

Treasury Board of Canada Secrétariat du Conseil du Trésor du Canada



Policy on Management of Real Property

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Policy on Management of Real Property

1. Effective date

1.1 This policy takes effect on November 1, 2006.

1.2 Together with the directive and standards listed in section 3.6 below, it replaces the following:

- Treasury Board Federal Contaminated Sites and Solid Waste Landfills Inventory Policy
- Treasury Board Federal Contaminated Sites Management Policy
- <u>Treasury Board Heritage Buildings Policy</u>
- <u>Treasury Board Open and Fair Real Property Transactions Policy</u>
- Treasury Board Policy on the Disposal of Surplus Real Property
- <u>Treasury Board Real Property Accessibility Policy</u>
- <u>Treasury Board Real Property Administration Policy</u>
- Treasury Board Real Property Environment Policy
- Treasury Board Real Property Investment Policy
- Treasury Board Real Property Management Framework Policy
- <u>Treasury Board Real Property Revenue Policy</u>
- Treasury Board Real Property Transactions, Processes, and Authorities Policy
- Treasury Board Use of Real Property Facilities Policy

2. Application

2.1 This policy applies to all departments as defined in section 2 of the *<u>Financial Administration Act</u>*, unless specific acts or regulations override it.

2.2 The requirement with respect to the Directory of Federal Real Property and to the Federal Contaminated Sites Inventory at section 6.1.15 of this policy also applies to Crown corporations as defined in the <u>Reporting Standard on Real Property</u>.

Note: For interpretation of this policy and the related directive and standards in the Province of Quebec, "real property" means "immovable" within the meaning of civil law of the Province of Quebec and includes the rights of a lessee in respect of such an immovable.

3. Context

3.1 Real property and real property information are significant corporate resources that, when managed well, enable effective and efficient government programs, inform strategic decision-making and facilitate horizontal initiatives.

3.2 The management of real property is a systematic, structured process covering real property activities on a whole-of-life basis. It includes activities related to planning, acquisition, use and disposal for which both custodian and tenant departments are responsible.

3.3 This policy is issued pursuant to the *Financial Administration Act*, subsections 7(1), 9(1.1), 9(2) and 149(1), and the *Federal Real Property and Federal Immovables Act*, subsection 16(4).

3.4 Ministers have <u>administration of real property</u> only in support of the mandated programs of their departments. Deputy heads are accountable to their respective minister and to the Treasury Board for the sound stewardship of these assets in accordance with legislation, regulations and Treasury Board policy instruments that promote due diligence, ethical behaviour and sound management practices, thereby ensuring long-term sustainability and value for Canadian taxpayers. They are also responsible for ensuring real property is managed in a manner that fulfills any legal obligations with respect to Aboriginal groups and that the Honour of the Crown is upheld.

3.5 This policy is framed by the principles set out in the <u>Policy Framework for the Management of Assets and Acquired Services</u>. This policy is to be read in conjunction with related Treasury Board policies governing assets, in particular the <u>Common Services</u> <u>Policy</u>, the <u>Policy on Investment Planning</u>, the <u>Policy on Long-term Capital Plans</u>, the <u>Policy on the Management of Projects</u> and the <u>Project Management Policy</u>.

3.6 Additional mandatory requirements for the management of real property are set out in the following policy instruments:

- Directive on the Sale or Transfer of Surplus Real Property;
- Accessibility Standard for Real Property;
- Appraisals and Estimates Standard for Real Property;
- Reporting Standard on Real Property; and
- Fire Protection Standard.
- 4. Definitions

4.1 Definitions to be used to interpret this policy and the related directive and standards can be found in the Appendix.

5. Policy statement

5.1 Objective

The objective of this policy is to ensure real property is managed in a sustainable and financially responsible manner, throughout its life cycle, to support the cost-effective and efficient delivery of government programs.

5.2 Expected Results

The expected results of this policy and its associated directive and standards are:

- effective and efficient management that enables program outcomes and serves broader government objectives;
- financially responsible management that maximizes the long-term economic advantage to the Crown and provides best value to the Canadian taxpayer;
- barrier-free access and use of federal real property and services that ensures inclusiveness and non-discrimination;
- cultural and environmental stewardship that contributes to the preservation and protection of our heritage and the environment; and
- fair, open and transparent transactions that ensure equitable treatment.

