

# Intro to Reserve Land Designation

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(3 hours)



# Introduction

- The term “designation” means:
  - the conditional or unconditional surrender that is NOT absolute,
  - in all or part of a reserve,
  - for the purpose of LEASING reserve lands


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- FN designated lands are reserve lands that a FN has agreed to lease for commercial, agricultural, recreational or other purposes which are voted on by the members of that FN according to the rules of the *Indian Referendum Regulations*:

- The First Nation retains its interest in the land
- Allows FNs to economically benefit from their reserves lands



## FYI

- The government passed the "Kamloops Amendment" (Bill C-115) in 1988 to amend subsection 38(2) of the *Indian Act*.
- The amendment distinguished between surrenders for sale (or exchange) and surrenders for leasing known as a "designation"

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- The Kamloops Amendment ensures that:
    - Designated reserve lands are still part of the reserve and retains reserve status
    - Designated reserve lands are subject to FN by-laws
    - Designated reserve lands are subject to FN Taxation Authority

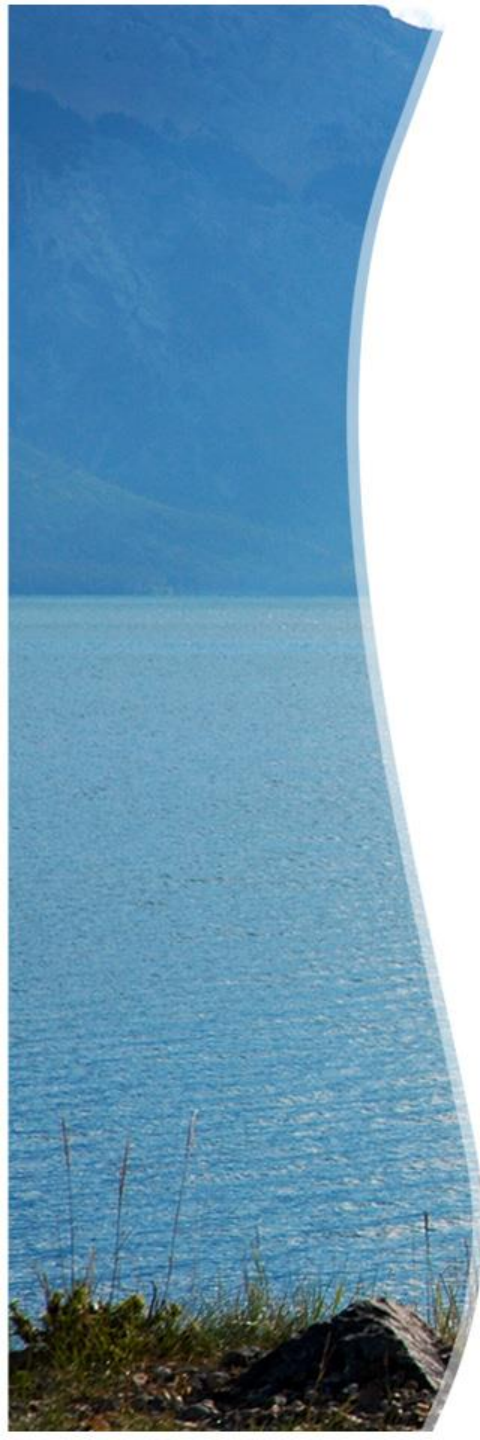


# Before You Begin

- Set realistic expectations & manage them well
- It is crucial that you prepare, plan, & document your work in detail
- It is important that leadership has a solid understanding of the designation policy & process

# Potential Impediments

- Lack of planning
  - It is absolutely essential to prepare an action plan that is reviewed & updated regularly
- Lack of communication
  - Between FN and INAC
  - Between FN & third parties holding interests in the lands

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- Insufficient justification & information to community members
  - Environmental issues
  - Lack of resources & work load



