Designating & Leasing on Reserve Land

September 21, 2017
What is a Land Designation?

• When a First Nation wants to lease out reserve land, the Indian Act requires the land to be designated for leasing;

• A designation identifies an area of land for a certain use or purpose, for a specified amount of time;

• The procedure for designating land is set out in sections 37 through 41 of the Indian Act.
Designation Process: Preparation

Designation Process
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Designation Process: Referendum

**Referendum Package**
- Cover letter
- Notice of Referendum
- Designation Document
- Information Document
- Survey Plan
- Ballot
- Statutory Declaration
- Instructions
- Envelopes

***Notice Includes***
- Notice of Referendum
- Designation Document with Survey Plan
- Information Document
- Voter List
Designation Process: Approval
Purpose of a Land Designation

• The Designation allows for the lands to be leased for economic development opportunities, examples of which include, but are not limited to the following:

  ▪ Truck stop, gas station and/or convenience store;
  ▪ Automotive service centres;
  ▪ Restaurant and food sales facilities including kiosks;
  ▪ Hotels and motels;
  ▪ Retail or wholesale establishments or shopping centres;
  ▪ Office, business or commercial establishments;
  ▪ Parking areas;
  ▪ Light manufacturing, fabricating, processing and packaging goods or products;
  ▪ Movement or storage of goods;
  ▪ Existing ‘for profit’ businesses – not yet leased;
Essential Requirements for a Valid Land Designation:

• it is made to Her Majesty;

• a majority of electors who vote must vote in favor of the designation;

• it is accepted by the Minister (by way of Ministerial Order).
Status of Land After a Designation

• It is important to note that land which is designated DOES NOT lose reserve status;

• Should plans for the land change, a designation can be revoked (changed) from designation status provided that the land has not been leased;

• Once the term of a designation ends or the designation is revoked, the lands revert back to common band lands.
What is a Lease?

• A Lease is a legal agreement which conveys the legal right to use and occupy reserve land;

• A lease grants exclusive use of the land to the lessee for a specified amount of time;

• Once the land is designated, it is then ready to be leased at any time;

• The person or company leasing the land is called the lessee.
Why Lease?

• Reserve land is not subject to seizure, and so cannot be pledged as security for loans or mortgages;

• While the land cannot be used as security for a loan, a leasehold interest can be pledged as security for a loan;

• However, before lands can be leased the Indian Act requires that the land must first be designated;

• A lease can be for any length of time (10, 20, 30 yrs. etc.) but cannot exceed the length of the designation.
Benefits of a Land Designation and Lease

• By providing an opportunity for all members to vote, the majority of the members can have a say on what happens on reserve lands;

• Environmental Protection - Environmental provisions in the lease can help ensure that businesses don’t pollute or contaminate the lands;

• Enhances a First Nation’s ability to attract investment in businesses on reserve by offering secure legal land tenure.

• Banks and Government programs require the security of legal land tenure before businesses and the Nation can access loans and/or grants.

• Ensures that all members will benefit from Economic Development through rent paid on leases and subleases (funds go into the FN revenue account).
Preparing for a Land Designation

- Land Appraisal Report - Determining fair market rent

- Environmental Assessment Report - Assessing the condition of the land

- Survey - Defining the area that is intended to be designated.
Information Required for Drafting the Documents

• Term: Length of designation/lease

• Land description: identify the land to be used (within the designated area)

• Rent: amount of compensation (determined by the appraisal)

• Rent Review: establishes the frequency of which rent reviews are required (must be completed a minimum of every five years during the term of the lease)

• Purpose: the approved uses of the designated lands (Residential, Commercial, Light Industrial, Institutional…)

This information is used to draft the Designation Document, Information Document and Head Lease.
Assent/Approval of the Electors of the First Nation

• To seek the assent of the electors of the First Nation, a vote for a land designation is conducted in accordance with the Indian Act and Indian Referendum Regulations;
Referendum Procedures

• A Band Council Resolution from the First Nation is received, the Director of Lands, Economic Development and Intergovernmental Relations orders the referendum vote and assigns an Electoral Officer;

• A list of eligible electors, and a list of addresses of off-reserve members is prepared and provided by the First Nation to the Department at least 49 days prior to the vote date;

• The Notice of Referendum is then posted at sites on the Reserve along with the voter’s list at least 42 days prior to the vote date;

• Mail-in ballot packages are mailed to off-reserve members for whose addresses were known and provided.
Referendum Procedures – cont.

• Any elector can apply to have the electoral list revised if a name of an elector has been omitted, incorrectly set out, or is ineligible. Necessary changes are made by the Electoral Officer;

• A declaration can also be made by an eligible voter on the day of the referendum if his or her name has been omitted from the voters list;

• The Electoral Officer and Deputy Electoral Officer(s) oversee the referendum day process with the assistance of First Nation representatives;

• The polls are open between 9 am and 8 pm;

• When the polls are closed, the ballots are counted and recorded by the Electoral Officer in the presence of the Chief or a member of the Council, including mail-in ballots that were received from off-reserve electors.
Community Consent

• If a majority of voters in the referendum vote in favour of the designation (i.e. vote ‘yes’) the designation is considered to be consented to by membership.
Referendum Acceptance Process ‘Yes Vote’

• Chief and Council sign the Designation Document and a BCR requesting the Ministerial Order;

• The INAC regional staff will then prepare the Ministerial Order submission for the Minister’s consideration;

• The time frame between the referendum and the passing of the Ministerial Order depends on the number of submissions in the system;

• Lands can not be leased until the Ministerial Order is passed.
Lands and Economic Development Services Program (LEDSP)

• Provides support to assist with enhancing economic development, land and environmental capacity of First Nation communities.

• Two types of funding: core allocations & target allocations.

• Eligible land designation activities (target allocations):
  - Land Use Planning (LUA) with a focus on economic development.
  - Environmental Site Assessments
  - Land Appraisals
  - Surveys
Applying for LEDSP Funding

• Targeted allocations through LEDSP require recipients to submit an application.
  ▪ End of April (First intake)
  ▪ End of June (Second intake if funds permit)
  ▪ End of September (Third intake if funds permit)

• Recipients of funding must incur **ALL** costs prior to the end of the fiscal year in which they were received (March 31).

• Reporting requirements: recipients of targeted allocations are required to submit a project status report on results of the project.