




Land Procedure Land Exchange – Indian Reserve Lands

NAME OF LAND PROCEDURE:	Land Exchanges (Indian Reserve Lands)
APPLICATION:	Applies to all exchanges of Crown land for Indian Reserve lands
ISSUANCE:	Assistant Deputy Minister, Tenures, Competitiveness and Innovation
IMPLEMENTATION:	Ministry of Forests, Lands and Natural Resource Operations
REFERENCES:	<i>Land Act (Ch. 245, R.S.B.C, 1996)</i> <i>Ministry of Lands, Parks and Housing Act (Ch. 307, R.S.B.C., 1996)</i> <i>Federal Indian Act (R.S.C. 1985, c. 1-5)</i>
RELATIONSHIP TO PREVIOUS LAND PROCEDURE:	This procedure replaces the previous Land Exchanges (Indian Reserve Lands) procedure effective dated September 22, 2008



Dave Peterson, ADM
Tenures, Competitiveness and Innovation
Ministry of Forests, Lands and Natural
Resource Operations

MAY 26 2011

Date:

EFFECTIVE DATE: June 1, 2011
AMENDMENT:

FILE:12480-00

APPROVED AMENDMENTS:		
Effective Date	Briefing Note /Approval	Summary of Changes:
June 1, 2011	BN 175892	Policy and Procedure update to reflect reorganization of resource ministries April 2011

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1. PURPOSE

To establish procedure respecting the exchange of Crown land for Indian Reserve lands, where Indian Reserve lands are required in the public interest. This procedure applies to all exchanges of Crown land for Indian Reserve land, including Crown land sold to Provincial Crown corporations for subsequent exchange with a First Nation.

To establish procedures respecting the provision of Crown exchange lands for past and future acquisitions of Indian Reserve land for road rights-of-way and to legally recognize Ministry responsible for the *Highways Act* for road rights-of-way traversing these lands.

2. DEFINITIONS

Acquisition means a taking of property by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction, creating an interest in property. Upon completion, it is legally binding and, for accounting purposes, meets generally accepted accounting principles.

Authorizing Agency means the Provincial ministry responsible for the specific land use authorization.

Disposition is the act of disposing or transferring property to the care or possession of another. Upon completion, it is legally binding and, for accounting purposes, meets generally accepted accounting principles.

First Nation is a term that refers to the Indian peoples in Canada, both Status and non-Status. Although the term First Nation is widely used, no legal definition of it exists. Some Indian peoples in British Columbia have adopted the term “First Nation” to replace the word “band” in the name of their community.

Land exchange means the transfer of lands between two parties where part or all of the consideration is the acquisition of the others land. Exchanges have two components (an acquisition and a disposition). Lands to be exchanged are exchanged on an equal-value basis. Timber is usually valued separately and/or negotiated separately from the bare land value.

3. GENERAL PROVISIONS

A proposed exchange of land with the Province requires at minimum a Band Council Resolution and, depending on the legislation that governs the Indian Reserve land, may require a Band vote.

The Province’s right to subsequently resume 1/20th of the Indian Reserve land is unaffected by an exchange. The Province will exercise its 1/20th resumptive right only as a last resort, in the event that a project of immediate public importance which requires Indian Reserve land is jeopardized by a stalemate in purchase or exchange negotiations.

4. LAND EXCHANGES AND INDIAN RESERVES

Where it is determined that Indian Reserve lands are required in the public interest (e.g. for roads, canals, bridges and other public utility works), the Provincial Crown first offers to purchase the subject land from the First Nation at full market value of the land and merchantable timber.

Wherever possible, a purchase of Indian Reserve lands by the Province is to be for “all public purposes”, and must be specified as such in the Federal Order in Council that authorizes the sale to the Province.

4.1 Exchange of Crown Land for Indian Reserve Lands

The Authorizing Agency will consider exchange of Crown land for Indian Reserve lands only where the First Nation rejects the Crown’s offer of cash compensation.

Exchanges are made, as nearly as possible, on an equal value basis. However, where the proposed public use results in disruption to Indian Reserve land usage by the First Nation, the Province will consider additional cash compensation, or some other form of additional compensation.

The regional office of the Authorizing Agency is responsible for identifying parcels available for exchange and for vetting appraisals.

The regional office of the Authorizing Agency will obtain written confirmation from Indian and Northern Affairs Canada that a proposal to transfer the subject Indian Reserve lands to the Province, is in accordance with the *Indian Act*.

The regional office of the Authorizing Agency obtains land appraisals and other appropriate documentation and prepares the Order in Council and submits the exchange proposal to Executive for final approval.

