

---

# Land Management Manual

---

Chapter:

**Natural Resources**

Section:

**Policy: Mineral disposition under the  
[Indian Mining Regulations](#)**

---

## Table of Contents

---

<b>1.0 Introduction .....</b>	<b>3</b>
Mineral rights .....	3
Precedents (templates) .....	4
<b>2.0 Instrument Types .....</b>	<b>4</b>
Instruments to authorize exploration.....	4
Exploration permit – authorized under subsection 28(2) of the <i>Indian Act</i> .....	4
Exploration permit – authorized under the <i>Indian Mining Regulations</i> .....	5
Exploration lease – authorized under the <i>Indian Mining Regulations</i> .....	5
Instruments to authorize extraction and production .....	5
Extraction and production lease – authorized under the <i>Indian Mining Regulations</i> .....	6
<b>3.0 General requirements for mineral permits and leases.....</b>	<b>6</b>
Environment .....	6
Negotiations.....	7
Duration (term) .....	7
Land description (survey) .....	7
Encumbrance check .....	7
Access to the permit/lease area .....	7
Insurance.....	8
Operational and restoration plan .....	8
Assessment work .....	8
Security deposits .....	9
Royalties.....	9
Land rental fee.....	9
Goods and Services Tax/Harmonized Sales Tax .....	9
Assignments .....	9
<b>4.0 Grouping and unitization .....</b>	<b>10</b>
Grouping.....	10
Unitization.....	10
<b>5.0 Approval and consent.....</b>	<b>10</b>
Ministerial approval.....	10

---

Revision No.:

Supersedes:

Effective Date: July 15, 2024

---

# Land Management Manual

---

Chapter:

**Natural Resources**

Section:

**Policy: Mineral disposition under the  
[Indian Mining Regulations](#)**

---

Bands with delegated authority under the <i>Indian Act</i> .....	11
Band Council consent.....	11
<b>6.0 Unauthorized removal of minerals.....</b>	<b>11</b>
<b>7.0 Compliance with other laws and regulations.....</b>	<b>11</b>
<b>8.0 Cancelling a permit/lease .....</b>	<b>12</b>
<b>9.0 Registration in the Indian Lands Registry .....</b>	<b>12</b>
<b>Annex A: Authorities for mineral permits and leases .....</b>	<b>13</b>
<b>Annex B: Relevant Case Law .....</b>	<b>15</b>

---

Revision No.:

Supersedes:

Effective Date: July 15, 2024

---

## Land Management Manual

---

Chapter:

Natural Resources

Section:

Policy: Mineral disposition under the  
[Indian Mining Regulations](#)

---

### 1.0 Introduction

---

- 1.1 This policy addresses the issuance of permits and leases under the [Indian Mining Regulations](#) for the exploration, extraction and production of minerals on reserve lands administered under the [Indian Act](#). As the regulations lack sufficient provisions to cover all aspects and requirements to administer the construction and operation of a mine in the same manner as corresponding provincial legislation, this policy provides further clarification and additional information to help address these gaps where possible. The policy is to be used concurrently with the [Indian Mining Regulations](#).
- 1.2 The [Indian Mining Regulations](#) define minerals as naturally occurring metallic and non-metallic minerals and rock containing such minerals, but does not include petroleum, natural gas and other petroliferous minerals or any unconsolidated minerals such as placer deposits, gravel, sand, clay, earth, ash, marl and peat.
- 1.3 Where First Nations or third parties are interested in the production of minerals by building a mine, a sub-surface mineral designation and sub-surface mineral lease is required. In addition, if mining facilities are expected to be located on reserve land, a surface designation and a surface lease may be required for those lands.
- 1.4 Where First Nations are interested in the production of minerals through the construction of a mine, the [First Nations Commercial and Industrial Development Act](#) may be used to supplement the [Indian Mining Regulations](#) for a specific project.
- 1.5 The [Indian Mining Regulations](#) and this policy do not apply to surrendered mines and minerals underlying reserve lands in British Columbia which are administered under the [British Columbia Indian Reserve Mineral Resources Act](#), SC 1943-44, c.19, and the [Indian Reserve Mineral Resource Act](#), RSBC 1979, c. 192).
- 1.6 For information on other requirements for permits and leases, including the steps to be undertaken to designate, please see the chapters on designations, leases and permits. For information on requirements for permits and leases on locatee lands, please see the chapter on individual land holdings.

