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General Instructions for Surveys, e-Edition

Chapter B1-2 - INTERDEPARTMENTAL AGREEMENT WITH THE DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT RE LAND TRANSACTIONS ON RESERVE LANDS, 2003

Effective Date:

This agreement came in force February 13, 1998. It supersedes the Interdepartmental Agreement respecting Legal Descriptions of Indian Lands, December 1993, published in Chapter B1 of the Third Edition of the *Manual of Instructions for the Survey of Canada Lands*. Only excerpts of the agreement are published on this Web site.

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Excerpts from the
Framework Accord between
Lands and Environment Branch,
Lands and Trust Services
Department of Indian Affairs and Northern Development
and
Earth Sciences Sector,
Department of Natural Resources Canada

Preamble

1. This Accord reflects the continuing intention to fulfill federal government obligations to First Nations within the mandates of Lands and Trust Services (LTS), Department of Indian Affairs and Northern Development (DIAND) and Earth Sciences Sector (ESS), Natural Resources Canada (NRCan). This Framework Accord will be supplemented from time to time by schedules that will detail present and future initiatives to be undertaken through this Accord.
2. Under the *Indian Act*, DIAND, LTS is responsible for the management of reserve lands. The *Canada Lands Surveys Act* (CLSA) mandates NRCan, ESS to manage the survey system on Canada Lands, which includes reserve lands.
3. It is important that ESS and LTS, reconfirm the commitment to work together towards common objectives in describing, recording interests on reserve lands and supporting the development of First Nations capacity to manage their lands. This Accord clarifies this partnership.

4. This Accord deals with normal operations of the land transaction system on reserve lands as defined by and administered under the *Indian Act* or when administration is transferred through legislation such as the *First Nations Land Management Act* (FNLMA). This Accord, when directed by specific schedules appended to this Accord, will extend to other activities of LTS, such as assisting First Nations entering the FNLMA and the Additions to Reserves process.

5. This Accord applies to First Nations Reserves, designated lands, surrendered lands, and any other lands held and administered by DIAND for the use and benefit of First Nations. It does not apply to those First Nations who, by self-government legislation, may use land registries other than the Indian Lands Registry (ILR) and the First Nations Land Register (FNLR), or to dispositions made pursuant to the *Indian Oil and Gas Regulations*.

6. The agenda for the modernization of reserve land management is driven by both the evolving needs of First Nations and by new legislation. Land management activities need to be streamlined to be more efficient, therefore processes will be implemented that identify and eliminate duplicated effort. In this manner, service delivery to First Nations can be improved and services can be delivered in an effective, flexible, accessible, and innovative manner under a variety of statutory regimes thereby providing a modernized spectrum of options for involvement of First Nations in land administration.

7. The survey program will operate consistently with the principle of devolving the responsibility for land management functions and related activities to First Nations. This Accord provides a framework for the provision of survey products and services by ESS.

8. This Accord supersedes the 1972 Treasury Board Minute and replaces the 1955, 1991, 1993 and 1998 Interdepartmental Agreements between LTS, DIAND and ESS, NRCan, in so far as those lands described in paragraph 5 are concerned.

Definitions

"Reserve", "reserve lands" - These terms refer to a reserve, designated lands and surrendered lands, as defined in the *Indian Act*.

"1955 Interdepartmental Agreement" is an agreement between the Departments of Northern Affairs and National Resources and of Citizenship and Immigration and the Department of Mines and Technical Surveys respecting surveys, plans and descriptions of lands when dealing with specific classes of transactions of public lands.

"1972 Treasury Board Minutes" is T.B. 710811, dated February 1972, re: "Surveying of Crown Canada Lands Administered by the Department of Indian Affairs and Northern Development"

"1993 Interdepartmental Agreement" is the agreement between the Director, Lands Directorate and the Registrar of Indian Lands, Department of Indian Affairs and Northern Development and the Surveyor General of Canada Lands, Department of Energy, Mines and Resources, respecting Legal Descriptions of First Nations Lands, which is dated November 25, 1993.

