regulations or other lawful requirements.

14. Survival of Vendor's Representations and Warranties

The representations and warranties of the Vendor as set forth above shall survive closing and shall continue in full force and effect for the benefit of the Minister.

- NOTE: 1) It is important that all key contractual terms be clearly defined by the parties to avoid problems in the future interpretation of the respective parties' obligations.
- 2) Where appropriate, reference to lessees should be made in the above clauses, e.g., clause 2 (access to property may require the approval of both the vendor and any lessee(s)).
- 3) Where the band, as opposed to the vendor, assumes responsibility for any required site investigation or clean-up, the above clauses should be modified accordingly.

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negotiating or in any manner dealing with the (relevant provincial) Ministry of the Environment and Environment Canada or with any other body having jurisdiction with respect to any possible order, directive or other requirement relating to the Property.

- (iii) On closing, the Vendor shall provide to the Minister a statutory declaration that the above warranties and representations are still correct and true as of the closing date.

11. Compliance with Laws

- (i) The Vendor warrants and represents unto the Minister that the present use of the Property is, and on closing will be, in full compliance with all applicable laws, rules, regulations, notices, approvals, orders and other requirements of the (relevant provincial) Ministry of the Environment and Environment Canada and of any other body having jurisdiction over the Property. Without limiting the generality of the foregoing, "approvals" include any approvals relating to environmental, health or safety requirements and the Vendor further warrants and represents unto the Minister that no condition currently exists, or will on closing exist, which might impugn the validity of any such approvals.
- (ii) The Vendor warrants and represents unto the Minister that the Property contains no toxic substances or contaminants as defined under the *Canadian Environmental Protection Act* (CEPA), or the equivalent provincial legislation, which have been handled, emitted or discharged by the Vendor, its officers, directors, agents, employees or any third parties and that there are no underground storage tanks on the Property.
- (iii) The Vendor also warrants and represents that it has at all times received, handled, used or stored all hazardous goods or contaminants in strict compliance with all applicable laws, rules, regulations, orders or approvals and that all such contaminants or hazardous goods will be removed from the Property ____ days prior to closing.

12. No Adverse Environmental Impacts

The Vendor warrants and represents unto the Minister that there are no adverse environmental impacts on the Property as a result of the use of the land by the Vendor, its officers, directors, agents, employees or any third parties.

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Indian and Northern
Affairs Canada
www.inac.gc.ca

Affaires indiennes
et du Nord Canada
www.ainc.gc.ca

ATTACHMENT 'E'

Your file - Votre référence

September 29, 1999

Our file - Notre référence

E4026-618
E5673-3

McLeod Lake Indian Band
General Delivery
McLeod Lake, BC , V0J 2G0

Specific Claims Branch
650 West Georgia Street
Vancouver, BC

Attn: Chief and Council

Attn: Carol Cosco

Dear Sirs/Madames:

**RE: APPROVAL IN PRINCIPLE
CREATION OF VARIOUS PARCELS AS RESERVES
MCLEOD LAKE TREATY NO. 8 ADHESION AND SETTLEMENT
AGREEMENT**

I am pleased to inform you that the New Bands/New Reserves/New Communities Committee has reviewed your submission requesting reserve status for those parcels of land identified in Article 1.1.30 of the McLeod Lake Indian Band ("MLIB") Treaty No. 8 Adhesion and Settlement Agreement, dated September 30, 1999 (the "Agreement"), with the exception of 26.0 hectares at the community of Bear Lake and 8.1 hectares in the District of Mackenzie. Further to the Committee's recommendation, I hereby grant approval-in-principle to the proposal subject to the following:

1. Subject to the provisions of Article 12 of the Agreement, the MLIB shall not be entitled to any additional resourcing arising as a result of the addition of these lands.
2. Environmental audits of the following lands be conducted and completed to the satisfaction of Canada:
 - a) the parcel at Finlay Bay referred to in article 1.1.30(a)(i) of the Agreement;
 - b) the parcel known as Quaw Island, which island is within the area described as McLeod Lake East in article 1.1.30(b)(i) of the Agreement; and
 - c) such further portions of the lands which were not audited by

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Canada between September 6, 1996 and August 10, 1998.

