



Designating & Leasing on Reserve Land

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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*.

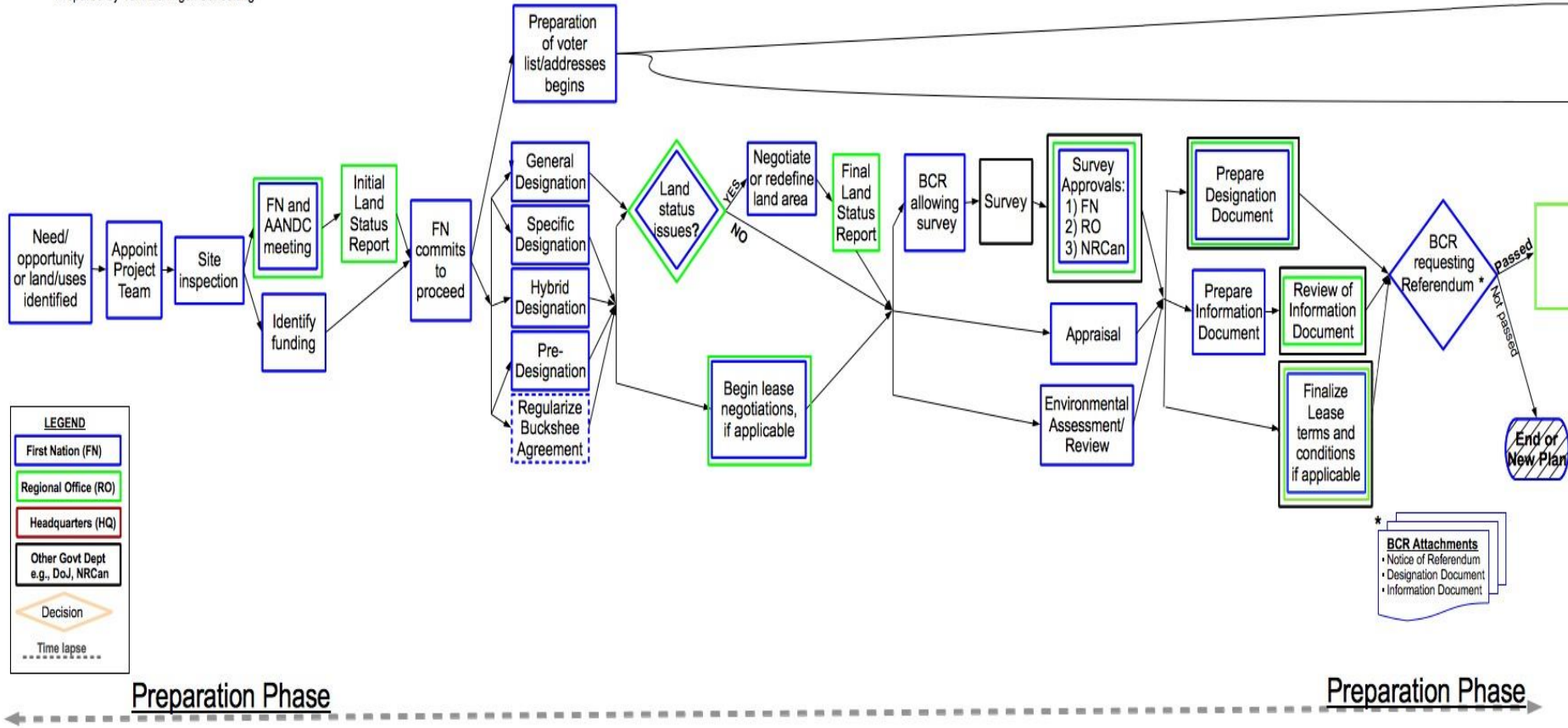




Designation Process: Preparation

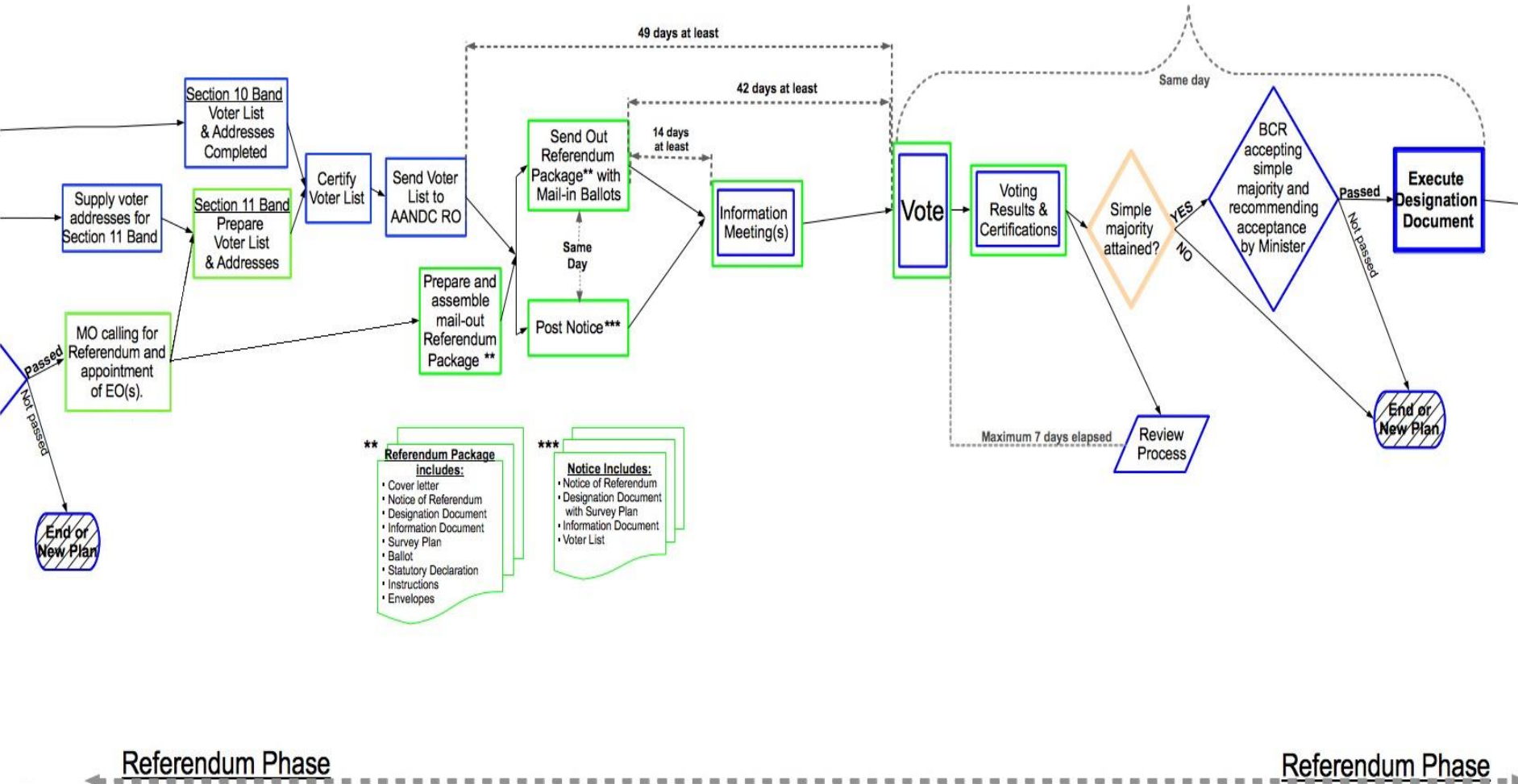
Designation Process

Version 2.2
January 27, 2014
Prepared by Toni Beninger Consulting



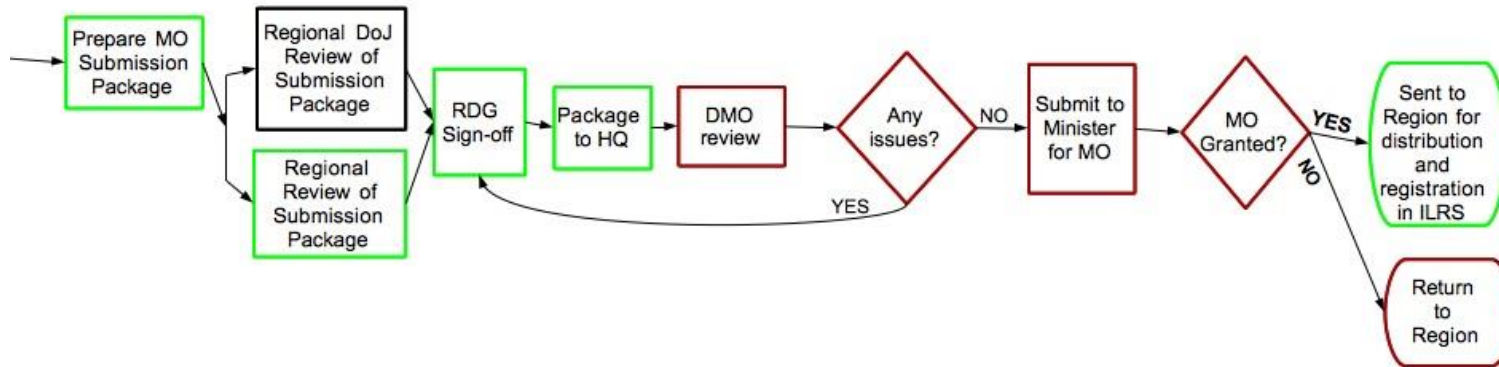


Designation Process: Referendum





Designation Process: Approval



Approval Phase

Approval Phase

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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.

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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.

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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

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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.





Further Information:

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