"1998 Interdepartmental Agreement" is the Framework Agreement between the Assistant Deputy Minister, Earth Sciences Sector, Natural Resources Canada and the Assistant Deputy Minister, Lands and Trust Services, Department of Indian Affairs and Northern Development respecting land descriptions, process flowcharts and resource management, which is dated February 6, 1998.

"BCR" refers to a Band Council Resolution, now commonly referred to as a First Nation Council Resolution.

"*Canada Lands Surveyors Act*" refers to the *Canada Lands Surveyors Act*, S.C. 1998, c. 14.

"*Canada Lands Surveyors Regulations*" refers to the *Canada Lands Surveyors Regulations*, approved by the Minister of Natural Resources Canada, pursuant to Section 62 of the *Canada Lands Surveyors Act*, on March 18, 1999.

"*Canada Lands Surveys Act*" or "CLSA" refers to the *Canada Lands Surveys Act*, R.S.C. 1985, c. L-5, as amended.

"CLU" is a Client Liaison Unit of the ESS. CLUs are presently co-located with DIAND regional offices.

"*First Nations Land Management Act*" or "FNLMA" refers to the *First Nations Land Management Act*, R.S.C. 1999, c. 24.

"*Indian Act*" refers to the *Indian Act*, R.S.C. 1985, c. I-5, as amended.

"First Nations lands" refers to lands held and administered by DIAND for the use and benefit of First Nations.

"ESS" is the Earth Sciences Sector of Natural Resources Canada.

"LTS" is Lands and Trust Services, the Sector of DIAND that contains the Lands Directorate.

"Official Plan" is a graphical description of boundaries of land prepared from field notes of a survey, confirmed pursuant to the CLSA.

"Registration Plan" is a graphical description of the boundaries of land prepared from information which can include: existing land descriptions, field notes of survey, controlled aerial photographs or imagery, maps and information found in land transaction documents.

"ROC" is a Regional Operations Centre of ESS located at either Whitehorse, Yukon; Yellowknife, Northwest Territories; Edmonton, Alberta and Ottawa, Ontario.

Roles and Responsibilities

9. The *Indian Act*, *First Nations Land Management Act* and the *Canada Lands Surveys Act* mandate certain responsibilities concerning registration of interests and surveys on reserve lands. This relationship is characterized through Sections 19, 21 and 55 of the *Indian Act*, Section 25 of the *First Nations Land Management Act* and Section 25 of the *Canada Lands Surveys Act*. Other legislation and processes, such as the Addition to Reserves Program, can invoke such roles and responsibilities as described by this Accord.

10. Under Section 19 of the *Indian Act*, the Minister of DIAND may:

- a) authorize surveys of reserves and the preparation of plans and reports with respect thereto;
- b) divide the whole or any portion of a reserve into lots or other subdivisions; and,
- c) determine the location and direct the construction of roads in a reserve.

Current practice requires that a First Nation Council Resolution (BCR) is required for any survey work to be done on reserve lands managed under the *Indian Act*.

11. Under Sections 21 and 55 of the *Indian Act*, DIAND keeps registers of land transactions affecting reserve, surrendered and designated lands.

12. Under Section 25(1) of the *First Nations Land Management Act*, DIAND keeps separate registers of land transactions affecting the reserve.

13. Under the CLSA, the Minister of NRCan administers, directs and controls surveys on Canada lands. Section 24 of the CLSA deems First Nations reserve lands to be Canada lands. The Surveyor General manages such surveys and has custody of the records related to those surveys.

14. Under Section 29 of the CLSA, the Surveyor General will only confirm official plans once the plans are approved by the administering department.

15. To manage records of transactions on reserve lands under the *Indian Act*, the Lands Directorate, LTS maintains and operates the Indian Lands Registry System (ILRS). To manage records of transactions on reserve lands managed under the FNLMA, the LTS maintains and operates the First Nation Land Registry System (FNLRS). To manage the legal survey system on First Nations reserves ESS, NRCan operates and maintains the Canada Lands Surveys System.