3. Where the environmental screenings (based on the audits referred to in paragraph 2 herein and those as attached as Schedule 1 herein) of the lands identify the requirement for remediation:

- a) such remediation must be completed to the satisfaction of Canada prior to the lands being transferred to Canada; or
- b) the McLeod Lake Indian Band must provide to Canada a Band Council Resolution in respect of those parcels, accepting the lands in an "as is" condition and must releasing Canada from liability for any existing and future claims that may arise in connection with the environmental status of these parcels; or
- c) the parties to the Agreement may choose other lands as set out in that Agreement, which lands are subject to Canada's Additions to Reserves Policy.

4. Should the granting of a federal order in council(s) setting the lands aside as reserves take place more than two years following the completion of the environmental audit or satisfactory remediation of the lands, then at the discretion of Canada, an update of the environmental audit may be required to ensure the continued satisfactory environmental status of the lands.

5. Upon the setting aside of the lands as reserve, the issuance of an access permit to the Province of British Columbia in respect of the communication tower located on MacLeod Lake East.

It is acknowledged that the transfer of administration, control and benefit of the lands to Canada will be free and clear of all interests, except for the following encumbrances:

- a. British Columbia Hydro and Power Authority Flowage Agreement, substantially in the form attached as Schedule "D" of the Agreement;
- b. British Columbia Hydro and Power Authority Right of Way, substantially in the form attached as Schedule "E" of the Agreement;
- c. Westcoast Energy Inc. Right of Way, substantially in the form attached as Schedule "F" to the Agreement; and

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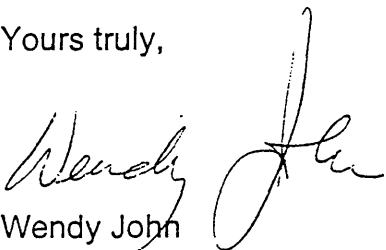
- d. Federated Pipeline (Western) Ltd. Right of Way, substantially in the form attached as Schedule "G" to the Agreement.

It is confirmed that the lands identified at Bear Lake and within the District of Mackenzie, and any lands identified subsequent to this conditional approval-in-principle and which fall within the definition of Additional Reserve Lands in Article 1.1.3 of the Agreement, will be the subject of separate submissions to the Department of Indian Affairs and Northern Development for consideration for reserve status pursuant to Article 4.7.1 of the Agreement.

This approval-in-principle confirms that your proposal meets departmental guidelines with respect to granting reserve status to lands, subject to the above mentioned conditions which must be satisfied prior to processing an Order-in-Council setting aside the lands as reserves.

If you have any questions regarding the foregoing, please do not hesitate to contact Kelly Scarrow at 604-666-0369 who would be pleased to assist you.

Yours truly,



Wendy John
Associate Regional Director General
British Columbia Region
340 - 1550 Alberni Street
Vancouver, B.C.
V6G 3C5

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Addition To Reserve ENVIRONMENTAL SCREENING REPORT

Indian and Northern Affairs Canada - British Columbia Region

Project Title:	McLeod Lake Indian Band Treaty Land Entitlement; Addition to Reserve		
Band Name:	McLeod Lake Indian Band	Band No:	
Reserve Name:	N/A	Reserve No:	N/A
Band Address:	GENERAL DELIVERY, McLeod Lake, BC	Postal Code:	V0J 2G0

Instructions:

1. In Part A, check N/A, U, I, or S for each VEC and identify whether the significant effects are mitigable.
2. On Page 2, provide a description of the significant effects and all other relevant information.
3. Also on Page 2, identify mitigation measures that will be implemented.
4. Complete the Public Registry System information on page 3.
5. Indicate the information sources used in Part B (including maps, plans, etc.), and complete the EA Document Record on Page 4.
6. Indicate the screening decision recommendation by selecting one of the 5 decision codes in Part C.
7. Ensure completed screening report and associated documentation are placed on the Public Registry according to established procedures.