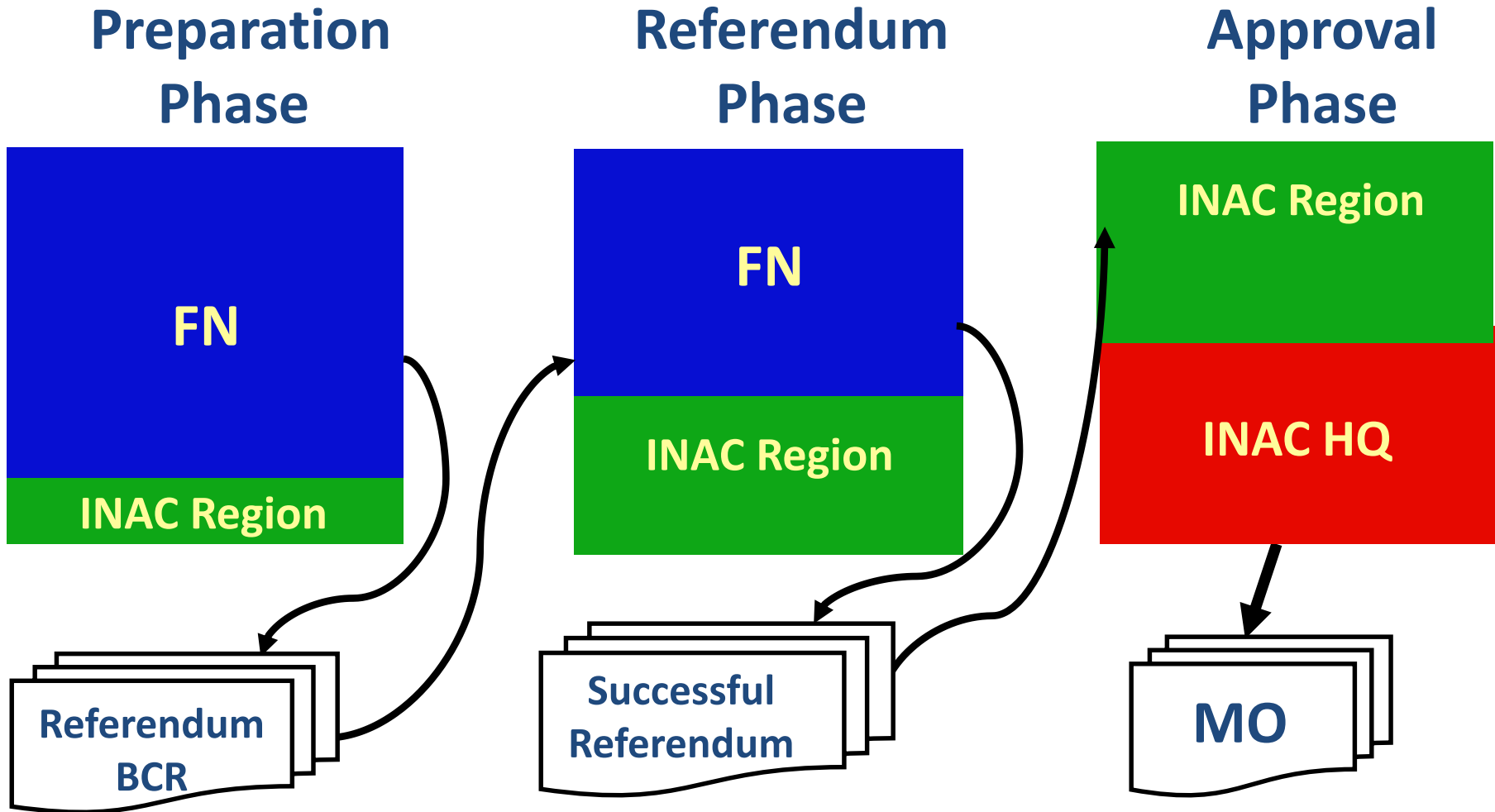


# IMPORTANT MESSAGE

The objective is to streamline the process and make it more efficient; work continues with this in mind.

Nevertheless, proper management of land will always involve serious work & the work must be conducted on a diligently managed basis.

# Designation Process





# Preparation Phase

- **Planning:**
  - CCP (land use planning)
  - Development opportunities
  - Type of development/proponent



- **Project Team:**

- Project Manager

- Communication Plan

- Skills & Experience

- Leadership

- Organized

- Communication



- **Site Inspection:**

- Consistent with proposed development
- Meets specific needs of the community
- Adverse effects (if any) to adjacent lands
- Long term impacts



- **FN & INAC Meetings:**

- Who is involved
- Objective of the designation
- Review the process
- Identify stakeholders, proponents, partners, etc.
- Budget
- Develop plan and timeline
- Define roles and responsibilities
- Updates throughout the process i.e. milestones



- **Funding:**

- FN project: funding is provided by the FN
- Proponent: funding can be factored into the negotiations with the proponent
- Alternative funding:
  - Community Economics Opportunity Program (CEOP)
  - Partners
  - INAC Land Management Annual Funding



- **Commitment:**

- INAC:

- Assigned staff time
- Funding

- FN:

- BCR committing to the process
- Funding





- **Designation Type:**

- General

- Long term planning
- No specific project

- Specific

- Project is identified
- Lease to be negotiated
- May be time sensitive
- Subsurface (Mines & Minerals)



– Hybrid

- Combination of general & specific

– Pre-reserve

- Specific use
- Purchase or ATR dependent on use

– Regularizing Buckshee

- An existing business/development




- **Negotiations:**

- Determine type of lease:

- New lease: specific, hybrid or pre-reserve
- Rewrite: buckshee
- Commercial or residential project

- Major terms:

- Headlease & subleases
- Assignments/mortgages
- Land required
- Term
- Rent/rent reviews
- specifics

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- **Voter list preparation:**
    - Section 10 or Section 11 FN
  - **Survey:**
    - Canada Lands Survey Record
    - BCR
    - Timing
  - **Environment:**
    - Funding
    - Terms of Reference



- **Appraisal:**

- Funding

- Terms of Reference

- Stale-dating depends on volatile market

- Longer term is stable market

- **Information Document:**

- Informed consent

- Designation Document is part of Information Document

- Reviewed by:

- FN & FN legal counsel

- INAC & DOJ



- **Finalize Lease Document:**

- All issues must be resolved
- Review by FN, FN legal counsel, INAC, DOJ, & proponent

- **Designation Document:**

- INAC prepares for the MO
- No discrepancies with Information Document
- Provide attachments (i.e. lease)
- Input from FN legal counsel & INAC RO/DOJ
- Back and forth review



- **BCR for Referendum:**

- Purpose of designation
- Date, time, place of referendum vote
- Request Minister to order Referendum
- Legal land description
- Term, compensation
- Request appointment of an Electoral Officer
- Date(s), time(s), place(s) of information meeting(s)
- Lease if applicable



# Summary

1. Identify Need/Opportunity
2. Appoint the Project Team
3. Site Inspection
4. FN & INAC Meeting
5. Identify Funding
6. FN Commitment to Proceed
7. Land Status Issues & Negotiations
8. Leasing
9. Begin Preparation of Voters List





10. Environmental Audits

11. Appraisal & Compensation

12. BCR Allowing Survey, & the Survey & Sign-Off

13. Prepare Information Document

14. Review of Information Document

15. Finalize Lease

16. Prepare Designation Document

17. Referendum BCR



# Major Milestone

“Preparation Phase Complete”



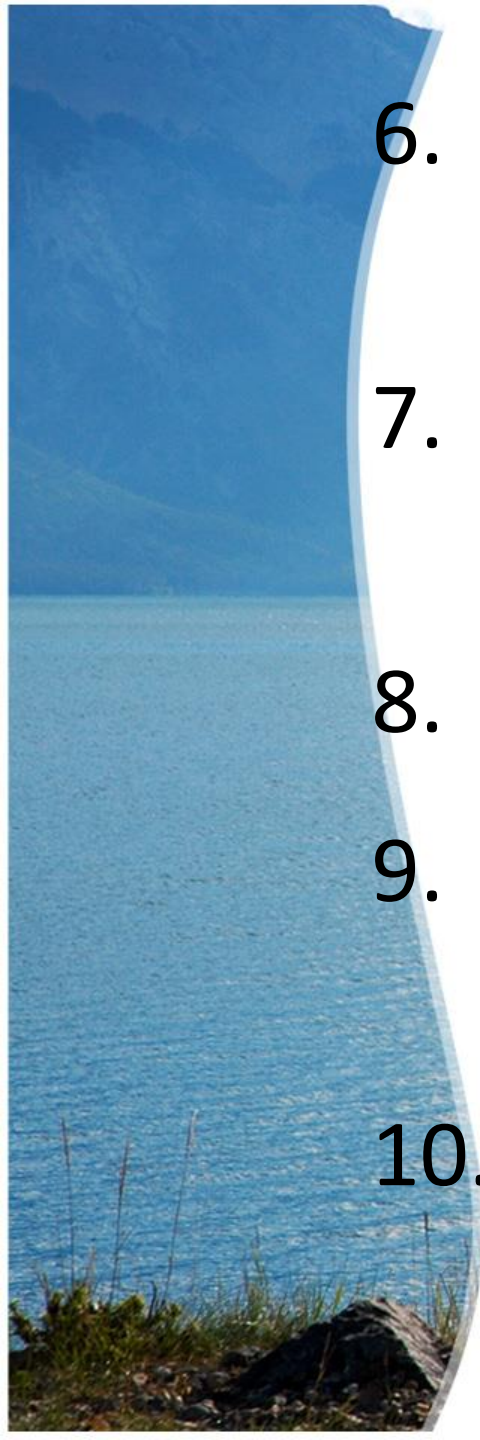
# Ask Yourself

Name 10 things that help  
designation projects succeed.