16. To accomplish the requirements of the CLSA as it pertains to the custody of documents, the Legal Surveys Division maintains the Canada Lands Surveys Records (CLSR) at Ottawa.

17. It is the intention of the Indian Lands Registry (ILR) and the Canada Lands Surveys Records (CLSR) to provide and continue to develop online and open access to these public records.

Standards

18. The Lands Directorate of LTS and the Legal Surveys Division of ESS have jointly developed a schedule of land descriptions and graphical products required for land transactions to be registered in the ILR and the FNLRS. This schedule, when approved by the Director of Lands and the Surveyor General for Canada, will form part of this Accord.

19. Under Section 27 of the CLSA, the Minister of NRCan, through the office of the Surveyor General, is responsible for setting the standards for the various surveys conducted and confirmed under Section 29 or approved under Section 31 of the CLSA. These standards are set out in the Manual of Instructions for the Survey of Canada Lands.

20. The Lands Directorate LTS, DIAND is responsible for setting standards for the registration of documents in the ILR. These standards are set out in the Indian Lands Registration Manual.

21. When needed to facilitate land transactions on reserve lands, ESS is prepared to develop standards for new products seeking advice on their suitability from the Lands Directorate.

Process

22. The objective of reviewing the processes is to streamline the transaction process to be more efficient, effective, flexible and accessible to First Nations. This would allow both departments to make the best use of available resources. The processes for recording a survey or a plan on reserve lands will be outlined in a schedule. This schedule, when approved by the Director of Lands and the Surveyor General of Canada Lands, will form part of this Accord.

23. Under the CLSA, the Minister of DIAND must approve Section 29 plans before the Surveyor General confirms them. This approval may be indicated by an authorized signature on the plan of survey. The approval may also be in electronic format and merged with an electronic copy of a plan of survey to create the final approved plan.

24. Indirect Surveys: First Nations and proponents to a transaction will be encouraged to contract for subdivision surveys or plans of reserve land directly with Canada Lands Surveyors whenever possible.

25. When a newly approved plan is received in the Lands Directorate an appropriate entry will be made in both the ILR and FNLR records either on the reserve general abstracts or on the parcel abstracts. For each new parcel created on unencumbered reserve land by an approved plan prepared in accordance with this Accord a new parcel abstract will be opened. A plan entry on an existing parcel abstract will be made for each newly approved plan of subdivision prepared in accordance with this Accord. Best efforts will be made to align the records of the CLSR, ILR and FNLR as parcels are created and registered independent of the land transaction. This section may be replaced by a specific schedule on systems integration.

General

26. When both parties agree, appendices, schedules and agreements to this Accord may be amended, added or deleted from time to time. The amendment, deletion or addition of any schedule will not affect the validity of the Accord itself.

27. The terms of this Accord, and any attached schedules, can continue to apply to any successor entity until the new parties reach an agreement.

28. This agreement will have an initial term of 3 years with one-year rolling extensions. The Work Plans and associated resources for the initial 3 years will be negotiated during the first year of the agreement. Work Plans and associated resources for each of the 1-year rolling extensions will be negotiated during the first year of each extended agreement unless a decision to terminate the agreement is made by either party in which case the agreement will run its full course but not be extended.

29. This Accord takes effect one week after signature.

30. French and English versions of this Accord are equally authoritative.

Dr. I. Itzkovitch
Assistant Deputy Minister,
Earth Sciences Sector
Natural Resources Canada

Original signed

date: Dec. 15th, 2003

Mr. W. Johnson
Assistant Deputy Minister
Lands and Trust Services
Department of Indian Affairs and
Northern Development

Original signed

date: Dec. 23rd, 2003

SCHEDULE A

Specifications and Standards of Land Descriptions for Transactions to be Registered in the Indian Lands Registry or the First Nations Land Register

This Schedule is made pursuant to a Framework Accord approved on December 23, 2003 by Dr. I. Itzkovitch, Assistant Deputy Minister, Earth Sciences Sector, Natural Resources Canada and Mr. Warren Johnson, Assistant Deputy Minister, Lands and Trust Services, Department of Indian Affairs and Northern Development.