PART A: SCREENING							PART B: INFORMATION SOURCES		
Valued Ecosystem Components	Summary of Effects*						Information Sources	Used	On Public Registry
	N/A	U	I	S	Significant effects mitigable?				
					Yes	No			
Ground Water			X				First Nations		
Surface Water			X				Feasibility Study		
Aquatic Biology			X				Engineering Design		
Air Quality			X				Terrain Analysis Study		
Land/Soil			X				Environmental Study	X	N/A
Flora (Vegetation)			X				Site Reconnaissance		
Fauna (Wildlife)			X				Published Literature		
Habitat			X				Consultations/Meetings		
Noise			X				Correspondence	X	N/A
Special Places**			X				Other Gov. Agencies		
Health and Safety			X				Other (specify)		
Socio-economic			X						
Recreational Resources			X						

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

Part C: Screening Decision Codes

Choose appropriate decision code from list below, enter here 01

- 00 Environmental Assessment under way - no decision yet
- 01 Effects not likely significant (considering mitigation) 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: DIAND Officer, or First Nation, or Consultant

Signature

Date

Approved By Responsibility Centre Manager

Signature

Date

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

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Signature

ENVIRONMENTAL ASSESSMENT SCREENING REPORT SUMMARY

PROJECT REFERENCES:

1. *Environmental Audit for McLeod Lake Settlement Claim, Weston Bay Property, Environmental Services, Public Works and Government Services Canada, September 6, 1996;*
2. *Environmental Audit for McLeod Lake Settlement Claim, Hominka River Property, Environmental Services, Public Works and Government Services Canada, September 6, 1996;*
3. *Environmental Audit for McLeod Lake Settlement Claim, Tacheeda Lake Property, Environmental Services, Public Works and Government Services Canada, September 6, 1996;*
4. *Environmental Audit for McLeod Lake Settlement Claim, Davie Lake Property, Environmental Services, Public Works and Government Services Canada, September 6, 1996;*
5. *Environmental Audit for McLeod Lake Settlement Claim, Arctic Lake Property, Environmental Services, Public Works and Government Services Canada, September 6, 1996;*
6. *Environmental Audit for McLeod Lake Settlement Claim, Blue Lake Property, Environmental Services, Public Works and Government Services Canada, September 6, 1996;*
7. *Environmental Audit for McLeod Lake Settlement Claim, McIntyre Lake Property, Environmental Services, Public Works and Government Services Canada, September 9, 1996;*
8. *Environmental Audit for McLeod Lake Settlement Claim, McLeod Lake Property, Environmental Services, Public Works and Government Services Canada, September 6, 1996;*
9. *Appendix B Toxicological Data on Tordon & Dicamba Use Along Rights of Way for MacLeod Lake Settlement Claim, Project memorandum, D. Charboneau, Environmental Services, Public Works and Government Services Canada to P. Santos, DIAND Technical Services, December 20, 1996;*
10. *Environmental Audit for McLeod Lake Settlement Claim, Weedon Lake Property, Environmental Services, Public Works and Government Services Canada, September 6, 1996;*
11. *Environmental Audit for McLeod Lake Settlement Claim, McLeod Lake East Property, Environmental Services, Public Works and Government Services Canada, June 23, 1997;*
12. *Environmental Audit for McLeod Lake Settlement Claim, Kerry Lake West Property, Environmental Services, Public Works and Government Services Canada, September 10, 1996;*
13. *Environmental Audit for McLeod Lake Settlement Claim, Kerry Lake East Property, Environmental Services, Public Works and Government Services Canada, September 10, 1996;*

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[Signature]

14. *Environmental Audit for McLeod Lake Settlement Claim, Weedon Carp Property, Environmental Services, Public Works and Government Services Canada, September 10, 1996;*
15. *Environmental Audit for McLeod Lake Settlement Claim, Carp South Property, Environmental Services, Public Works and Government Services Canada, September 6, 1996;*
16. *Followup Environmental Audit for McLeod Lake Settlement Claim, Environmental Services, Public Works and Government Services Canada, 1998;*
17. *Memorandum L. Webster, INAC to S. Yoner, Ocotober 27, 1999, McLeod Lake Settlement Agreement - Review of Followup Environmental Audits;*
18. *McLeod Lake Indian Band TLE Settlement Proposal, Land Selection Parcels, Non-Forested Lands, Copied for Lands and Trust services from material provided by Blair Smith (Natural Resources Canada) on September 22, 1999; and*
19. *McLeod Lake Indian Band (MLIB) Treaty No.8 Adhesion and Settlement Agreement, Draft 23, August 10, 1999.*

PROJECT DESCRIPTION:

As the result of a tri-partite (Canada, British Columbia, and the Mcloed Lake Indian Band) treaty adhesion settlement entitled the *McLeod Lake Indian Band (MLIB) Treaty No. 8 Adhesion and Settlement Agreement* (the Agreement), 18 parcels of land will be added-to-reserve on the behalf of the Band.

