



Land Designation

   2018/19



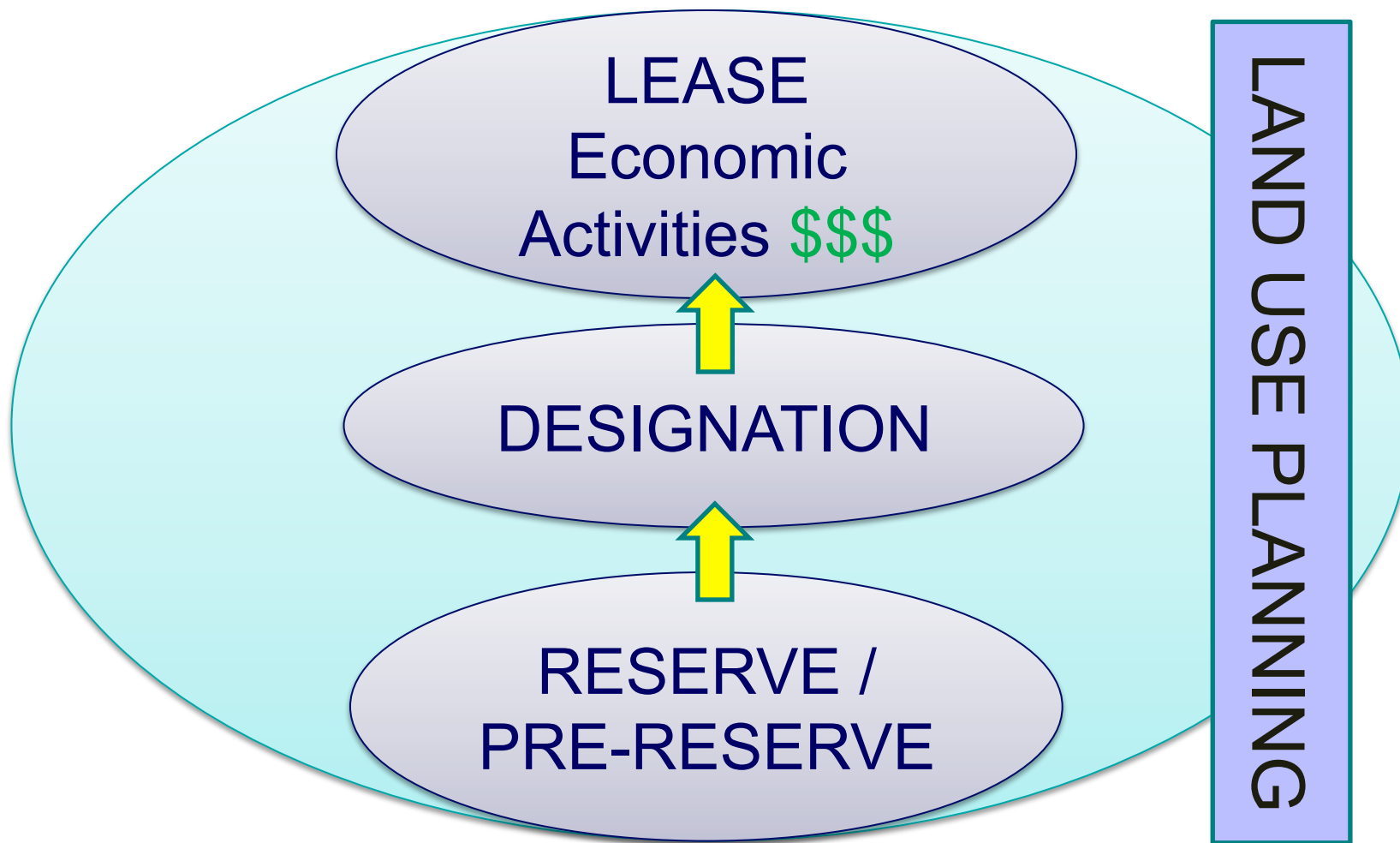


Outlining





Overview





What is a Designation?

- **Designation:** s. 38(2) of the *Indian Act* the conditional or unconditional designate, by way of a surrender that is NOT absolute, in all or part of a reserve, for the purpose of its being leased or a right or interest therein being granted
- **Under this process the land always maintains its reserve status**
- A simple majority referendum vote must be held by secret ballot in accordance with the Indian Referendum Regulations in the *Indian Act*
- Once the land is designated, certain sections of the *Indian Act* no longer apply (ie: 28(2) permits, 18(2) set-a-sides, CMHC housing)
- Pre-Reserve Land can also be designated, but only come into affect once the land reaches reserve status



Types of Designations

• Specific Designation

- Lands are identified for a specific purpose and/or to a specific lessee

• General Designation

- Lands are identified for specific and/or multiple purposes with no known lessee at the time of the Designation
- informed consent is required at time of new project/lease

• Surface designation (Reserve/Pre-reserve)

- commercial
- gravel
- recreational
- Light and/or heavy industrial

• Sub-Surface designation (Reserve/Pre-reserve)

- mines and minerals (potash, uranium, graphite)
- oil and gas



Pre-Reserve Designation

- FN must have a settlement under the Claims Settlement (Alberta and Saskatchewan) Implementation Act or any new claim settlement where a FN has opted-in to the Implementation Act
- The Pre-reserve Lands must be **initiated** by BCR with the Additions to Reserve/Specific Claims unit

*** NOTE: Pre-reserve designation does not take effect until the land actually acquires reserve status**



Who's involved:





Referendum Timeline

2 to 6 Months

- Initiating BCR requesting designation
- Legal Land Descriptions / LSR
- Voter's list and off-reserve address list
- Document creation: Notice of Vote, Information and Designation Documents, Chief's Letter, ballots, etc.