Principle

The requirements for legal descriptions for reserve lands, as detailed in this Schedule, are the minimum required to provide a definition of the extent of interests to be registered in the Indian Lands Registry (ILR) or the First Nations Land Register (FNLR). Surveyors and land managers, when advising clients, should carefully consider whether the minimum requirements outlined in this Schedule provide adequate protection to the Crown, the parties to the proposed transaction,

and to any third parties that the transaction may affect.

Purpose

The purpose of this Schedule is to identify appropriate methods of describing reserve lands when legal descriptions are required for executing and/or registering land transactions in the ILR or the FNL. This Schedule also applies to land transactions which must be registered in the Indian Lands Registry pursuant to any self-government legislation. This Schedule prescribes which products and methods of describing lands to use for specific types of land transactions involving reserve lands. It also sets out the basic principles on which the standards for the products and methods of describing land are based.

Scope

This Schedule applies to reserve lands and any other lands held and administered by DIAND for the use and benefit of Indians.

This Schedule also applies to legal descriptions of provincial lands which will subsequently become Indian lands.

Agreement

The Surveyor General of Canada Lands, who is also the Director of Legal Surveys Division (LSD), Earth Sciences Sector, Natural Resources Canada (NRCan) and the Director, Lands Directorate, Lands and Environment Branch, Lands and Trust Services (LTS), Department of Indian Affairs and Northern Development (DIAND) agree that legal descriptions of reserve lands, used to register interests in those lands, will follow the guidelines set out in this Schedule, in the *Indian Land Registration Manual*, and in the *Manual of Instructions for the Survey of Canada Lands*.

Implementation

Legal descriptions for which specific survey instructions were issued before this Schedule came into force, will be completed according to the agreement in force when the description was commenced.

Requirements for Legal Descriptions of Reserve Lands

General

1. For the purposes of this Schedule, the word 'lease' also includes any authorization given to other federal departments respecting the exclusive right to use land for a specified period. The word 'permit' includes any authorization given to other federal departments respecting the nonexclusive rights to use land. For the purposes of this Schedule, the term of leases and permits include any renewal or extension provisions contained in the lease or permit.
2. To describe the location and extent of lands subject to a land transaction that will be registered in the ILR or the FNL, that requires a description approved by the Surveyor General, only the following land description products shall be used:
 - a) Official Plan (provincial plan - see section A3); or
 - b) Registration Plan (see section B3 to decide if a field survey is required).
3. The above land description products are described in Sections A and B. The land transactions which use each product are identified in Chart A in this Schedule. As a general rule the minimum appropriate land description product will be selected when LTS, DIAND funds its preparation. If the

circumstances warrant it and subject to the availability of funds, the LTS Regional Lands Manager may select a higher quality land description if the option is available in Chart A. Nothing precludes a third party from funding a higher quality land description product if the option is available in Chart A. The choice of such a product is at the discretion of the third party.

4. In cases where it is not clear which product may be used for a land transaction, the Head of the Client Liaison Unit (CLU), LSD and the Regional Lands Manager, LTS will jointly identify the product to use.

5. *The Manual of Instructions for the Survey of Canada Lands* sets out standards required for the products referred to in Sections A and B.

6. When LSD contemplates changes to product standards for Registration Plans, the Lands Directorate and the Lands Advisory Board will be consulted and given an opportunity to comment on the proposed changes.