### Mineral rights

- 1.7 Minerals are considered collective assets on Band and allotted lands.

---

Revision No.:

Supersedes:

Effective Date: July 15, 2024

---

## Land Management Manual

---

Chapter:

**Natural Resources**

Section:

**Policy: Mineral disposition under the  
[Indian Mining Regulations](#)**

---

- 1.8 The right to minerals underlying reserve lands can be a complex issue and such rights may or may not in fact be included in the reserve. A review of the Order in Council or Ministerial Order establishing the reserve must be undertaken to confirm ownership of minerals, and as part of the encumbrance check before any activity takes place. In some cases this information may be missing or unclear.

### Precedents (templates)

- 1.9 Precedents (available from the department) provide the basis for permits issued and leases granted under the [Indian Act](#), and include necessary policy and legal requirements to ensure consistency and accuracy when negotiating terms. The precedents simplify drafting, allow for a streamlined process and can be tailored to meet the needs of specific projects.
- 1.10 National precedents for mineral permits and leases have not been developed; however, regional offices may develop region-specific precedents to suit local contexts.

---

## 2.0 Instrument Types

---

### Instruments to authorize exploration

- 2.1 Mineral exploration and prospecting activities involve mining techniques, such as, but not limited to: geological surface mapping and sampling; geophysical measurements and surveys; geochemical analysis of geological samples; water and soil tests; or, drilling for core sampling.
- 2.2 The following instruments can be used for exploration and prospecting activities related to minerals:
- Exploration permit – authorized under subsection 28(2) of the [Indian Act](#)**
- 2.2.1 A s.28(2) exploration permit may be issued for prospecting and early exploration activities that do not involve the drilling of core samples, such as, but not limited to: prospecting or searching for minerals, fossils, precious metals or mineral specimens; geological surveys and mapping; geophysical surveys (measurements); or, geochemical analysis. Samples may be temporarily transported to a facility off reserve for further analysis. A designation of land and minerals is not required prior to authorizing a s.28(2) permit.

---

## Land Management Manual

---

Chapter:

**Natural Resources**

Section:

**Policy: Mineral disposition under the  
[Indian Mining Regulations](#)**

---

### **Exploration permit – authorized under the [Indian Mining Regulations](#)**

- 2.2.2 An exploration permit may be issued in accordance with s.5 or 6 of the [Indian Mining Regulations](#) to authorize the permittee to prospect and explore for minerals within a specified area. A designation is required (surface and subsurface) prior to authorizing an exploration permit under the *Indian Mining Regulations*. A permit under the [Indian Mining Regulations](#) allows for samples to leave the reserve; however, this permit does not authorize the permittee to extract and produce consolidated minerals.

### **Exploration lease – authorized under the [Indian Mining Regulations](#)**

- 2.2.3 A lease may be issued in accordance with s.5, 6 or 19 of the [Indian Mining Regulations](#) for exploration, including advanced drilling exploration operations where the parties may look to secure certain rights and investment financing. A designation is required (surface and subsurface). These types of leases may be contemplated as a transitional instrument towards mineral production. It grants a property interest in surrendered minerals (except in Quebec where it grants a personal right under the Civil Code of Quebec).

## **Instruments to authorize extraction and production**

### **Mining and processing consolidated minerals**

- 2.3 Operating mines range from small underground operations (e.g., 100 metric tonnes of ore per day) to large open pits producing thousands of tonnes of ore per day. The shape and orientation of an ore body, its quality, the surrounding waste rock, and the distribution of consolidated minerals, may be factors in the choice of mining method.
- 2.4 The most common methods are cut and fill, conventional blast hole, vertical retreat, room and pillar, shrinkage and sub-level caving. In most cases, holes are drilled into an exposed area of the ore body and then the holes are loaded with explosives and blasted. The resulting ore is then removed by machine for processing. Rubble or muck, which consist of crushed rock resulted from blasting and ore processing, is considered mining waste.
- 2.5 The primary opening into the underground mine provides access for personnel, materials, equipment and a way for ore to be brought to the surface. The opening may be a shaft, decline (or ramp), or adit (a nearly horizontal entrance). The cost of bringing a mine from development to production is high; therefore, mining operations are often financed by business partnerships and venture capital.

