

Intro to Reserve Land Designation

Debra Campbell, Master Instructor

NALMA


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(3 hours)



Introduction

- The term “designation” means:
 - the conditional or unconditional surrender that is NOT absolute,
 - in all or part of a reserve,
 - for the purpose of LEASING reserve lands


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- FN designated lands are reserve lands that a FN has agreed to lease for commercial, agricultural, recreational or other purposes which are voted on by the members of that FN according to the rules of the *Indian Referendum Regulations*:

- The First Nation retains its interest in the land
- Allows FNs to economically benefit from their reserves lands

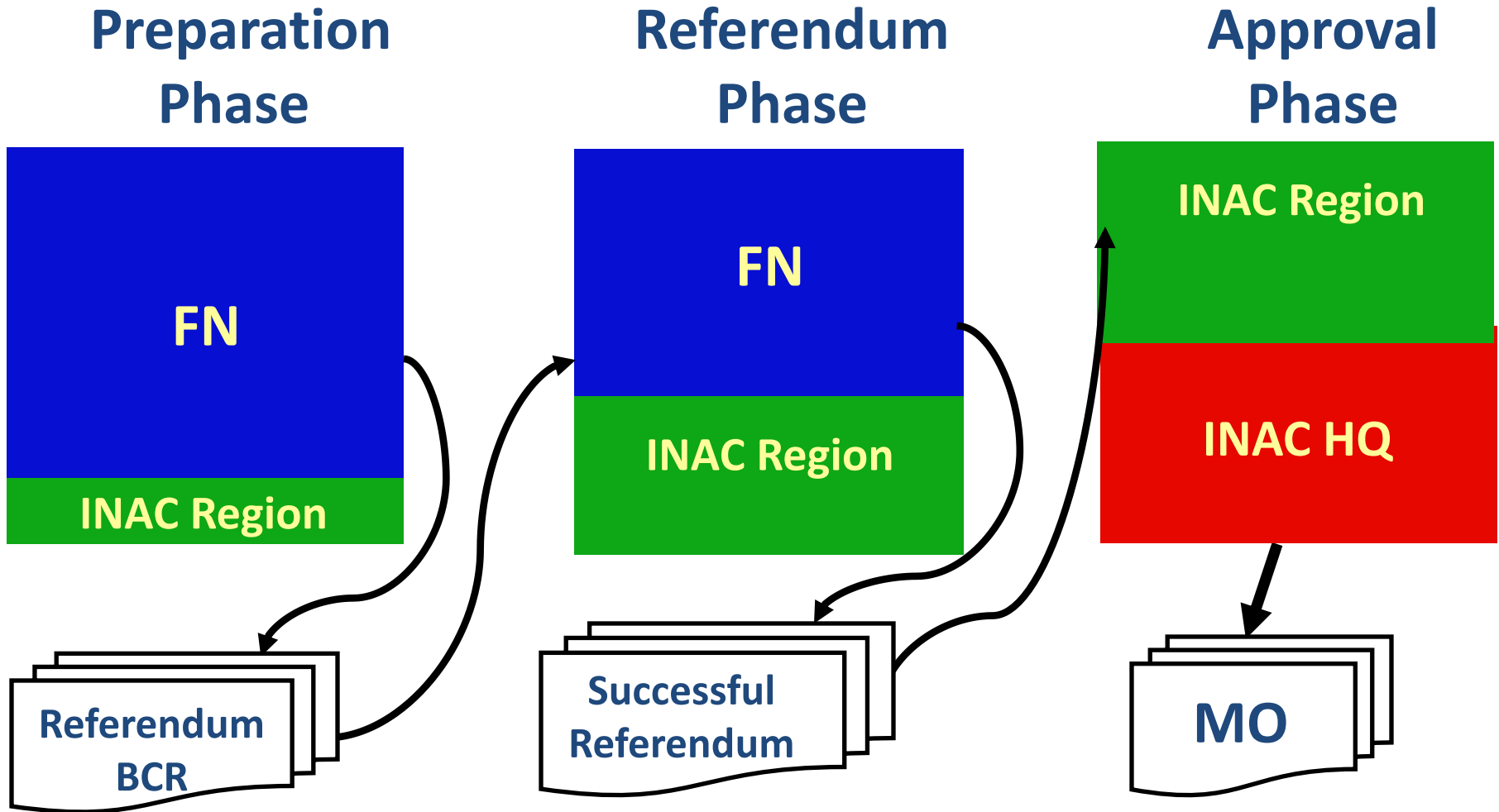


FYI

- The government passed the "Kamloops Amendment" (Bill C-115) in 1988 to amend subsection 38(2) of the *Indian Act*.
- The amendment distinguished between surrenders for sale (or exchange) and surrenders for leasing known as a “**designation**”

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- The Kamloops Amendment ensures that:
 - Designated reserve lands are still part of the reserve and retains reserve status
 - Designated reserve lands are subject to FN by-laws
 - Designated reserve lands are subject to FN Taxation Authority

Designation Process





Preparation Phase

- **Planning:**
 - CCP (land use planning)
 - Development opportunities
 - Type of development/proponent



- **Project Team:**

- Project Manager

- Communication Plan

- Skills & Experience

- Leadership

- Organized

- Communication



- **Site Inspection:**

- Consistent with proposed development
- Meets specific needs of the community
- Adverse effects (if any) to adjacent lands
- Long term impacts



- **FN & INAC Meetings:**

- Who is involved
- Objective of the designation
- Review the process
- Identify stakeholders, proponents, partners, etc.
- Budget
- Develop plan and timeline
- Define roles and responsibilities
- Updates throughout the process i.e. milestones



- **Funding:**