There are essentially two types of land requested for addition to reserve: a: not for forestry purposes and b) for forestry purposes. These lands are:

A. Not for Forestry Purposes:

The parcels of land (collectively 63 hectares) are described as approximately (paraphrased from the Agreement):

- i. 1.0 hectare on Finlay Bay,
- ii. 1.0 hectare on Weston Bay,
- iii. 2.0 hectares on the Hominka River,
- iv. 2.0 hectares on Tacheeda Lake,
- v. 1.0 hectare on Davie Lake,
- vi. 2.0 hectares on Arctic Lake,
- vii. 1.9 hectares on Blue Lake,
- viii. 2.0 hectares on McIntyre Lake,
- ix. 12.0 hectares on McLeod Lake,
- x. 4.0 hectares on Weedon Lake,
- xi. 26.0 hectares at the community of Bear Lake, and
- xii. 8.1 hectares in the District Municipality of Mackenzie; and

B. For Forestry Purposes

Those lands as outlined in the Agreement in bold on maps recorded in the Vancouver, British Columbia Office of Legal Surveys Division, Natural Resources Canada, that are described as:

- i. Approximately 8,720.7 hectares of land in the vicinity of McLeod Lake and shown in orthophoto map #990 as "McLeod Lake East" and "McLeod Lake West";
- ii Approximately 4,122 hectares of land in the vicinity of Kerry Lake and shown in orthophoto map #991 as "Kerry Lake West" and "Kerry Lake East";
- ii Approximately 2,579 hectares of land in the vicinity of Weedon Lake and shown in orthophoto map #992 as "Weedon Carp"; and
- iv Approximately 4,334 hectares of land in the vicinity of Carp Lake and shown in orthophoto map #993 as "Carp South".

ADD

SURROUNDING ENVIRONMENT:

As documented in the above references.

ENVIRONMENTAL EFFECTS/CONCERNS (Including Cumulative Impacts):

There are real and substantial environmental hazards associated with the land acquisition process. Among these hazards are buried wastes, controlled substances, underground or aboveground storage tanks, contaminated soil, surface and groundwater pollution, process effluent discharge, waste accumulation, soil gas accumulation and toxic spills.

All but four of the listed properties have been subjected to an environmental audit (review) as per the requirements of the specific claim negotiation and in accordance with the Lands and Trust Services, Lands Management Manual, Chapter 9 - Additions to Reserve Policy. The resultant audit documents and related project information are listed in the Project References. Specific concerns for each property are as detailed in the above documentation and summarized in the attached table.

Environmental audits of the following lands will be conducted and completed to the satisfaction of Canada:

1. the parcel at Finlay Bay referred to in article 1.1.30(a)(i) of the Agreement;
2. the parcel known as Quaw Island, which island is within the area described as McLeod Lake East in article 1.1.30(b)(i) of the Agreement; and
3. such further portions of the lands which were not audited by Canada between September 6, 1996 and August 10, 1998.

MITIGATION/FOLLOW UP PROGRAMS:

Concerns identified in the audits are summarized in the following table and will be mitigated as summarized.

Should the granting of a federal order in council(s) setting the lands aside as reserves take place more than two years following the completion of the environmental audit or satisfactory remediation of the lands, then at the discretion of Canada, an update of the environmental audit may be required to ensure the continued satisfactory environmental status of the lands

RATIONALE FOR SCREENING DECISION:

Based on the audit and subsequent review of the audit of the subject lands there are no apparent environmental concerns with respect to the subject lands to be transferred that are unmitigable or would not meet the ATR policy. It is expected that should the terms and conditions of the Agreement be met, there should be no significant negative environmental impacts.