---

## Land Management Manual

---

Chapter:

**Natural Resources**

Section:

**Policy: Mineral disposition under the  
[Indian Mining Regulations](#)**

---

- 2.6 Processing begins with the crushing and grinding of ore. The ground ore (or pulp) is then fed through the recovery process to separate the elements. The most common method of recovery is smelting using heat.
- 2.7 Before proceeding to extract and produce minerals, a regulatory regime should be established through the development of a project specific regulation as provided for in the [First Nations Commercial and Industrial Development Act](#). This [Act](#) closes the regulatory gap on reserves and enables complex commercial and industrial projects to proceed. It provides for the adoption of regulations on reserve that are compatible with those off reserve. This compatibility with existing provincial regulations increases certainty for the public and developers while minimizing costs.
- 2.8 The [First Nations Commercial and Industrial Development Act](#) does not replace the [Indian Act](#). For more information on the [First Nations Commercial and Industrial Development Act](#) please visit the [department's website](#).
- 2.9 The following instruments authorized under the [Indian Mining Regulations](#) can be used for activities related to the extraction and production of minerals:
- [Extraction and production lease – authorized under the Indian Mining Regulations](#)**
- 2.10 A lease may be issued in accordance with s.5, 6 or 19 of the [Indian Mining Regulations](#) for extraction and production. A designation is required (surface and subsurface).

---

### 3.0 General requirements for mineral permits and leases

---

#### Environment

- 3.1 Before any mineral permit/lease can be issued, an environmental review in accordance with the department's environmental review process and the [Impact Assessment Act](#) must be completed.

For more information on environmental considerations, please see the Environmental Management Processes on Reserve chapter.

---

## Land Management Manual

---

Chapter:

**Natural Resources**

Section:

**Policy: Mineral disposition under the  
[Indian Mining Regulations](#)**

---

### Negotiations

- 3.2 The Band Council and the proponent negotiate the key elements of the permit/lease including consideration (e.g., royalties, whether prepaid or reviewed periodically), the proposed use of land, and duration of the permit/lease. All elements are subject to review by the department and it is the responsibility of the department to ensure all non-negotiable terms such as all applicable laws, regulations and standards are included in the final permit/lease.

### Duration (term)

- 3.3 Mineral permits/leases for exploration are usually short in duration, between one to two years.
- 3.4 A mineral lease must not exceed the term of the corresponding designation.
- 3.5 A renewal of a permit/lease may be granted per the requirements noted under s.7 (permits) and s.23 (leases) of the [Indian Mining Regulations](#).

### Land description (survey)

- 3.6 The description of the land must meet the requirements contained in the [Interdepartmental Agreement](#) between the department and Natural Resources Canada.

### Encumbrance check

- 3.7 Prior to the issuance of any mineral permit/lease, an encumbrance check must be conducted to identify all surface and subsurface encumbrances, locatee interests, and Indian Oil and Gas Canada interests registered in the [Indian Lands Registry System](#). After an encumbrance check is completed, a Land Status Report summarizing these third party interests must be generated and provided to the Band Council. It is the Band Council's responsibility to review the Land Status Report and take appropriate steps to ensure the removal of any conflicting encumbrances. If all conflicting encumbrances are not removed, a mineral permit/lease cannot be issued.

### Access to the permit/lease area

- 3.8 Access to the permit/lease area (e.g., road allowance, street, or lane) must be addressed in or with the permit/lease or by way of a separate access instrument.

---

Revision No.:

Supersedes:

Effective Date: July 15, 2024

---

## Land Management Manual

---

Chapter:

**Natural Resources**

Section:

**Policy: Mineral disposition under the  
[Indian Mining Regulations](#)**

---

- 3.9 As permits authorize non-exclusive use and occupation, the permit area remains available to the Band for uses compatible with the use authorized in the permit.

### Insurance

- 3.10 The permittee/lessee must provide proof of liability insurance before a permit is issued or a lease is granted. His Majesty the King in Right of Canada must be on the policy as an additional insured. The requirement for insurance can be waived in certain circumstances, such as when a municipality or a province or a Crown-owned corporation/agency is the permittee or the lessee.

### Operational and restoration plan

- 3.11 Proponents must provide an operational and restoration plan outlining the intended operations on the affected lands. The operational and restoration plan must be prepared by a registered professional geoscientist or engineer.
- 3.12 The operational and restoration plan must be submitted by the proponent and approved by the department before the permit/lease can be executed. The permittee/lessee must receive written approval of the department before making any alterations and changes to this plan.
- 3.13 The operational and restoration plan outlines the proponent's intended operation and use of land. It may also include a geotechnical evaluation report in cases where commercial operations, building of structures and/or sale of excess materials are contemplated. The level of restoration of the site must be in accordance with federal, provincial and municipal environmental regulations.

