

**Management of land in the N.W.T. :
past, present and future**

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MANAGEMENT OF LAND IN THE N.W.T.

PAST, PRESENT AND FUTURE

Jim Umpherson's paper

Department: INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

Region: NORTHWEST TERRITORIES

Directorate: NATURAL RESOURCES AND ENVIRONMENT

Division: LAND ADMINISTRATION

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DEFINITIONS

- 'claim' - depending on the context may mean a plot of land located or acquired in the manner prescribed by the CMR or may refer to land claim settlement either comprehensive or specific
- 'Crown' - means Her Majesty in right of Canada
- 'DIAND' - means the Department of Indian Affairs and Northern Development
- 'Engineer' - as designated by the Minister pursuant to section 4 of the TLUR
- 'engineer of mines' - means a person designated as an engineer of mines pursuant to section 4 of the CMR
- 'inspector' - as designated by the Minister under the TLUR
- 'lease' - under CMR means a lease of a recorded claim granted to the holder of the claim pursuant to section 58 (section 12 of TLA)
- 'lease' - under TLR means the disposal of surface rights to a parcel of land by lease agreement (section 8 of the TLA)
- 'mine' - means any work or undertaking in which minerals or ore containing minerals are removed from the earth by any method
- 'mineral' - means precious and base metals and other naturally occurring substances that can be mined, but does not include coal, hydrocarbons, construction stone, carving stone, gravel etc or other substances regulated by other regulations
- 'Minister' - means the Minister of Indian Affairs and Northern Development
- 'territorial lands' - means land in the NWT that are vested in the Crown or of which the Government of Canada has the power to dispose, and that are under the control, management and administration of the Minister
- 'trespass' - a person who is wrongfully or without lawful authority using, possessing or occupying territorial lands

ABBREVIATIONS

DRAFT

- 'CMR' - Canadian Mining Regulations
- 'FRPA' - Federal Real Property Act
- 'FRPR' - Federal Real Property Regulations
- 'TCR' - Territorial Coal Regulations
- 'TDR' - Territorial Dredging Regulations
- 'TLA' - Territorial Lands Act
- 'TLR' - Territorial Lands Regulations
- 'TLUR' - Territorial Land Use Regulations
- 'TQR' - Territorial Quarrying Regulations

LAND ADMINISTRATION

Manages land use and land disposition, both surface and subsurface, of territorial land through the administration of the following Acts and Regulations.

1. Territorial Lands Act (TLA)

- *(a) Territorial Lands Regulations (TLR)
- *(b) Territorial Land Use Regulations (TLUR)
- *(c) Territorial Quarrying Regulations (TQR)
- *(d) Canada Mining Regulations (CMR)
- *(e) Territorial Dredging Regulations (CDR)
- *(f) Territorial Coal Regulations (TCR)

2. Federal Real Property Act (FRPA)

- *(a) Federal Real Property Regulations (FRPR)

*Note: A screening decision must be made in accordance with the appropriate environmental legislation before any authorities are issued!

DIAND has administration and control of territorial land. Territorial land is often referred to as federal land, Crown land or public land. DIAND has the power to dispose of surface rights by lease, licence or sale. DIAND may also dispose of the subsurface by recording claims or issuing mineral, coal or dredging leases. This Division initiates the transfer of administration and control of land to others. Land transfers of this type have taken place to the Inuvialuit, the Inuit, the Gwich'in and the Government of the Northwest Territories. After the transfer the land is no longer territorial land. After the transfers the Inuvialuit and Inuit have administration and control of Inuvialuit and Inuit lands, the Government of the N.W.T. has administration and control of Commissioner's land.

1. TERRITORIAL LANDS ACT (TLA)

- enabling legislation for Regulations [Territorial Land Regulations (TLR), Territorial Land Use Regulations (TLUR), Territorial Quarrying Regulations (TQR), the Canada Mining Regulations (CMR), Territorial Dredging Regulations (TDR) and Territorial Coal Regulations (TCR)]
- authorizes sale or lease of territorial land
- puts limitations on the sale and lease of land
- mechanism to transfer administration and control of territorial land
- includes the offence section
- defines reservations from grants of land:
 - 100' reserve
 - beds of water bodies
 - mines and minerals
 - no exclusive right to water given to individuals, the general public has a right to travel over any navigable waters
 - addresses trespass and process for removal
 - outlines the powers of the Governor-in-Council
 - withdrawals from disposal
 - set apart land for public purpose
 - nominal fees
 - make regulations or orders
 - prescribe fees