6. Policy requirements

6.1 Deputy heads are responsible for ensuring that:

6.1.1 An appropriate real property management framework is in place and maintained that supports timely, informed real property management decisions and the strategic outcome of programs. The framework must include clear accountability and decision-making structures, including authorities and responsibilities that are consistent with organizational needs and capacity; policies, practices and processes that comply with federal legislation, regulations and government policies; and systems that provide relevant program, financial, and real property performance information.

6.1.2 When there is a custodian – tenant relationship, a formal agreement is entered into that ensures ongoing co-operation, timely communication and a mutual understanding of respective accountabilities, operational requirements, policy responsibilities and financial commitments to achieve optimum real property outcomes.

6.1.3 The overall performance of the real property is regularly and systematically assessed for functionality, utilization, and physical and financial performance. Key performance indicators and targets must be developed based on appropriate benchmarks.

6.1.4 Acquisition, operation, maintenance and disposal strategies are developed based on the findings of the performance assessment and on an economic and program analysis that considers the full life-cycle costs and benefits of the real property options to meeting ongoing program requirements. To ensure the effective consideration of all suitable options, including a public-private partnership (P3), all infrastructure investments creating an asset with a lifespan of at least 20 years, and having capital costs of \$100 million or more, will be subjected to a P3 screen, in consultation with PPP Canada. Should the assessment conclude that there is P3 potential, departments will be required to develop a P3 option among possible options. These strategies must inform the development of the departmental investment plan.

6.1.5 Opportunities to earn revenues through the wider use of under-utilized real property, which is still required for program purposes, are assessed and taken advantage of. Such opportunities must not cause a negative impact on their programs or tenant programs, applicable policy obligations must be met and the use by others must be compatible with local land use controls.

6.1.6 Real property decisions are financially prudent and represent the best value to the Crown based on pre-determined financial and program criteria. Transactions and agreements must be duly authorized; abide by the <u>limits and conditions established by Treasury</u> <u>Board</u> and respect the market value principle. The consideration received or given by the government must be justified in relation to the market value determined according to the Treasury Board <u>Appraisal and Estimates Standard for Real Property</u>.

Note: Market value does not apply to custody transfers as defined in this policy as they are effected at nominal value.

6.1.7 The public is provided with a fair and equitable opportunity to transact with the government. Offers must be solicited unless the minister is satisfied that the nature or subject matter of the transaction would make it inappropriate or not in the public interest to have a solicitation of offers.

6.1.8 Further to the requirements of the <u>Canadian Human Rights Act</u>, the Treasury Board <u>Accessibility Standard for Real Property</u> is considered the minimum requirement for barrier-free access to and use of real property. The standard will be applied unless it creates undue hardship in health, safety or cost.

6.1.9 The heritage character of federal buildings is respected and conserved throughout their life cycle. Buildings that are 40 years of age or older, whether Crown-owned buildings under the administration of their minister or buildings they are planning to purchase, must be evaluated by Parks Canada for their heritage character.

6.1.10 Where their minister has administration of heritage buildings: conservation advice is sought for recognized heritage buildings; consultations with Parks Canada are undertaken before demolishing, dismantling or selling a recognized heritage building and before taking any action that could affect the heritage character of a classified building; and best efforts are made to arrange for appropriate

alternative uses of under-utilized or excess classified and recognized heritage buildings, first within the federal government and then outside the federal government.

6.1.11 Real property is managed in an environmentally responsible manner consistent with the principles of sustainable development. The environmental condition of real property must be ascertained to determine whether it is or can be made environmentally compatible with its current and intended use. All available, relevant environmental information must be disclosed to anyone interested in occupying the real property.

6.1.12 Known and suspected contaminated sites are assessed and classified and risk management principles are applied to determine the most appropriate and cost-effective course of action for each site. Priority must be given to sites posing the highest human health and ecological risks. Management activities (including remediation) must be undertaken to the extent required for current or intended federal use. These activities must be guided by standards endorsed by the Canadian Council of Ministers of the Environment (CCME) or similar standards or requirements that may be applicable abroad. The costs of managing contamination caused by others must be recovered, when this is economically feasible.