### Assessment work

- 3.14 Section 13 of the [Indian Mining Regulations](#) require the permittee/lessee to prepare and submit an annual assessment work report acceptable to the department to evaluate the potential of all the permitted/leased lands in accordance with reasonable mining practices. In determining the assessment work to be performed for the exploration and development of the permitted/leased area, the department will use assessment work regulations and guidelines applicable to provincial/territorial lands.



---

## Land Management Manual

---

Chapter:

**Natural Resources**

Section:

**Policy: Mineral disposition under the  
[Indian Mining Regulations](#)**

---

### Security deposits

- 3.15 Security deposits, as required by s.11 of the [Indian Mining Regulations](#), must be held by the department and are handled in accordance with the [Financial Administration Act](#) and its [Government Contract Regulations](#).
- 3.16 Upon termination of the permit/lease the security deposits are refunded, without interest, provided the permittee/lessee has complied with all the terms and conditions of the permit/lease.

### Royalties

- 3.17 Royalties are charged for subsurface leases where minerals are extracted or produced. The royalty rate is provided in the [Indian Mining Regulations](#) or may be negotiated and specified in the terms and conditions of the lease. Negotiations should include the Band and apply the relevant provincial royalty rate as a starting point. The department will consult with the province or territory, to determine current royalty rates.
- 3.18 Royalties are not charged under exploration permits/leases as minerals are not extracted and sold.

### Land rental fee

- 3.19 An annual land rental fee is charged for mineral permits/leases. The rates are provided in the [Indian Mining Regulations](#) in s.10 (permits) and s.24 (leases); however, an alternate rate may be negotiated upon request by the Band.

### Goods and Services Tax/Harmonized Sales Tax

- 3.20 The department must charge, collect and remit to the Canadian Revenue Agency, all applicable taxes. Permits and leases must contain a provision requiring permittees/lessees to pay all applicable taxes.

### Assignments

- 3.21 Mineral permits/leases are not assignable unless expressly allowed in the instrument. If assignability was not included in the terms and conditions of the permit/lease but the Band wishes to allow an assignment, the instrument must first be amended. An assignment will require a new security deposit being paid to the Receiver General of Canada.

---

## Land Management Manual

---

Chapter:

Natural Resources

Section:

Policy: Mineral disposition under the  
[Indian Mining Regulations](#)

---

### 4.0 Grouping and unitization

---

- 4.1 Under the [Indian Mining Regulations](#) the Minister may authorize grouping and unitization.

#### Grouping

- 4.2 Under s.37(a), a permit or lease area in a reserve may be grouped with another permit or lease in the same reserve for the purpose of providing a security deposit and performing assessment work.
- 4.3 Under s.37(b), a lessee may, subject to the approval of the department, group two or more lease areas within a reserve to qualify for the renewal of a lease under s.23(2) or s.23(3).

#### Unitization

- 4.4 Grouping described under s.38 is, in industry today, known as unitization. Pursuant to s.38, a permit or lease area in a reserve can be unitized with a permit or lease area in another reserve; or, with a tract of land outside a reserve to allow for the development or production of minerals. The Band Council must negotiate and approve a formula for determining their participation in revenues and other benefits derived from such development or production of minerals.

### 5.0 Approval and consent

---

#### Ministerial approval

- 5.1 All permits/leases require ministerial approval. Departmental officials authorized by the Delegation of Authority Instrument under the [Indian Act](#) and related regulations must authorize all permits/leases. The Ministerial Delegation in relation to s.24(2)(d) of the [Interpretation Act](#), [Indian Act](#) and related statutes and regulations sets out the positions the Minister considers appropriate to exercise various ministerial powers. Please consult the department's most current version of the Delegation of Authority Instrument to ensure the permit/lease is authorized by the appropriate departmental official.