4.2 Exchange of Indian Reserve Lands on Behalf of Other Provincial Agencies

Where an exchange is sought by a government agency other than a provincial ministry (e.g. BC Hydro and Power Authority), the Authorizing Agency will consider sale of appropriate Provincial Crown land to the agency to help it affect the exchange.

Sale of Provincial Crown land to another agency for the purpose of exchange is conditional on the provision that the agency take title to the Reserve land for “all public purposes”, which must be specified in the Order in Council prepared by the Federal government to authorize the transfer of Federal lands.

5. LAND EXCHANGES FOR ROADS THROUGH INDIAN RESERVES

Provincial Crown land to be made available to an Indian Band will be transferred to Canada by Order in Council under the authority of the *Land Act* (section 31).

Only Provincial Crown lands that are acceptable to Canada as Indian Reserve lands will be transferred to Canada. These lands will, in most cases, be adjacent to an already-established Indian Reserve.

In lieu of additional lands to be added to Indian Reserves, Canada and the Province may provide direction for lands to be transferred to Band Corporations as fee simple land for economic development purposes.

5.1 Procedures for exchanges for roads through Indian Reserves

After the submission of a request from Ministry of Transportation and Infrastructure, the Authorizing Agency will provide Crown exchange lands which are suitable as substitution for road right-of-way takings through Indian Reserves.

The Ministry of Transportation and Infrastructure will complete a land status report and preliminary assessment of land suitability. Upon confirmation of availability and suitability, Executive approval will be requested. The regional office of the Authorizing Agency will seek approval to undertake a land exchange and will formally respond to The Ministry of Transportation and Infrastructure as to land availability or encumbrances.

Referrals will be sent to appropriate agencies by the Authorizing Agency or the Ministry of Transportation. After reviewing referral documents, the regional office of the Authorizing Agency will notify the Ministry of Transportation and Infrastructure that an exchange is tentatively approved.

Upon receipt of approval, the regional office of the Authorizing Agency will advise the Ministry of Transportation and Infrastructure of the potential availability of Crown lands and will establish a *Land Act* Reserve over the parcel for a maximum period of two years. This *Land Act* Reserve provides interim protection for the land, allowing for further investigations if necessary.

The regional office of the Authorizing Agency will prepare Orders- in-Council transferring the administration and control of Crown lands to Canada.

5.2 Responsibilities of the Ministry of Transportation and Infrastructure in Exchanges for Roads through Indian Reserves

The Ministry of Transportation and Infrastructure will be responsible for direct negotiations and will obtain appraisals of the Crown and Indian Reserve lands including the market value of merchantable timber and stumpage value if necessary. The Ministry of Transportation and Infrastructure will provide a copy of the appraisals and appraisal reviews to the Authorizing Agency.

The Ministry of Transportation and Infrastructure will provide preliminary approval from Canada that the transfer of land for Indian Reserve purposes will be accepted.

The Ministry of Transportation and Infrastructure will be responsible for paying the costs of land exchanges over and above the land value, including, but not limited to, the costs of compensating third-parties where they exist, surveys, advertising and environmental assessment and contaminated site reports. Land value is not to absorb historical or cultural values or historic costs or back rent costs and will be based on market value of land (and timber if applicable). In active markets, land values will be reassessed after six months.

The Ministry of Transportation and Infrastructure will be responsible meeting any applicable legal obligations related to the potential for aboriginal rights and title.

The Ministry of Transportation and Infrastructure will contact impacted third parties after the Authorizing Agency has approved a potential exchange.

The Ministry of Transportation and Infrastructure will be responsible for ensuring finalization of a signed-off agreement with an Indian Band receiving Crown lands. On review and acceptance of the appraisal report and agreement by Canada, the Ministry of Transportation and Infrastructure will provide the Authorizing Agency with a copy of the signed-off agreement with the First Nation. The Authorizing Agency's regional director will review these agreements.

6. FIRST NATIONS

The Authorizing Agency is responsible for ensuring the Province's obligations to First Nations are met in the disposition of Crown land. The Authorizing Agency carries out consultations with First Nations in accordance with its guidelines and policies on First Nations consultation to identify the potential for aboriginal rights or title over the subject property and to determine whether infringement of either might occur (refer to the Aboriginal Interest Consideration Report form contained in the Land Use Report).

Appendix 1. Appraisal Terms of Reference for Road Rights-of-Way Located on Indian Reserves

The following should be considered in developing terms of reference for appraisals for road right of way land located on Indian Reserves:

The appraisal shall be completed to the Canadian Uniform Standards of Professional Appraisal Practice standards.

The land is to be valued without improvements. Improvement to the right-of-way such as grading, clearing, paving, culverts, etc. are not to be valued.

The contents of the appraisal are subject to the *Freedom of Information and Protection of Privacy Act* (the “Act”).