- FN project: funding is provided by the FN
- Proponent: funding can be factored into the negotiations with the proponent
- Alternative funding:
 - Community Economics Opportunity Program (CEOP)
 - Partners
 - INAC Land Management Annual Funding



- **Commitment:**

- INAC:

- Assigned staff time
- Funding

- FN:

- BCR committing to the process
- Funding



- **Designation Type:**

- General

- Long term planning
- No specific project

- Specific

- Project is identified
- Lease to be negotiated
- May be time sensitive
- Subsurface (Mines & Minerals)



– Hybrid

- Combination of general & specific

– Pre-reserve

- Specific use
- Purchase or ATR dependent on use

– Regularizing Buckshee

- An existing business/development



- **Negotiations:**

- Determine type of lease:

- New lease: specific, hybrid or pre-reserve
- Rewrite: buckshee
- Commercial or residential project

- Major terms:

- Headlease & subleases
- Assignments/mortgages
- Land required
- Term
- Rent/rent reviews
- specifics



- **Voter list preparation:**

- Section 10 or Section 11 FN

- **Survey:**

- Canada Lands Survey Record

- BCR

- Timing

- **Environment:**

- Funding

- Terms of Reference



- **Appraisal:**

- Funding

- Terms of Reference

- Stale-dating depends on volatile market

- Longer term is stable market

- **Information Document:**

- Informed consent

- Designation Document is part of Information Document

- Reviewed by:

- FN & FN legal counsel

- INAC & DOJ



- **Finalize Lease Document:**

- All issues must be resolved
- Review by FN, FN legal counsel, INAC, DOJ, & proponent

- **Designation Document:**

- INAC prepares for the MO
- No discrepancies with Information Document
- Provide attachments (i.e. lease)
- Input from FN legal counsel & INAC RO/DOJ
- Back and forth review



- **BCR for Referendum:**

- Purpose of designation
- Date, time, place of referendum vote
- Request Minister to order Referendum
- Legal land description
- Term, compensation
- Request appointment of an Electoral Officer
- Date(s), time(s), place(s) of information meeting(s)
- Lease if applicable