2. FEDERAL REAL PROPERTY ACT (FRPA)

- replaces the Public Lands Grants Act
- enabling legislation for the Federal Real Property Regulations (FRPR)
- authorizes the lease of offshore lands
- authorizes the dredging and use of granular material offshore
- authorizes the licensing of territorial lands
- legislation used to transfer territorial land to other federal government departments

3. LEASES (TLR)

(Authority)

- are a surface disposal of specific parcels of territorial land, including waterlots (submerged lands under fresh water)
- for permanent structures and specific uses
- for extended periods of time (usually 5 to 30 year periods)
- binding contract between two parties
- conditions included
- annual rental

Past: DIAND issued leases and agreements of sale from Ottawa

Present: DIAND issues leases from the regional office in Yellowknife for the NWT. (signing authority delegated to Director, NR&E)

Future: DIAND will issue leases from the regional office in Yellowknife for territorial land in the Mackenzie Valley or a designated administrative location within Nunavut for leases located within the boundaries of that territory. The Designated Inuit Organizations will issue leases on selected lands. All lease applications will be distributed for consultation. It is important to work closely with adjacent landlords.

In the Mackenzie Valley DIAND will receive copies of all applications from the L&W Board, some for construction activities on leases. DIAND to indicate preparedness to issue lease, comment and suggest permit conditions.

DIAND will assess cumulative impacts before issuing any authority.

4. LAND USE PERMITS (TLUR)

(Authority)

- do not dispose of land
- for temporary uses of land
- for short term use (less than 3 years)
- designed to minimize environmental disturbance
- environmental conditions attached to permit
- land use fees paid for the land used (\$20.00 per ha south of the 65th parallel and \$10.00 north of the 65th)
- security deposit of up to \$100,000 may be required

Past: All land use permits were issued by the regional office in Yellowknife for land use operations anywhere in the NWT.

Present: Inuvik and Yellowknife District officers issue LUPs for operations within their districts. Land Administration issues permits for all other land use operations in the NWT.

Future: The Land and Water Board will issue land use permits in the Mackenzie Valley on both territorial and settlement lands. DIAND will be consulted by the L&W Board on all land use applications. DIAND to make recommendations and suggest permit conditions for LUPs on territorial land. Some concern has been expressed recently about a possible overlap between the regulatory responsibility of the LWB on Gwich'in land and the proposed Gwich'in management structure.

DIAND will continue to issue LUPs on territorial lands within Nunavut.

Soon all District Managers may be appointed as 'engineers'

5. QUARRY PERMITS (TOR)

(Authority)

- are a form of surface disposal
 - *- authorize the taking of material (sand, gravel, stone, loam etc.)
- permit specifies amount and location
- valid for one year
- conditions attached
 - *- quarry royalties are \$0.10 per cubic yard for sand gravel or loam and \$0.05 per cubic yard for other building material

*Note: (a resident of the N.W.T. may take up to 50 cubic metres of material without a permit or fee for his own use but not for barter or sale)

Past: Were issued by the regional office in Yellowknife for all of the NWT.

Present: The Inuvik and Yellowknife district offices issue all quarrying activities in their districts. QPs for the rest of the NWT are issued by Land Administration in Yellowknife. (Land Administration maintains a master register of all QPs issued.)

Future: Will be issued by the owner of the land on which the activity is proposed. L&W Board to issue land use permits and consult with land owners. DIAND to comment and suggest land use permit conditions to the L&W Board. Need to ensure there is minimum overlap between the conditions in the quarry permit and conditions in the land use permit

Quarry Permits will continue to be issued by DIAND on territorial lands in the Nunavut Territory.

May be issued by the District Managers in each District. (New Quarry Regulations to be promulgated)

6. OFFSHORE LEASES (FRPA)

(Authority)

- are a disposal of submerged lands offshore i.e. for artificial islands (under salt water only)
- for specific uses
- for extended periods of time
- binding contract
- conditions included
- annual rentals

Past: Were issued under the authority of the Public Lands Grants Act and included artificial islands and granular materials on the bed of the sea.

Present: These leases now issued under the authority of the FRPA by Land Administration in Yellowknife.

Future: All leases in the offshore are outside of the Mackenzie Valley. No offshore lands were selected. The lands offshore will continue to be administered by DIAND.

