Indigenous Services Canada
Services aux Autochtones Canada

Draft Indigenous Service Canada Directive on Land Tenure and Land Survey Requirements for Community Infrastructure Investments on First Nation Reserve Lands

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1.0 Application (Purpose)

The Land Survey Directive clarifies land tenure and legal land survey requirements for ISC funded capital/ infrastructure projects on First Nations' Reserve lands, including First Nations under the *Indian Act* and *Framework Agreement on First Nations Land Management Act.*

The legal tenure of the land set out for the community infrastructure project should adhere to the requirement provided in the Interdepartmental Letter of Agreement with the Surveyor General Branch of the Natural Resources Canada related to Surveys and the Specifications for Descriptions of Lands for Transactions on Reserve Lands.

The Interdepartmental Letter of Agreement states that the minimum description requirement for community infrastructure is a Plan of Survey (Administrative Plan).

Where there is no appropriate land tenure, the land on which infrastructure project is built must be adequately surveyed and recorded in the Canada Lands Survey Record, Indian Lands Registry or the First Nations Lands Registry prior to or after construction.

ISC funded capital projects include: construction of, additions to, and/or relocation of buildings or structures, or amendments that change the size or location of a building.

2.0 Effective Date

This Directive is issued under the authority of the Minister of Department of Indigenous Service Canada (ISC).

This Directive will be administered by the Lands and Economic Development and Regional Operations Sectors.

This Directive received approval on **…**, and is effective as of...

This Directive is Chapter … of ISC's Land Management Manual.

As of … 2023, capital projects funded by ISC will require appropriate legal land tenure and legal land surveys.

3.0 Definitions

- ISC means the Department of Indigenous Services Canada.
- "First Nation" or "Band" means a "band" as defined under the *Indian Act*.
- Reserve as in the *Indian Act*, means a tract of land, the legal title to which is vested in Her Majesty, which has been set apart by Her Majesty for the use and benefit of a Band.
- *Indian Act* is the federal statute by which the federal government administers Indian status, Band governments and the management of reserve land and communal monies.

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- *Framework Agreement on First Nation Land Management Act* enables First Nations with a land code in force to set lands apart as reserve pursuant to the Framework Agreement, by way of a Ministerial Order (MO).
- "Minister" means the Minister of ISC (legally known as the Minister of Indigenous Service Canada).
- "Land Management Manual" means ISC's Land Management Manual.
- Infrastructure means permanent structures and facilities on the surface, overhead and/or underground.
- Land tenure is the legal regime by which land is owned by an individual or a group.
- Legal land surveying means surveying in relation to: (a) the identification, establishment, documentation or description of a boundary or the position of anything relative to a boundary; or (b) the generation, manipulation, adjustment, custody, storage, retrieval or display of spatial information that defines a boundary.
- A Plan of Survey is a plan prepared from a full field survey with official survey monuments placed to reference all corners of the boundaries or parcels.
- Administrative Plan refers to survey plan which is approved pursuant to section 31 of the Canada Lands Survey Act (*CLSA)*. Administrative Plans are used for all new internal subdivisions or other surveys related to internal interests in Reserve lands.
- Official Plan refers to a survey plan which is prepared pursuant to section 29 of the *CLSA*. Official plans are used for surveys of jurisdictional boundaries of Reserve lands or parcels, which will create jurisdictional boundary once a land transaction has been completed.
- *CLSA* is an Act that sets the standards and guidelines for surveying on Canada Lands, including First Nations Reserve lands.
- *Canada Lands Surveyors Act* is an Act regulating survey profession on Canada Lands, including First Nations Reserve lands.
- Land status report provides status update of the land that is subject to survey, which includes ownership, location and encumbrances.

4.0 Context

Legal land surveys are important tools to assist in community and economic development, environmental protection and maintaining societal harmony. During a recent review it was determined that land development and funding for land surveys for community infrastructure varied from Department to Department and even within ISC. This Directive is meant to bring clarity and ensure a consistent approach to land surveys related to ISC funded infrastructure projects on First Nations Reserve lands for their benefit, and society as a whole, while at the same time providing some flexibility to prevent delays in the implementation of community infrastructure projects and address project specific needs. It should be noted that surveys go hand in hand with properly recorded land tenures which are equally required to understand the quality of land titles.

Land surveys and the legal descriptions and tenures they create are used throughout the world to support the granting of land titles and to further subdivide interests. Surveys create boundaries that allow areas to be defined with respect to rights, responsibilities and restrictions. They provide the extent of titles (land tenures) that are normally tracked in some form of land registries.

Without surveys and legal descriptions, it would be impossible to understand the extent of the lands that are subject to described rights, responsibilities and restrictions.