Summary

1. Identify Need/Opportunity
2. Appoint the Project Team
3. Site Inspection
4. FN & INAC Meeting
5. Identify Funding
6. FN Commitment to Proceed
7. Land Status Issues & Negotiations
8. Leasing
9. Begin Preparation of Voters List



10. Environmental Audits

11. Appraisal & Compensation

12. BCR Allowing Survey, & the Survey & Sign-Off

13. Prepare Information Document

14. Review of Information Document

15. Finalize Lease

16. Prepare Designation Document

17. Referendum BCR



Test Yourself



Major Milestone

“Preparation Phase Complete”



Referendum Phase

- **Electoral Officer (EO):**
 - RDG appoints INAC Electoral Officer & an Alternate
 - Later the EO will appoint Deputies
- **Section 10:**
 - FN manages their own member list
 - On & off reserve electors are eligible
 - Assembles voters list



- **Section 11:**

- INAC manages the membership list
- On & off reserve electors are eligible
- Assembles voters list

- **Voter List Certification:**

- C & C sign Certification Form & initial the list or BCR



- **Voter List to INAC:**

- Timing begins before vote

- Allow a minimum of 7 days for stuffing/addressing packages

- **Referendum Package:**

- Off reserve electors with addresses

- On reserve elects that request a package



- **Mail-Out Referendum Package:**

- Notice of Referendum
- Mail-in ballot initialed on the back by EO
- Postage paid return envelope, pre-addressed to EO
- A second inner envelope marked “Ballot”
- Voter declaration (usually on envelope back)
- Letter of instruction regarding voting by mail-in
- Information Document
- Designation Document



- **Post Referendum Notice:**

- EO is responsible (can delegate to Deputy)
- At least 1 conspicuous place on the reserve
- Posting includes:
 - Notice of Referendum
 - Designation Document with Survey Plan
 - Information Document
 - Voter List (names only)
- FN:
 - newsletter,
 - website, etc.



- Mail-Out Referendum Package:

- EO mails Referendum Package to off-reserve electors and on-reserve if requested

- Cost is covered by INAC

- Timing:

- Minimum 7 days to stuff/address packages

- Mailing date is at least 42 CLEAR days from Vote day

- Mailing date is at least 14 CLEAR days to Information Meeting

- Posting day is same day as Mail-out day



- **Information Meeting:**

- Appropriate project participants

- Project team
- C & C
- EO/deputies
- Legal counsel

- Convenient location(s)


- On each inhabited reserve
- Cities/towns

- Set agenda

- **Vote:**

- Open poles at 9 am

- Close poles at 8 pm

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- **Count Votes & Certify Results:**
 - EO process mail-in ballots in the presence of the DEO and Council members
 - EO counts all ballots from the polling stations
 - Sign documents:
 - Polling statement: C&C/EO
 - Statement of Referendum Results: C&C/EO
 - EO determines sufficiency of votes



- **Success:**

- Simply majority

- Majority of the electors who cast a ballot voted “yes”

Result —→ Execute Designation Document

- **No Go:**

- Majority of the electors who cast a ballot voted “no”

Result —→ Proposal ends here



- **Execute Designation Documents:**

- Signed by:

- Chief
- Quorum of Council
- Witness



Summary of Referendum Phase

1. Section 10 or 11 Bands Voter List
2. Assemble Mail-Out Referendum Package
3. Post the Notice of Referendum
4. Mail Referendum Package & Mail-In Ballots
5. Information Meetings
6. First Vote
7. Successful Referendum



Critical Milestone Achieved



- **BCR Requesting Ministerial Acceptance:**

- C&C request Minister to accept Designation
- Document given to EO to form part of package to go to RO & HQ



Major Milestone

“Referendum Phase Complete”

Approval Phase

- **INAC RO Review & Submission:**
 - Review documents and forward to HQ
- **HQ Review & Submission:**
 - HQ reviews package
 - Forwards to Minister's Office
- **Ministerial Order:**
 - HQ Forwards to INAC RO
 - INAC RO forwards to:
 - FN
 - ILR



Amendments to the Designation Provisions

- The Government has amended the designation provisions to alleviate the overly complex & lengthy process of designating land
- The amendments are intended to expedite the process for designating lands under the *Indian Act*



- **Specifically, the amendments are:**

- Lower the voting threshold to a simple majority from a majority-of-a-majority, rendering a second vote unnecessary; and
- Change responsibility for approving designations to the Minister of INAC from the Governor in Council.