6.1.13 The contamination of real property or negative impacts on the environment through the use or permitted third-party use of real property is avoided. In the event of contamination, immediate and reasonable action must be taken to protect the health and safety of persons and the environment, prior to assessing a future course of action.

6.1.14 Real property surplus to program requirements is not retained. The type of right or interest in the property will dictate the most appropriate means of cessation of occupancy or disposal. A disposal by sale or transfer must be completed in conformance with the Treasury Board <u>Directive on the Sale or Transfer of Surplus Real Property</u>.

6.1.15 The management of real property information enables: the integration of real property and financial information; linkages to program objectives and to the Management, Resources and Results Structure of the department; and the recording and updating of information in the Directory of Real Federal Property (DFRP) and the Federal Contaminated Sites Inventory (FCSI). The recording and updating of information must be done in conformance with the Treasury Board <u>Reporting Standard for Real Property</u>.

Note: Heads of Crown corporations are responsible for ensuring that the recording and updating of information is done within their organization as directed by the Treasury Board <u>*Reporting Standard for Real Property</u>*.</u>

6.1.16 The prior approval of Treasury Board ministers is sought for management decisions, transactions and other agreements that do not comply with real property policy requirements or that exceed the transaction approval <u>limits and conditions established by the</u> <u>Treasury Board</u>.

6.1.17 A senior official is designated as Departmental Fire Protection Coordinator (DFPC) to oversee implementation of the Fire Protection Standard.

Monitoring and reporting

6.2 Deputy heads are responsible for monitoring and reporting on the management of real property in their departments. More specifically, they are responsible for ensuring that:

6.2.1 a control and oversight regime is in place to monitor adherence to this policy and its associated directive and standards;

6.2.2 performance relative to the obligations under the real property policy instruments is measured and documented;

6.2.3 the management framework for real property is reviewed as an ongoing component of departmental risk-based audit planning;

6.2.4 departmental records, plans, policy instruments or any other required information are provided to the Treasury Board Secretariat, upon request, in support of the Secretariat's monitoring responsibilities; and

6.2.5 organizational capacity to manage real property transactions is regularly reviewed and, when capacity-based limits have been approved, attestations of capacity are provided to the Treasury Board Secretariat.

6.3 The Secretary of the Treasury Board is responsible for:

6.3.1 assessing departmental performance in the management of real property through such activities as ongoing dialogue and committee work with departments, review of departmental strategic investment plans and related submissions as well as other departmental records, plans, policy instruments, etc., and by taking note of relevant audits and reviews conducted by departments or the Auditor General of Canada; and

6.3.2 reviewing the effectiveness of the policy and its associated directive and standards at the five-year mark of their implementation and for ensuring that an evaluation is conducted when supported by a risk-based analysis.

7. Consequences

7.1 Based on the assessment of departmental management performance, the Secretary of the Treasury Board will make appropriate recommendations to the deputy head of a department and to Treasury Board. Recommendations to Treasury Board ministers could include such measures as an increase in transactional approval limits to acknowledge improved performance or capacity, or conversely, a decrease in authorities or a withholding of proceeds of sale or transfer in the event of performance falling short of the requirements of this policy and its associated policy instruments.

8. Roles and responsibilities of other government organizations

Note: This section is meant to inform departments of other significant players in the management of real property. In and of itself, it does not confer an authority.

8.1 The Canadian Environmental Assessment Agency administers the <u>Canadian Environmental Assessment Act</u> and advises federal departments of their obligations under the Act. The Agency encourages public participation in the environmental assessment process and promotes high-quality assessment through training and guidance. It also provides administrative and advisory support for review panels, mediations, comprehensive studies and class screening. In addition, the Agency administers the Cabinet Directive on the Environmental Assessment of policy, plan and program proposals and promotes the use of strategic environmental assessments as a key tool to support sustainable decision-making.

8.2 The Canadian Human Rights Commission can accept complaints concerning the accessibility of real property under the authority of the Canadian Human Rights Act. In addition, the Commission requires that employers (i.e., both custodian and tenant departments) examine their workplaces to ensure they are accessible as required under the *Employment Equity Act*.