Boundaries defined by surveys promote security of titles (tenures), which allow land holders to leverage their property for loans and to improve their property with certainty that their improvements are protected. As such, property certainty is normally seen as a cornerstone of economic development. Additionally, boundaries certainty help avoid social conflicts that may ultimately arise when the locations of boundaries are not known. Boundaries are also used in the protection of the environment by allowing areas to be described to impose restrictions. Similarly, tenure rights recorded in some form of public land registries help ensures that rights, restrictions and responsibilities are known.

The Government of Canada has made significant investments on reserve land surveys over the last several decades, but the parcel (boundary) fabric continues to deteriorate for reasons related to:

- poor planning over land use;
- insufficient funds to support legal land survey projects;
- lack of understanding of the value of surveys;
- traditional views on boundaries (i.e. Buckshee); and,
- capital project programs not requiring legal land surveys.

4.1 Other Jurisdictions

Other jurisdictions in Canada have sophisticated requirements for land surveys for capital/infrastructure projects. They generally require surveys to confirm extent of ownership for planning purposes, to acquire pre-engineering information for design purposes, layout surveys for construction based on some form of geodetic control, and as-built drawings to understand what was actually built. If land or rights acquisition is required, that will also involve legal surveys. In many cases these require sign-off by provincial lands surveyors or some other competent individual.

Where other jurisdictions are granting funds, requirements may seem significantly less on the surface, but as projects proceed, jurisdictions and managing organizations will typically require detailed surveys prior to granting the development or building permits required.

Legal surveys are a cost-effective investment in infrastructure development. If policies requiring surveys are not adhered to, the resultant challenges, including extra costs, may be transferred from the developers and contractors to the jurisdiction itself. The requirement to complete appropriate legal surveys throughout the process of infrastructure investments is a proactive cost saving measure. Additionally, if real property transactions are involved they are required to be entered into the proper land registry. Failure to do so can in fact void that land transaction.

5.0 Legislative Authorities

The legislative authorities vary depending on the land management regime under which the reserve is being operated. For the purposes of this Directive the two highest classes are considered: reserves managed under the *Indian Act* and those operated under the *Framework Agreement on First Nations Land Management Act*.

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5.1 *Indian Act*

For First Nations operating under the *Indian Act*, Section 19 of the Act allows the Minister to authorize surveys of reserves and the preparation of plans. Additionally, Section 18(2) of the *Indian Act* allows the Minister (with Band Council consent) to authorize the use of land for purposes of general welfare of the Band (e.g. lands designated or allotted for community infrastructure such as schools, community hall, health facility, band office, cultural/recreational centres, roads and bridges etc.). Lands allotted for the general welfare of the Band require a Plan of Survey (Administrative Plan).

Chapter 6 of the Indian Land Registration Manual defines the minimum land description requirements for various land transactions and the Land Management Manual also addresses the need for land surveys. Land survey requirements are also documented in the Interdepartmental Letter of Agreement related to the Cooperation in the Area of Surveys and Specifications for Descriptions of Land for Transactions on Reserve Land (known as the ILA).

5.2 *Framework Agreement on First Nations Land Management Act*

The Framework Agreement on First Nation Land Management and its enabling legislation, the *Framework Agreement on First Nation Land Management Act*, includes provisions for First Nations with a land code in force to set lands apart as reserve pursuant to the Framework Agreement, by way of a Ministerial Order.

5.3 *Canada Lands Surveys Act*

The *Canada Lands Surveys Act (CLSA)* sets the standards and guidelines for surveying on Canada Lands, including First Nations reserve lands. Section 25 of the *Act* requires the Minister of the Department of Natural Resources Canada to undertake a survey on Canada Lands at the request of a minister of any Federal Department. Section 3 of the *Act* provides the Surveyor General of Canada the authority to manage surveys and address their custody subject to direction of the Minister of Natural Resources Canada. Section 24 of the *Act* states surveys shall be made in accordance with the Surveyor General Instructions as indicated in the National Standards for the Survey of Canada Lands. This includes the alteration or removal of survey monuments, which can occur during construction. Exemption is given to lands described under the regulation of the *First Nations Commercial and Industrial Development Act.*

5.4 *Canada Lands Surveyors Act*

The *Canada Lands Surveyors Act* regulates the survey profession on Canada Lands. Section 50 of the Act states no person other than a licence holder or a person acting under the direction of a licence holder, may engage in legal land surveying on Canada Lands or on private lands in a territory.