- **Voting Thresholds**

1. **Surrender Absolute**

- **Majority of a Majority** means that a majority of eligible voters must vote and that a majority of those who vote must vote in favour.

2. **Designation**

- **Simple majority** requires that a majority of those who participate in the vote, vote in favour of the designation, regardless of the number of persons eligible to vote.



- **Approving Designations:**

1. **Governor in Council:** This is typically the lengthiest step in the designation process.
2. **The Minister:** The Minister can respond more quickly therefore reducing the approval step in the designation process.


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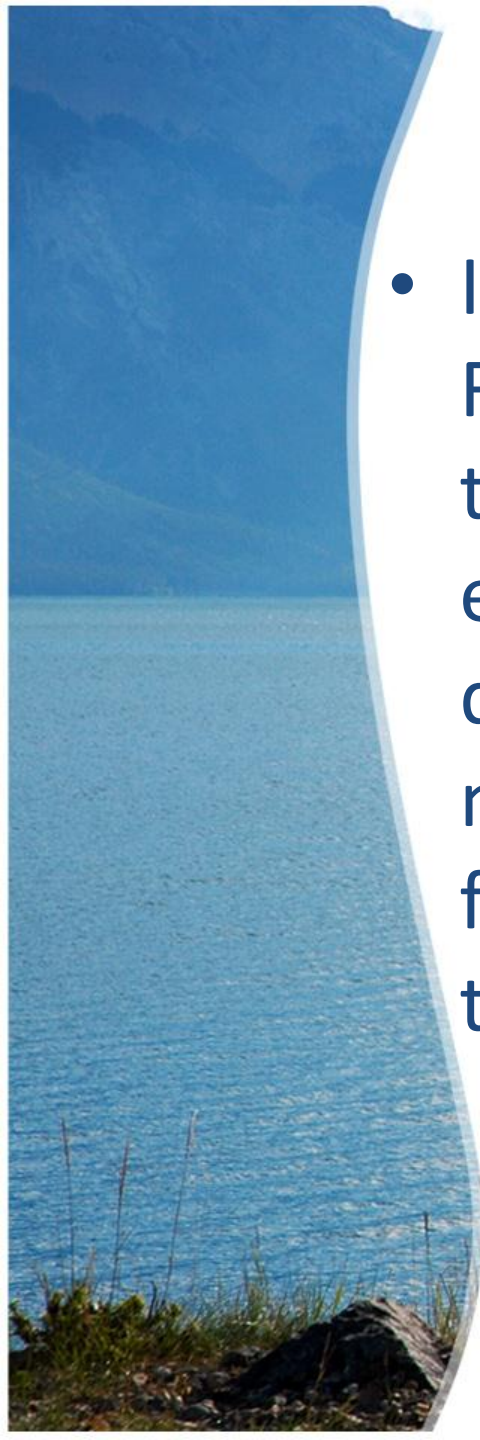
Test Yourself



Amendments to the CEAA

- *CEAA 2012* focuses on major projects that have a greater potential to cause adverse environmental effects
- Most projects on reserve land do not fall under this category, therefore will be exempt from federal environmental assessment

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- The new approach will identify specific projects that require a federal review based on establishing a project list.
 - The list will describe the categories of projects to which the federal environmental assessment process will apply, such as energy and mining projects.
 - INAC's new environmental review process for non-designated projects on reserve land is still being developed.

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- In the interim, INAC will be working with First Nations to review those projects that are no longer subject to an environmental assessment to help determine what additional information may be required in order for INAC to fulfill its legislative requirements under the new system.