7. RESERVES

(Authority)

- are authorized by Cabinet Directive
- set aside land by book notation for government use (ie. water survey stations for Environment Canada, navigational aid stations for Transport Canada)
- the administration and control of the land remains with DIAND (the land is still territorial land and the Territorial Lands Act still applies)
- for specific purposes
- for unspecified periods of time
- no fees involved

Past: Applications received, established and administered by Land Resources.

Present: Applications received, processed and reserves established and administered by Land Administration.

Future: The long term intention is to transfer administration and control of reserves containing significant assets to the client federal department or the GNWT as the case may be. Those remaining reserves will continue to be administered by DIAND.

In the Mackenzie Valley land use permits will be required for activities on reserves outside of municipal boundaries.

8. LICENCES (FRPA)

(Authority)

- are for a non-exclusive use of territorial land (i.e. others may cross or use the land if it does not interfere with the licensed right, subject to negotiations with the licence holder if the activity interferes. The latter may require other users to pay a fee if it is allowed in the licence)
- may continually occupy (i.e. pipeline) or use regularly on an annual basis (i.e. winter road)
- no need for a land use permit as activities included in the licence within the licensed area. (this may change in future management regimes)

Past: Were issued under the Territorial Lands Act.

Present: Are issued by Land Administration throughout the NWT under the authority of the Federal Real Property Act.

Future: Will be issued by DIAND on territorial land after consultation. Adjoining landowners will have the ability to issue similar documents. Land Use Permits from the Land and Water Board may still be required for licensed territorial and selected lands.

Will be issued by DIAND for territorial lands within Nunavut.

9. ORDERS-IN-COUNCIL (TLA)

(Authority)

Many actions involving land require the preparation of an O.I.C. submission to the Privy Council of Canada.

- transfer of land to the GNWT
- the withdrawal of the surface or subsurface from disposal
- approval for government employees to lease territorial land
- waiver of the 100 foot reserve in exceptional circumstances
- the correction or lifting of existing OICs

Past: Used to be done in Headquarters for all of the NWT

Present: Completed by the Regional Land Administration in Yellowknife for all of the NWT, then forwarded to the Land Management Division in Headquarters for processing through the Privy Council Office

Future: Will continue to be done by DIAND as described above. Some OIC requests require extensive consultation.

The L&W Board and/or DIO's as the case may be will be consulted on any OIC's involving large parcels of territorial land.

Some OICs do not require consultation because of their small size or relative insignificance. (ie. federal employee to lease land)

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10. SALE (TLR)

(Authority)

Legislation allows for the sale of territorial land.

Past: DIAND used to enter into Agreements of Sale.

Present: By policy DIAND no longer sells territorial land.

Future: DIAND will retain the authority to sell territorial land. Present policy will be reviewed and may change after the settlement of land claims. Land use permits will be required on titled land over 5 hectares in size outside of municipalities.

11. RECORDING OF CLAIMS (CMR)

(Authority)

- dispose of the right to mine minerals
- outline specific rules for staking claims
- provides for the inspection of claims
- procedure after the lapsing of claims
- dispute resolution mechanism
- requirements to lease claims before mining
- requirement to lease surface before erecting any buildings

Past: DIAND administered Crown owned sub-surface rights from Ottawa and the Mining Lands Office in Yellowknife.

Present: Administered by the Land Administration office in Yellowknife for all of the NWT. Headquarters maintains responsibility for Royalties.

Future: Land Administration will continue to administer the Crown's sub-surface mineral interest under territorial land and the existing third party sub-surface rights under private land. District officers provide inspection services to ensure compliance with the regulations.

It is possible that at some future date that the a 'Mining Lands Office' will be located somewhere within the Nunavut area.

12. DREDGING LEASES (TDR)

- authorize the dredging of minerals from the beds of waterbodies
- requirement to mark the area
- dredging requirements and term
- navigation not to be impeded
- public works are protected
- regulations put in place in 1954 and are not frequently used

Past: DIAND issued leases from Ottawa

Present: DIAND issues leases from the regional office in Yellowknife.

Future: DIAND issues leases from the Land Administration office in Yellowknife.

LEASES & PERMITS (TCR)

- are a subsurface disposal of the right to mine coal
- leases are for the commercial mining of coal, not to exceed 21 years
- permits are for the mining of coal, not to exceed one year
- licences are issued for exploration, giving licensees first right to leases and permits
- authority issuance under these regulations are rare
- regulations established in 1954 and are not frequently used

Past: Issued by Headquarters

Present: Issued by the recorder for a mining district,
Land Administration Division

Future: Issued by the recorder, Land Administration
Division in Yellowknife