8.3 Environment Canada provides advice to all federal departments on environmental matters, including contaminated sites, species at risk and environmental assessment. Through a full consultative process, the department also works with departments to establish federal environmental goals and objectives and to develop regulations, directives, guidelines, standards, or codes that affect them. In co-operation with partners, the department develops environmental quality criteria, site assessment protocols and other environmental tools and technologies.

8.4 Fisheries and Oceans Canada, under the *Fisheries Act*, has a regulatory function with respect to the protection of fish habitat and the prevention of pollution. Fisheries and Oceans Canada provides advice and support to Environment Canada and custodian departments concerning, among other things, the impact of contamination and remediation strategies on fish habitats. The department is also the competent ministry for aquatic species at risk under the <u>Species at Risk Act</u>.

8.5 Foreign Affairs and International Trade Canada is the designated custodian of real property outside Canada that supports diplomatic and consular purposes. The department is also the *common service organization* providing real property services to departments outside Canada.

8.6 Human Resources and Skills Development Canada is responsible for and ensures compliance with the <u>Canada Labour Code</u>, Part 2 and attendant health and safety regulations with respect to federal workplaces. Fire protection services are delivered by the department's Labour Program, which has as its mandate "ensuring the protection, conservation and minimization of risks to life, property and the Government's financial position". Fire protection services include: advice to Treasury Board on fire protection and standards; assistance and advice to departments on fire risk management matters; fire investigations and reports; reviewing plans on design and construction of buildings to ensure conformity with Treasury Board policy and fire protection standards; liaison with fire, police and building authorities; reporting on national and crown property fire losses and specialized fire inspection and fire protection engineering services.

8.7 Aboriginal Affairs and Northern Development Canada provides available information about federal properties such as: whether the property is in an area subject to a land cession treaty or completed comprehensive land claim; whether there are ongoing claims negotiations or out-of-court settlement discussions; if the property is subject to any asserted claims; or if there is evidence of use or occupation or history of use and occupation by an Aboriginal group or groups.

8.8 The Department of Justice Canada, under the authority of the <u>Department of Justice Act</u> and the <u>Federal Real Property and</u> <u>Federal Immovables Act</u>, acts as solicitor to departments for real property transactions of all types to ensure that all legal aspects of the transaction have been addressed; provides property-specific legal title search and an assessment as to whether potential or established Aboriginal or treaty rights could be adversely impacted by the disposal of the land and whether a duty to consult is triggered; provides information on any relevant litigation; prepares instruments, contracts and other documents, including approval of their form and legal content; provides legal advice and opinions on real property matters and transactions; countersigns conveyance instruments; and operates a document depository.

8.9 The National Capital Commission, under the <u>National Capital Act</u>, has legislated responsibilities for real property within the National Capital Region (NCR). These responsibilities include the approval of all sales or transfers of federal lands within the NCR, approval of demolition of buildings on federal lands within the NCR, and the approval of land use or development plans. The organization is also responsible for approving exterior alterations and additions to buildings on federal lands for defining the National Interest Land Mass (NILM) - those lands essential to the function and character of the NCR that must be held for future generations.

8.10 Natural Resources Canada promotes energy management in federal government facilities, surveys Canada Lands and manages the Crown's mineral rights. Under the *National Resources Canada Act*, the department issues, manages, transfers, and registers federally owned mineral rights in the provinces and oil and gas rights for frontier land areas not covered by regional boards. It therefore has a role in real property transactions whenever mineral rights form part of the federal Crown's ownership of the land.

8.11 PPP Canada provides advice and expertise on the use of public-private partnerships, in accordance with its mandate established in its enabling Order-in-Council.

8.12 Parks Canada establishes national goals to protect federal heritage buildings and national historic sites. It also develops policies, standards and guidelines in consultation with other departments. Through the Federal Heritage Buildings Review Office, Parks Canada provides criteria and a process for evaluating and designating heritage character, provides advice and recommendations to other departments, and maintains a register of federal heritage buildings. The minister responsible for the

Agency is responsible for approving the heritage designations for federal buildings based on the recommendation of an interdepartmental advisory committee.