---

## Land Management Manual

---

Chapter:

**Natural Resources**

Section:

**Policy: Mineral disposition under the  
[Indian Mining Regulations](#)**

---

### Bands with delegated authority under the [Indian Act](#)

- 5.2 Approval of permits/leases is subject to the terms, conditions and restrictions contained in the Order in Council and/or Ministerial Letter delegating authority to the Band to exercise control and management over their reserve lands. At a minimum, the permit/lease must be approved by the department before it is issued.
- 5.3 Where a Band has delegated authority and wishes to issue a permit/lease to its own Band-owned corporation, the department must approve the terms and conditions of the permit/lease and assume responsibility for all monitoring and compliance provisions in the permit/lease.

### Band Council consent

- 5.4 A Band Council Resolution consenting to the permit/lease must be obtained prior to the permit being issued or the lease being granted.

---

## 6.0 Unauthorized removal of minerals

---

- 6.1 Mineral permits/leases allow an activity which would otherwise constitute an offence under s.93 of the [Indian Act](#). Under this section, it is an offence for anyone to remove, or allow the removal of, minerals from a reserve without permission of the Minister or his duly authorized representative, or for anyone to be in possession of any minerals so removed.
- 6.2 Paragraphs 103 and 104 of the [Indian Act](#) address situations where minerals maybe seized if there are reasonable grounds to believe an offence has been committed under s.93.

---

## 7.0 Compliance with other laws and regulations

---

- 7.1 In addition to those specified in the [Indian Act](#) and the [Indian Mining Regulations](#), compliance with related federal laws and regulations, provincial laws, municipal by-laws and Band by-laws relevant to the removal and/or transportation of minerals is required.

---

## Land Management Manual

Chapter:

**Natural Resources**

Section:

**Policy: Mineral disposition under the  
[Indian Mining Regulations](#)**

---

### 8.0 Cancelling a permit/lease

- 8.1 The department has the authority to cancel a permit/lease; however, the cancellation has important consequences. As such, legal advice must be obtained and the Band Council consulted prior to initiation of any steps for cancellation or early termination.
- 8.2 In general, Bands with delegated authority may not a cancel a permit or lease; however, this should be confirmed through a review of the Band's specific delegated authorities.

---

### 9.0 Registration in the Indian Lands Registry

- 9.1 Mineral permits/leases and any associated documentation, including forms and agreements, must be prepared in a form suitable for registration in the Indian Lands Registry and must, in accordance with s.55 of the [Indian Act](#), be sent for registration in accordance with the requirements of the [Indian Lands Registration Manual](#).

---

## Land Management Manual

---

Chapter:

**Natural Resources**

Section:

**Policy: Mineral disposition under the  
[Indian Mining Regulations](#)**

---

### Annex A: Authorities for mineral permits and leases

---

#### ***Indian Act***

The relevant sections of the [Indian Act](#) are as follows:

##### Authorizing a permit

*28(2) The Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.*

##### Regulations

*57 The governor in council may make regulations*

*(c) Providing for the disposition of surrendered mines and mineral underlying lands in a reserve;*

*(d) Prescribing the punishment, not exceeding one hundred dollars or imprisonment for a term not exceeding three months or both, that may be imposed on summary conviction for contravention of any regulation made under this section; and*

*(e) Providing for the seizure and forfeiture of any timber or minerals taken in the contravention of any regulation made under this section.*

##### Removal of material from reserve

*93 A person who, without the written permission of the Minister or his duly authorized representative,*

*(a) removes or permits anyone to remove from a reserve (i) minerals, stone, sand, gravel, clay or soil, or(ii) trees, saplings, shrubs, underbrush, timber, cordwood or hay, or*

*(b) has in his possession anything removed from a reserve contrary to this section, is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both.*

#### ***Indian Mining Regulations***

The relevant sections of the [Indian Mining Regulations](#) are as follows:

---

Revision No.:

Supersedes:

Effective Date: July 15, 2024

---

## Land Management Manual

Chapter:

**Natural Resources**

Section:

**Policy: Mineral disposition under the  
[Indian Mining Regulations](#)**

*Sections 5 to 16, 19 provide general standards for issuing mineral exploration permits.*

*Sections 17 to 36 provide general standards for issuing mineral exploration leases.*

---

## Land Management Manual

Chapter:

**Natural Resources**

Section:

**Policy: Mineral disposition under the  
[Indian Mining Regulations](#)**

---

### Annex B: Relevant Case Law

---

These are considered the leading cases pertaining to natural resources on reserves.  
This is not intended to be all inclusive or exhaustive:

- a. Guerin v. The Queen, [1984] 2 S.C.R. 335
- b. Sparrow v. The Queen, [1990] 1 S.C.R. 1075