PUBLIC CONCERNS (IF ANY) :

Public concerns are considered in the negotiation of the settlement agreement and in the subsequent consideration of adding the subject properties to reserve. Significant consultation with the band and surrounding public has led to the selection of the above subject properties; hence, public concern is not an issue

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PUBLIC REGISTRY SYSTEM INFORMATION

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GENERAL CEEA INFORMATION:

EA Start Date (EA document received): _____

EA Type: 01 X Screening 02 ☐ Class Screening

EA Trigger: 01 ☐ Proponent 02 ☐ Money 03 X Land 04 ☐ Law list
70 ☐ Transboundary - Interprovincial 80 ☐ Transboundary - International
90 ☐ Transboundary - Effect on Federal Lands

Please complete either II (Physical Activity) or III (Primary Undertaking & Physical Work)

II PHYSICAL ACTIVITY (Describe the EA project's Physical Activity as listed in the "Inclusion List")

Note: This section should only be completed if the sections below are not applicable to the EA project.

Short Title: _____

Code Number (See Inclusion List):

III PRIMARY UNDERTAKING (Check the appropriate Primary Physical Work)

- | | | |
|------------------------------------------|------------------------------------------|---------------------------------------------|
| 01 <input type="checkbox"/> Construction | 04 <input type="checkbox"/> Operation | 07 <input type="checkbox"/> Repair |
| 02 <input type="checkbox"/> Installation | 05 <input type="checkbox"/> Modification | 08 <input type="checkbox"/> Decommissioning |
| 03 <input type="checkbox"/> Expansion | 06 <input type="checkbox"/> Maintenance | 09 <input type="checkbox"/> Abandonment |

PHYSICAL WORK (Identify the physical work being undertaken)

- | | | |
|---------------------------------------------------|-----------------------------------------------------|---------------------------------------------------------|
| 01 <input type="checkbox"/> Bridge | 08 <input type="checkbox"/> Electrical Transmission | 15 <input type="checkbox"/> Power Generator Station |
| 02 <input type="checkbox"/> Central Heating Plant | Line | 16 <input type="checkbox"/> Sewage Treatment Facility |
| 03 <input type="checkbox"/> Community Building | 09 <input type="checkbox"/> Fences | 17 <input type="checkbox"/> Underground Cable |
| 04 <input type="checkbox"/> Culvert | 10 <input type="checkbox"/> Fuel Storage Tank | 18 <input type="checkbox"/> Waste Disposal |
| 05 <input type="checkbox"/> Dam | 11 <input type="checkbox"/> Housing | 19 <input type="checkbox"/> Water Filtration Facilities |
| 06 <input type="checkbox"/> Ditch | 12 <input type="checkbox"/> Landfill | 20 <input type="checkbox"/> Wells |
| 07 <input type="checkbox"/> Dyke | 13 <input type="checkbox"/> Other Building | 21 <input type="checkbox"/> Road |
| | 14 <input type="checkbox"/> Pipelines | 22 <input type="checkbox"/> Municipal Infrastructure |

IV SUBJECT DESCRIPTORS (Check the Subject Descriptor(s) (Max 4) that best describe the project)

- | | | | |
|--------------------------------------------|-------------------------------------------|--------------------------------------------|-----------------------------------------|
| 01 <input type="checkbox"/> Agriculture | 05 <input type="checkbox"/> Energy | 09 <input type="checkbox"/> Oceans | 13 <input type="checkbox"/> Industry |
| 02 <input type="checkbox"/> Buildings | 06 <input type="checkbox"/> Forestry | 10 <input type="checkbox"/> Oil & Gas | 14 <input type="checkbox"/> Environment |
| 03 <input type="checkbox"/> Communications | 07 <input type="checkbox"/> Inland Waters | 11 <input type="checkbox"/> Parks | |
| 04 <input type="checkbox"/> Defence | 08 <input type="checkbox"/> Mining | 12 <input type="checkbox"/> Transportation | |

V PROJECT CATEGORY (Choose one of the three categories of environmental assessment projects)

1. ☐ Point Project - These include all EA projects which are less than 25 kilometres in radius from their "Point of Reference", i.e., geographic location name.
2. ☐ Linear Project - These are projects like hydro lines, pipelines, etc., and have two points, i.e., a start point and an end point, and therefore two locations apply.
3. ☐ Area Project - These are projects larger in scope than a simple projects and not line projects. For these, RAs must supply the three or four locations