7. Plan suitability criteria for the ILR and the FNLR:

a) When an entire interest in land is returned to a First Nation, then the original land description used in the transaction document is acceptable for the use in the document returning the interest to the First Nation.

b) Access to each parcel created by a plan must be shown on the plan. However, if for some reason showing the access is not possible, a note on the plan dealing with the matter of access will be acceptable.

c) The lots or parcels depicted on a plan used to register an interest in the ILR or the FNLR cannot be significantly changed in size or location by a new plan, without the written consent of the owner of the interest and all other affected parties. This consent will take the form of a request for update of titles in individual land holdings, a lease amendment in leasing situations or a new permit or permit amendment in instances where an existing permit is to be amended.

d) All parcels created by a plan, including roads to be set aside for band purposes under Section 18(2) of the *Indian Act*, will be identified by a distinct lot number consistent with the records of the ILR or the FNLR. Areas subject to a permit or easement shall not be identified with a distinct lot number.

e) If the parcels created by a plan are not compatible with current registered interests, any request for registration using the plan will be rejected until the underlying interests are dealt with and the plan will not be publicized in the ILR or the FNLR abstracts until the plan is modified or until the individual interests are dealt with.

Section A - Official Survey Plan confirmed under Section 29 of the CLS Act

As a general rule, Official Plans are only to be used when the purpose of the survey is to determine reserve and jurisdictional boundaries.

1. An Official Plan is a graphical description of boundaries of land prepared from field notes of a survey and confirmed pursuant to Section 29 of the *CLS Act*.

2. Pursuant to Section 29 of the *CLS Act*, a plan of survey will not be confirmed unless it has first been approved by the Minister of the DIAND.

3. Plans depicting surveys carried out under provincial legislation, and approved by provincial authorities, which define boundaries of land which will subsequently become reserve lands, may be

considered acceptable to use for the same purposes as an Official Plan when a copy of the provincial plan is recorded in the Canada Lands Surveys Records (CLSR). When an existing plan prepared under provincial legislation is used to define lands which will subsequently become reserve lands, the Head of LSD's CLU in the region must be consulted to decide if the existing plan is satisfactory and is suitable for recording in the CLSR. If the plan is acceptable, an officer of DIAND will acquire a copy of the provincial plan on a reproducible material acceptable to the Surveyor General. This copy will then be forwarded to Legal Surveys Division for recording in the CLSR.

4. A First Nation Council, for whose land an Official Plan was made, must be given an opportunity to comment on the plan before it is approved by DIAND. A minimum and a maximum time that the Council will have to comment on the suitability of a plan may be established in each region.

5. Chart A shows those transactions where an Official Plan must be used.

6. The appropriately delegated officials of DIAND will approve an Official Plan.

Section B - Registration Plan

As a general rule, Registration Plans will be used for all new internal subdivisions or other surveys related to internal interests in a reserve.

1. A Registration Plan, prepared by a Canada Lands Surveyor and certified correct may be used to depict the boundaries of lands which are subject to interests that may be registered in the ILR or the FNLR. Chart A shows the transactions where a Registration Plan must be used.

2. Standards for the preparation of a Registration Plan are based on the following general guidelines:

a) LSD will give the Canada Lands Surveyor lot numbers and authorize the survey within 48 hours of receiving an appropriate written request from the surveyor (fax, telephone, email or written).

b) The plan must show the area of each parcel dealt with. This provision may be waived for some permits where the cost of determining natural boundaries by field survey would be prohibitive.

c) Parcels created on the plan will be tied mathematically to the existing lots, the reserve boundary or geographical coordinates and the ties must be shown on the plan.

d) When a field survey is required:

i) the plan must tie in and show all relevant evidence of occupation;

ii) the plan must show all survey evidence found and placed. The plan will not show traverse information;

iii) monumentation must consist of a minimum of two survey markers per parcel created. Additional survey markers may be placed as requested by the client funding the work.

3. A field survey is required under the following circumstances:

a) There is not sufficient existing information to prepare the Registration Plan without a site visit.

- b) The minimum land description requirement as outlined in Chart A requires a Registration Plan based on a field survey.
- c) None of the limits of the parcel to be created coincide with an existing surveyed and monumented boundary (unless the parcel is in an isolated portion of a reserve).
- d) The Registration Plan will result in the creation of more than five unsurveyed parcels within an individual surveyed parcel. (The Manager of the CLU may permit more than five parcels if, in his or her professional opinion, the existing survey framework can support the creation of more parcels).

4. A Registration Plan for a parcel in an isolated portion of a reserve may be prepared from a controlled aerial photograph, class A line map, or orthophoto map.