6.0 Directive Objectives

- To clarify land tenure and land survey requirements for ISC funded infrastructure projects to assist in maintaining and strengthening on-reserve parcel fabric.
- To ensure that the reserve lands upon which ISC funded infrastructure projects are undertaken have proper land tenures and have been legally surveyed, and recorded in Canada Lands Survey Record and registered in the Indian Lands Registry or the First Nations Land Registry.
- To ensure that ISC funded infrastructure projects results in appropriate land tenures that can be relied on for sustainable and effective lands, resources and environmental management, including land use planning, emergency planning and others.

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- To respect existing rights in the land, both surveyed and un-surveyed, whether recorded in Canada Lands Survey Record or registered in other registries.
- To avoid legal issues that may arise due to encroachments from ISC funded infrastructure projects.

7.0 Policy Requirements

For any project on an reserve undertaken by or funded by ISC that places new infrastructure or modifies an existing infrastructure such that its occupied footprint changes, an up-to-date legal survey shall be completed prior to construction taking place. Where circumstances exist that prevent legal survey from taking place prior to construction (such as project with a potential change in location, delays or where urgent construction needs prevent the completion of the survey in advance of construction), survey shall be completed after construction as long as Land Status Report has been completed during the project design stage.

An up-to-date Land Status Report will be prepared prior to construction with a view of understanding the required land tenure to appropriately support the infrastructure investment (e.g. consider the needs for easements or set-asides under Section 18 (2) of *the Indian Act*). Where land tenure changes are required (e.g. to create set-asides under Section 18(2) of the *Indian Act*) appropriate documents need to be prepared and registered in the Indian Land Registry or First Nations Land Registry as appropriate. Where a new plan of survey is required, it shall be completed in compliance with the Instructions of the Surveyor General of Canada Lands and the final plan shall be recorded in the Canada Lands Survey Records and registered in Indian Lands Registry or the First Nations Land Registry.

7.1 Best Practices

Although not mandatory under this Directive the following are considered best practices and should normally be undertaken:

- Prior to developing or subdividing land, sufficient planning should be undertaken to plan for future uses of existing parcels and adjacent parcels of land to avoid potential conflicts and ensure the use or development is consistent with the community land use plans and zoning by-laws. Some First Nations have adopted community land use plans and zoning by-laws, which would limit acceptable uses.
- Prior to construction existing survey monuments should be located. Any monuments removed during construction should be replaced at the contractor's expense once construction is completed to preserve the survey fabric.
- Prior to commencing construction layout survey work should be undertaken to ensure that the new or expanded works are located on the appropriate property. It is recommended that this work be undertaken by a Canada Lands Surveyor to minimize risks of works being built in the wrong location. The *Canada Lands Surveyors Act* mandates that only Canada Lands Surveyors are able to position objects relative to parcel boundaries. It is recognized that others with certified technical skills and knowledge will be involved in layout of internal works (e.g. concrete forming, steel layout).
- Upon completion of a project "As Built" plans should be prepared, ideally related to geodetic control, to document the construction and facilitate future development and maintenance. This is especially important for any buried infrastructure such as water line, sewers or cabling. An

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"As-Built" plan can be completed by anyone with appropriate skills and knowledge and does not necessarily require a Canada Lands Surveyor and would normally be stored with the authority responsible for maintenance of the infrastructure.

- Officials from appropriate ISC departments and the Surveyor General Branch should meet annually to evaluate the implementation of this Directive.

7.2 Exemptions

This Directive is to apply from the date of approval. Where contracts for construction have already been issued and projects are underway at the date of approval, those projects are exempted from the application of this Directive.

Where circumstances exist that prevent legal surveys from taking place prior to construction (such as projects with potential for change in locations or where urgent constructions needs prevent the completion of the surveys), they may be completed within one year following constructions as long as Canada Lands Surveyors or persons under their supervision have been involved in the layout of the new infrastructures. Additionally, sufficient understanding of land tenures (e.g. up-to-date Land Status Reports) are required to ensure what, if any, tenure changes are required.

Should difficulties arise in complying with this Directive, proponents are encouraged to contact the Surveyor General's Branch in Natural Resources Canada for assistance.

8.0 Roles and Responsibilities

8.1 Notification

The Director, Lands Administration and Addition to Reserve Directorate, ISC - HQ, is responsible for communicating this Directive.

8.2 Implementation

All managers and their subordinates who are responsible for undertaking or funding development including community capital/infrastructure projects on reserves are required to follow this Directive. Where someone is having difficulty obtaining approvals for surveys from a Band, they should contact the appropriate regional office of ISC for assistance.

8.3 Enquiries

Enquiries on this Directive should be made to the Director, Lands Administration and Addition to Reserve Directorate, ISC.

Enquiries regarding legal land survey requirements with respect to this Directive should be made to the Surveyor General Branch.

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