8.13 Public Works and Government Services Canada is the designated custodian of general-purpose office accommodation in Canada, provided on an obligatory basis to departments, and sets the standards for them. The Minister has authority under the *Expropriation Act* to expropriate any interest in land that, in the minister's opinion, is required by the Crown for a public work or other public purpose. Under the *Payment-in-lieu-Taxes Act*, the minister has sole authority for making a payment to a taxing authority in respect of federal real property. In addition, under the *Department of Public Works and Government Services Act*, the department is also a common service organization providing real property services to federal organizations within Canada.

8.14 The Royal Canadian Mounted Police, in consultation with the Secretariat and other departments, develop operational standards and technical documentation on the security design of facilities and the control and monitoring of access to facilities and assets. They advise departments on the application of the operational standards and technical documentation, on the security design of facilities and on physical security equipment, systems and procedures. Furthermore, they develop and provide physical security training and awareness; review and advise on counter-technical intrusion detection and conduct related research and develop counter-measures for physical threats.

8.15 The Treasury Board Secretariat, in addition to the explicit responsibilities outlined in this policy, provides the appropriate tools and guidance in support of this policy and its associated directive and standards to be consistent with best practices in the public and private sectors. The Secretariat also supports the professional development of the real property community.

9. References

9.1 In addition to the directive and standards associated with this policy, the following directly affect or inform activities related to the management of real property.

Relevant legislation

- Canada Labour Code
- <u>Canadian Environmental Assessment Act</u>
- <u>Canadian Environmental Protection Act 1999</u>
- Canadian Human Rights Act
- <u>Expropriation Act</u>
- Federal Real Property and Federal Immovables Act
- Federal Real Property Regulations
- <u>Financial Administration Act</u>
- Fisheries Act
- Historic Sites and Monuments Act
- Indian Act
- <u>National Capital Act</u>
- <u>National Parks Act</u>
- <u>National Resources Canada Act</u>
- <u>Northwest Territories Act</u>
- <u>Nunavut Act</u>
- <u>Official Languages Act</u>
- Payment-in-Lieu-of-Taxes Act
- Species at Risk Act
- <u>Territorial Lands Act</u>
- Yukon Act

Treasury Board policies

- <u>Common Services Policy</u>
- Federal Identity Program Policy
- <u>Government Security Policy</u>
- <u>Management of Information Technology Policy</u>
- Policy on Accounting for Costs and Liabilities Related to Contaminated Sites
- Policy on Accounting for Non-Monetary Transactions
- Policy on Delegation of Authorities
- Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service
- Policy on Internal Audit
- <u>Policy on Long-term Capital Plans</u>
- Policy on Losses of Money and offences and Other Illegal Acts Against the Crown
- Policy on the Management of Government Information
- Policy on the Use of Official Languages for Communications with and Services to the Public
- Project Approval Policy
- Project Management Policy

Treasury Board directives and standards

- <u>Accounting Standard 3.1 Capital Assets</u>
- Federal Identity Program Manual, Section 4, Signage
- Isolated Posts and Government Housing Directive
- Information Technology standards
- Occupational Safety and Health directives and standards
- Security standards

Treasury Board Secretariat publications

- Best Practices Advisory on Environmental Considerations in Real Property Transactions
- Best Practices Advisory on Federal Brownfields
- Environmental Guide for Federal Real Property Managers
- Guide to the Management of Real Property
- <u>Guideline to Implementing Budget 2011 Direction on Public-Private Partnerships</u>
- Integrated Risk Management Framework
- Smoking in the workplace
- <u>TBS Management Accountability Framework</u>
- <u>Workplace Day Care Centres</u>
- Workplace Fitness Program

Other

- Aboriginal Self-Government: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government
- <u>Action Plan for Official Languages</u>
- <u>A Federal Approach to Contaminated Sites</u>
- <u>CCME Canadian Environmental Quality Guidelines</u>
- <u>CCME National Classification System for Contaminated Sites</u>
- CCME Soil Quality Guidelines for the Protection of Environmental and Human Health
- Gathering Strength: Canada's Aboriginal Action Plan
- Guide to Real Property Management: Aboriginal Context
- National Fire Code of Canada
- National Building Code of Canada
- Policy on Framework for Office Accommodation and Accommodation Services, PWGSC

10. Enquiries

Please direct enquiries about this policy instrument to the organizational unit in your department responsible for this subject matter. For interpretation of this policy instrument, the responsible organizational unit should contact: <u>TBS Public Enquiries</u>.