5. A First Nation Council, for whose land a Registration Plan was made, must be given an opportunity to comment on the plan before it is approved. A minimum and a maximum time that the Council will have to comment on the suitability of a plan may be established in each region.

Section C - Textual Reference

1. Chart A indicates that a textual reference may be used to describe the lands subject to certain transactions. The textual reference referred to under this section are prepared under the guidelines of the Indian Lands Registry Manual and without reference to any standards or instructions from LSD. This schedule does not deal with these textual references.

Original signed
Paul Landry
Director
Lands Directorate
Department of Indian Affairs and Northern Development

March 11, 2004
Date

Original signed
Michael O'Sullivan
Surveyor General and
Director
Legal Surveys Division
Natural Resources Canada

February 17, 2004
Date

CHART "A"
ILR and FNLR, MINIMUM LAND DESCRIPTION REQUIREMENTS

Standards for these products are set out in the <i>Manual of Instructions for the Survey of Canada Lands</i>					See specific notes below
Administrative Plan - Sec. 31	Official Plan - Sec. 29	Purpose			
		Registration Plan (No Survey)	Registration Plan (Limited Survey)	Survey Plan	
I ADDITIONS TO RESERVE		No	No	Yes/ Prov. plan	
II RE-SURVEYS OF JURISDICTIONAL BOUNDARIES		No	No	Yes	
III SALES					
Surrender Vote Sec. 38(1) and accepting OC	See Note 3	Yes	Optional	Optional	
Disposition		No	No	Yes	
Section 35 (highways, etc.)		No	No	Yes	
Section 35 (easements)		Yes	Optional	No	
IV FIRST NATION PURPOSES					
Designation Vote Sec 38(2) and accepting OC	See Note 3	Yes	Optional	No	
Welfare of First Nation (Sec.18(2))	See Note 1	No	Yes	No	
V LAWFUL POSSESSION					
Allotment Sec 20	See Note 1	Yes	Optional	No	
				Transfers Sec 24, 43, 49	See Note 1
Yes	Optional	No	Access Agreements		See Note 4
Optional	Optional	No	VI LEASES Sec. 53, 58		See Note 5
			- 10 years or more		See Note 1
			- land		
No	Yes	Yes	- building unit with interest in land		
Yes	Optional	No	- building unit only		
Yes	Optional	No	- less than 10 years		See Note 4

SPACE

Definition: "OC" - Order-in-Council (Privy Council)

NOTES:

- (1) Specific circumstances may require a higher quality product.
- (2) The plan will create no new lots. The plan will create a right-of-way or may be used to create an easement.
- (3) Not required if the parcel can be fully described by reference to existing plans recorded in the CLSR.
- (4) The minimum description required by the ILR and the FNLR for these transactions is a textual reference. The guidelines for textual references are set out in the Indian Lands Registry Manual. A Land Use Area Plan (LUA) prepared under the instructions of the Surveyor General may be used as the basis of a textual reference prepared for an agricultural permit.
- (5) The term of leases and permits include any renewal and extension provisions.

References to Sections 29 and 31 in Chart A are to the *Canada Lands Surveys Act* all other Section references are to the *Indian Act*.

- | | |
|------------------|---|
| Subsection 18(2) | land in a reserve may be taken for the general welfare of the Band (e.g. schools, Band roads, churches etc.). |
| Subsection 20(1) | possession of land can be allotted by a Band Council. |
| Section 24 | the right to possession of land may be transferred. |
| Subsection 28(2) | permits may be issued on reserve land. |
| Section 35 | land in a reserve may be taken for public purposes. |
| Subsection 38(1) | a Band may absolutely surrender all of its rights in land to Her Majesty in right of Canada. |
| Subsection 38(2) | a Band may designate (by way of a surrender that is not absolute) any right for the purpose of leasing or granting the right. |
| Sections 43, 49 | the administration of property of deceased Indians. |
| Sections 53, 58 | Surrendered, designated or reserve land may be leased. |

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