At least 49 days (+7 weeks) before vote day

- Documents Finalized attached to an accepting BCR submitted to ISC for printing
- Ministerial Order calling the Referendum
- Finalized Off-reserve Address List
- Finalized Voter's List



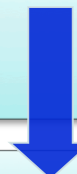
At least 42 days (+5 weeks) before vote day and 14 days before the information meeting

- Ballot/Information Packages mailed out to off-reserve members
- The Notice of Vote is posted



14 days after posting of the Notice of Vote

- Information Meeting(s) are to be held



VOTE DAY



Legal Land Descriptions (LLD)

What Lands:

- Initiating BCR with LLDs attached as a schedule
- Reserve and/or Pre-reserve land, Surface and/or Sub-Surface
- Clear and Concise:
 - **Reserve Name: SW 25-38-6 W2M or Lot 3, Block 2, Plan #2289**

Why?:

- Encumbrance Check (Land Manager - Land Status Report)
 - To identify lands that cannot be Designated (Set-A-Sides, CMHC housing and CP's)
- Provide membership a visual at information meetings (NRCan - maps)
- To insert into the Designation Document(s) (NRCan - textual description)

Tools:

- Reserve creation - Ministerial Orders or Order-in-Councils – Indian Lands Registry (ILRS)
- Encumbrance Check – Instruments in (ILRS)
- Survey plans – NRCan website, Sask Interactive website and Google Earth



Voters List

- **Voter's List**
- **Section 10 Bands**
 - Band assumes control of their own membership;
 - Band maintains list as they have their own membership code.
- **Section 11 Bands**
 - Department maintains Band list of members (registry list).
 - BCR required to release list
- **Off reserve mailing addresses are provided by the First Nation**



Document Preparation

Designation Document:

- Drafted by ISC, DOJ, First Nation's Legal Counsel and Chief and Council
- This designation document contains:
 - The land(s) to be designated, the purpose of the designation and term of the designation
 - Who the lands can be leased to i.e. band owned corporation
 - Compensation i.e. fair market rent and/or nominal rent
 - The terms and conditions of the lease
 - Environmental assessment clauses
 - Revocation clause
 - Other terms and conditions specified by the First Nation Band Council



Document Preparation

Information Document:

- Drafted by Chief and Council and their legal counsel
- The Information document should contain:
 - The purpose and term of the designation and the land affected by the designation
 - Prospective lessee(s) and/or sub-lessee(s)
 - Compensation i.e. fair market rent or nominal rent, basis and frequency of rent reviews
 - The results of any environmental assessments
 - The nature and scope of Chief and Council's authority to request revocation or amendments to the designation
 - Contact information for the Electoral Officer and Deputy Electoral Officer



Document Preparation

Notice of Vote & Chief's Letter:

The Notice of Vote is drafted by ISC

- It contains:
 - The Ballot questions
 - Location, date and time of information meetings
 - Location, date and time of the poll on reserve
 - Contact names and numbers

Chief's Letter: created by the First Nation, informing membership of vote



Calling the Vote

- A BCR calling the referendum, approving the documents and appointing the Electoral Officer is sent in, then an Order In Council is signed
- Posting the Notice of Vote is posted on reserve, it includes the full information package and the voters list
- ISC prints the documents and assembles mail-out packages with the assistance of the Deputy Electoral Officers from the First Nation:
 - Notice of Vote
 - Chief's Letter
 - Information document
 - Designation document(s)
 - Mail-in ballot package (Ballot, Declaration Envelope and pre-paid postage return envelope)



Information Meetings

- The First Nation is required to hold at least one information meeting on reserve, but they may hold as many as they see fit
- The information meetings are attended by the Band's legal counsel, generally some if not all members of Chief and Council, Electoral Officer and/or Deputy Electoral Officer and interpreters as arranged by the Band where required
- Minutes are recorded by a departmental representative
- The map products produced by NRCan are on display for membership visually depicting which land is being designated
- Ballot packages can be given out to members and the EO and/or DEO can accept sealed Declaration Envelopes containing Ballot(s)



Referendum Day

- Polls are open 9:00 am to 8:00 pm
- Simple Majority
 - Example:
 - 150 members eligible to cast a ballot
 - 50 members vote
 - 30 members vote in favour
 - = Simple Majority and successful vote
- If not assented to, First Nation can request another vote (same steps as 1st vote)
- A BCR is required accepting the results of the referendum vote and recommending that the Minister accept the results



Ministerial Order

- The designation is not valid until it's accepted by the Minister
- It must also clear the 7day waiting period after vote day for any reviews requested by membership
- The following documents form the submission package sent to the Minister for review and acceptance:
 - **Signed Designation Document(s)**
 - **Signed Statement of Voting results**
 - **Certifications by Chief or Councillor**
 - **Certifications by the Electoral Officer**
 - **BCR accepting the designation**
 - **Certificate of Independent Legal Advice (CILA)**



Resources

- *Indian Act* – Surrenders and Designations S. 37 to 41
 - Indian Referendum Regulations
- Chapter 5 – Lands Management Manual (soon to be updated)
- Indian Lands Registry System (ILRS)
- Natural Resources Canada (NRCan) website - Canada Lands Survey System – CLSS Map Browser
- SK Interactive Mapping website
- Google maps



Designation Funding:

Lands and Economic Development Services Program (LEDSP):

- **Project-based funding is available for:**
- economic development, land management and environment management activities, including (but not limited to)
 - capacity development
 - planning
 - land designations that support economic development
 - development of proposals to raise financial resources
- program management services pertaining to community economic development
- Eligible recipients can apply for LEDSP - project based funding and use it as a supplement to operational funding.
- Find out more about the

[Lands and Economic Development Services Program](#) on the ISC website



Questions?



Contact Information

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