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Addition to Reserve ENVIRONMENTAL SCREENING SUMMARY REPORT

Property	Review Comments	Recommended Remediation / Followup	PWGSC Recommendation
Weedon Carp	None	None	No contamination is indicated; transaction may proceed.
Carp South	Adjacent to Provincial Park	Confirm requirements for buffer zones.	No contamination is indicated; transaction may proceed.
Weedon Lake	Remnants of an old cabin were identified with metal roofing and derelict wood burning stove	None	No contamination is indicated; transaction may proceed.
Kerry Lake West	Derelict trapper's cabin; empty, old, rusting 205 gallon drums, likely contained diesel for heating; notation of Interest Reserve for trapline cabin purposes	None; compensation for trapping interest considered in negotiations of Agreement	No contamination is indicated; transaction may proceed.

AOD

Addition to Reserve ENVIRONMENTAL SCREENING SUMMARY REPORT

Property	Review Comments	Recommended Remediation / Followup	PWGSC Recommendation
Kerry Lake East	BCHydro ROW (4); Westcoast Energy ROW (gas & oil); BC Highways; unknown - PCB's or UST/AST; pesticide use on ROW's examined; borrow areas and gravel pits noted in audit not included in proposed reserve lands; clarify tanks noted on reserve (page 11, B-5, Followup Audit); clarify item 12, page B-5 (Followup Audit) - as noted in comments of audit: small localized fuel spill west side of highway 97 south of wooden bridge approach to Kerry Lake.	ROW activities will be examined in depth when instruments are issued at the time of transfer to reserve; pesticide use does not present long term environmental issue; if applicable tanks to be registered in INAC database; fuel spill site to be cleaned as per agreement. NOTE: This spill is also indicated in the Kerry Lake West audit report.	No contamination is indicated; transaction may proceed.
Tachceda Lake	None	None	No contamination is indicated; transaction may proceed.
Davie Lake	Site of Davie Lake BC Forest Service Recreation Site; old corroded concrete footing for industrial equipment present.	INAC to determine if site to remain open; may require signage.	No contamination is indicated; transaction may proceed.
Arctic Lake	None	None	No contamination is indicated; transaction may proceed.

Addition to Reserve ENVIRONMENTAL SCREENING SUMMARY REPORT

Property	Review Comments	Recommended Remediation / Followup	PWGSC Recommendation
Blue Lake	Small cabin with ATV access observed.	INAC to ascertain ownership of cabin.	No contamination is indicated; transaction may proceed.
McIntyre Lake	None	None	No contamination is indicated; transaction may proceed.
McLeod Lake	Residential property located on site; septic system, heating fuel and household waste noted; ROW noted for BCHydro; legal notation which states "certificate of title may be affected by the Agricultural Land Commission Act; see Agricultural Land Reserve Plan No. 21608, deposited July 2, 1974.	INAC to determine future use of residence; ROW activities will be examined in depth when instruments are issued at the time of transfer to reserve; pesticide use does not present long term environmental issue. .	No contamination is indicated; transaction may proceed.
Weston Bay	Adjacent to Williston Lake	Clarify status of foreshore.	No contamination is indicated; transaction may proceed.
Hominka River	None	None	No contamination is indicated; transaction may proceed.

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Addition to Reserve ENVIRONMENTAL SCREENING SUMMARY REPORT

Property	Review Comments	Recommended Remediation / Followup	PWGSC Recommendation
McLeod Lake West	Adjacent to McLeod Lake Reserve; campsite noted on property.	Clarify requirements for buffers, etc.; clarify use of campsite.	No contamination is indicated; transaction may proceed.
McLeod Lake East	Page D-15 (Followup Report) final paragraph suggest further investigation is likely required to determine condition of tanks at operating gas station adjacent (west) for north end of subject property; borrow areas and gravel pits will not be included as part of subject property to be added to reserve; potential of contamination of lands via noted garbage dump contained in agreement; list of assets / improvements not listed.	Clarify need for further investigation of gas stations - operating and abandoned; list of assets and improvements should be provided to ascertain condition and need for removal..	No contamination is indicated; transaction may proceed.