



Aboriginal Affairs and
Northern Development Canada

Affaires autochtones et
Développement du Nord Canada



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Individual Land Holdings

Presentation for the Lac des Mille Lacs First Nation

November 13, 2014

Canada



Presentation Contents

- Introduction
- Reserve Land
- Interest in Land
- Individual Land Holdings
- Overview



Introduction

- The *Indian Act* sets out the land management responsibilities of the Minister of Aboriginal Affairs and Northern Development for much of the reserve lands in Canada.
- Land management generally includes activities related to the ownership, use and development of land for personal, community and economic purposes.



Reserve Land



Section 18 (1) Reserves to be held for the use and benefit of Indians-

Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.

Indian Act



Reserve Land

Reserve land is different from other land:

- Legal title to reserve lands is held by the Crown rather than by individuals or organizations;
- First Nations have a recognized interest in reserve land that includes the right to exclusive use and occupation, inalienability and the communal nature of the interest;
- The land cannot be seized by legal process or be mortgaged or pledged to non-members of a First Nation; and
- The Minister must approve or grant most land transactions under the *Indian Act*.



Interest in Land

- **Collective First Nations Interest:**

- A First Nation as a whole has the right to the use and benefit of reserve land.
- The collective interest of First Nations in reserve lands cannot be transferred to another entity except by following strict statutory provisions.



Interest in Land

- **Interest of Individual First Nations Members:**
 - Individual members of a First Nation may be allotted possession by Band Council Resolution, upon approval by the Minister this is lawful possession.
 - An allotment is the right to use and occupy a parcel of reserve land. The individual allotment holder has possession of a parcel of land and may be issued a Certificate of Possession as evidence of their right.
 - An individual may transfer his or her allotment to the band or another band member, may lease the allotment to a third party, and may leave the allotment to another band member in his or her will.
 - Allotments and any subsequent transfers must be approved by the Minister, as legal title to the land remains with the Crown.



Interest in Land

- Non-members of a First Nation cannot hold "lawful possession" of reserve lands.
- Under the *Indian Act*, non-members can obtain rights to use or occupy reserve land by entering into **leases** or **permits**.
- All allotments, leases, and permits under the *Indian Act* must be approved and authorized by the Minister. Once approved they are registered in the Indian Land Registry.



Individual Land Holding

- Certificate of Possession (CP)- documentary evidence of a First Nation member's lawful possession of reserve land pursuant to the provisions of subsections 20 (2), (3) or sections 22, 24 or 49 of the *Indian Act*;
- Certificate of Occupation (CO)- the documentary evidence, issued under subsection 20(5) of the Indian Act, of a First Nation member's right to temporary use and occupation of reserve lands pursuant to the provisions of subsection 20(4) and (6)



Certificate of Possession (CP)

- Pursuant to subsection 20(1) of the *Indian Act*, grants lawful possession of the land that has been allotted to the FN member by the council of the band and subsequently a CP is issued pursuant to subsection 20(2) of the *Indian Act*;
- Allotment is a serious process which, once approved, cannot be rescinded unless there has been a major defect in the allotment such as fraud or an incorrect description
- Legal title of the land in question always remains vested in Her Majesty in right of Canada



Certificate of Occupation (CO)

- Pursuant to subsection 20(4) of the Indian Act, grants temporary possession and subsequently a CO is issued pursuant to subsection 20(5) of the Indian Act.
- Temporary possession is not “lawful possession”. As a result, the FN member cannot transfer or dispose of the subject land except by devise or descent.
- The term is for a period of up to two years from the date of its issue.
- The First Nation council may recommend conditions which the locatee must fulfill before they make an allotment (CP)



Requirements of allotments

- There are a four mandatory requirements for an allotment;
- Survey requirement- A survey that is registered in the Canada Land Survey Records (CLSR) with Natural Resources Canada;
- Band Council Resolution- With specific wording of the allotment;
- The land must be unencumbered;
- Approved by the Minister.



Overview

- **Introduction-** AANDC provides land management services to more than 600 First Nations, representing 2,800 reserves consisting of over 3 million hectares.

- **Reserve Land-** Legal title to reserve lands is held by the Crown for the use and benefit of First Nations.

- **Individual Land Holdings-** when a portion of reserve land is allotted to an Individual member of the Band for temporary or lawful possession

- **Interest in Land-** A First Nation as a whole has the right to the use and benefit of reserve land. Individual members of a First Nation may be given allotments



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- Lands
- Funding
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- Publications
- Success Stories
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There are more than 3 million hectares of reserve land across Canada. The land base of First Nations continues to increase as land claims are settled and implemented and lands are added to reserves as part of Canada's commitment to addressing historical injustices.

The Government of Canada recognizes the cultural, historical, social, political and spiritual aspects of land. At the same time, economic development of First Nations' substantial and growing land and natural resource base can greatly improve the well-being and quality of life for Aboriginal people in Canada.

Laws and regulations, such as the Indian Act, and deficits in community and institutional capacity are impediments to developing the land and natural resource base.

The Government of Canada will work with Aboriginal people in Canada and other partners to remove legislative and regulatory barriers to economic development, provide Aboriginal Canadians with greater access to and control of their lands, build greater capacity in economic development institutions and support commercial infrastructure.

<http://www.aadnc-aandc.gc.ca/eng>



Questions?

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