Appendix – Definitions

Acquisition (Acquisition)

A transaction that adds real property to a department's inventory by purchase, lease, licence, exchange, gift, easement, expropriation, transfer of administration from another department or agent Crown corporation or a transfer of administration and control from the provincial Crown.

Agreement (Entente)

An instrument, such as a memoranda of understanding, a memoranda of agreement or an occupancy instrument, that while not legally binding, creates a custodian-tenant relationship by conferring certain real property rights of use or benefits and obligations on the part of the two parties as if it were a truly enforceable instrument.

Contaminated Site (Site contaminé)

A site at which substances occur at concentrations that: (1) are above background levels and pose, or are likely to pose, an immediate or long-term hazard to human health or the environment, or (2) exceed the levels specified in policies and regulations.

Custodian (custody) (gardien)

A department whose minister has administration of real property for the purposes of that department

Custody transfer (Transfert de la garde de biens immobiliers)

A transfer of administration of real property that supports an adjustment to or transfer of program accountability.

Disposition/Disposal (Aliénation)

A transaction that alienates real property from a department's inventory by sale, lease, licence, exchange, gift, easement, transfer of administration to another department or an agent Crown corporation, or transfer of administration and control to the provincial Crown.

Financial performance (Rendement financier)

A performance measure that addresses the cost of operating and sustaining an asset relative to established standards or targets.

Functionality (Fonctionnalité)

A performance measure that addresses how effectively an asset meets defined program and service requirements. **Heritage building** (*Édifice patrimonial*)

A federally owned building to which the Minister of the Environment has assigned a "classified" or "recognized" designation. **Management of contaminated sites** (*Gestion des sites contaminés*)

The spectrum of approaches for dealing with a known contaminated site. Management includes, but is not limited to, one or more of the following: monitored natural attenuation, warnings, restrictions to site access, change in land usage, isolation of contaminants from human and ecological receptors (contaminant stabilization, barrier walls, capping), interim remediation, partial remediation, phased remediation, full remediation, remediation in any of the previous approaches to varying standards (industrial, commercial, agricultural, residential/parkland), postponement of action until contamination stops. Management also includes risk management.

Market value (Valeur marchande)

The price that a property would likely bring in a competitive and open market on a specified date under all conditions required for a fair sale, with the buyer and seller each acting prudently and knowledgeably, and where the price is not affected by undue stimulus.

Open market (Marché libre)

A solicitation of offers giving the public fair and equitable opportunity to acquire real property from or to dispose of real property to the government

Physical performance (Rendement physique)

A measure that addresses the physical state of repair and environmental condition of an asset relative to its current and long-term service delivery requirements.

Public purpose (Fins publiques)

For federal departments and agent Crown corporations, "public purpose" means program need; for provinces and municipalities, "public purpose" generally refers to roads, utilities and parks. Other public purposes could be considered if they are non-commercial and for the "common good" of all citizens.

Public-Private Partnership (partenariat public-privé)

A long-term contractual relationship between a public authority and the private sector that involves:

- The provision of capital assets and associated services to meet a defined output specification (i.e., defines what is required rather than how it is to be done);
- The integration of multiple phases of the life cycle of an asset (e.g., design, build, maintain and/or operate) and related financing into a single agreement;
- The allocation of risks between the public and private sectors;
- Private sector capital at risk throughout the duration of the contract; and
- A performance-based payment mechanism.

Real property (Biens immobiliers)

Any right, interest or benefit in land, which includes mines, minerals and improvements on, above or below the surface of the land.

Remediation (Assainissement)

I mproving a contaminated site to prevent, minimize or mitigate damage to human health or the environment. Remediation involves developing and applying a planned approach that monitors, removes, destroys, contains, or otherwise reduces the exposure of contaminants to receptors of concern.

Surplus real property (Biens immobiliers excédentaires)

Real property that is no longer required in support of a department's programs.

Sustainable development (Développement durable)

Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

Tenant (locataire)

A department occupying real property that is under the administration of the minister of another department.

Term (Durée)

The period of time covered by a lease, licence or other agreement, including any option(s) (i.e. extensions of the term). **Utilization** (*Utilisation*)

A performance measure that addresses the type, suitability and intensity of use of an asset relative to its capacity or potential.