# Answers

1. A good project team right from the start
2. Clearly identifying the benefits of the project to the community
3. Leadership committed to the project
4. A good type of project decision compatible to socio-economic development plan
5. Clear internal procedures & processes in place

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6. Develop a realistic project plan with measureable milestones
  7. Find effective ways to identify & deal with opposition
  8. Ensure appropriate funding
  9. Project Manager willing to champion the project to the end
  10. Proactive rather than a passive approach to making things happen

A decorative header image showing a blue-tinted mountain range under a light sky. The mountains are layered, with some in the foreground and others receding into the distance. The overall color palette is various shades of blue.

# Best Practice

It is essential to plan on how to manage the file, & how to back it up on a regular basis.

Keep all of it in one container (there will be much more than a binder of information!)

Also make & keep an offsite digital copy of the file to ensure that all the information can be retrieved at any time.

A decorative graphic on the left side of the slide, featuring a blue sky, a calm blue lake, and a rocky shoreline with some green grass at the bottom. The graphic is shaped like a vertical banner with a curved right edge.

# Referendum Phase

- **Electoral Officer (EO):**
  - RDG appoints INAC Electoral Officer & an Alternate
  - Later the EO will appoint Deputies
- **Section 10:**
  - FN manages their own member list
  - On & off reserve electors are eligible
  - Assembles voters list



- **Section 11:**

- INAC manages the membership list
- On & off reserve electors are eligible
- Assembles voters list

- **Voter List Certification:**

- C & C sign Certification Form & initial the list or BCR





- **Voter List to INAC:**

- Timing begins before vote

- Allow a minimum of 7 days for stuffing/addressing packages

- **Referendum Package:**

- Off reserve electors with addresses

- On reserve elects that request a package



- **Mail-Out Referendum Package:**

- Notice of Referendum
- Mail-in ballot initialed on the back by EO
- Postage paid return envelope, pre-addressed to EO
- A second inner envelope marked “Ballot”
- Voter declaration (usually on envelope back)
- Letter of instruction regarding voting by mail-in
- Information Document
- Designation Document



# Best Practice

## **1. BAND WEBSITE**

You may set up a special website or page in an existing website for this referendum

In this latter case, provide ample information directing viewers to the correct page

Include a highlighted block requesting updated addresses, & provide email address to which the information can be sent

## **2. SOCIAL MEDIA**



- **Post Referendum Notice:**

- EO is responsible (can delegate to Deputy)
- At least 1 conspicuous place on the reserve
- Posting includes:
  - Notice of Referendum
  - Designation Document with Survey Plan
  - Information Document
  - Voter List (names only)
- FN:
  - newsletter,
  - website, etc.



- Mail-Out Referendum Package:

- EO mails Referendum Package to off-reserve electors and on-reserve if requested

- Cost is covered by INAC

- Timing:

- Minimum 7 days to stuff/address packages

- Mailing date is at least 42 CLEAR days from Vote day

- Mailing date is at least 14 CLEAR days to Information Meeting

- Posting day is same day as Mail-out day



# Best Practice

Prior to mailing out the Referendum Package, it is a good idea to send an executive summary of the Information Document to all voting members.

This executive summary including a sketch is to inform the members of the upcoming referendum vote & that a Referendum Package will be sent to off-reserve members & further that they should open it & read it.



- **Information Meeting:**

- Appropriate project participants

- Project team
- C & C
- EO/deputies
- Legal counsel

- Convenient location(s)


- On each inhabited reserve
- Cities/towns

- Set agenda

- **Vote:**

- Open poles at 9 am

- Close poles at 8 pm

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- **Count Votes & Certify Results:**
    - EO process mail-in ballots in the presence of the DEO and Council members
    - EO counts all ballots from the polling stations
    - Sign documents:
      - Polling statement: C&C/EO
      - Statement of Referendum Results: C&C/EO
    - EO determines sufficiency of votes





- **Success:**

- Simply majority

- Majority of the electors who cast a ballot voted “yes”

**Result —→ Execute Designation Document**

- **No Go:**

- Majority of the electors who cast a ballot voted “no”

**Result —→ Proposal ends here**



- **Execute Designation Documents:**

- Signed by:

- Chief
- Quorum of Council
- Witness



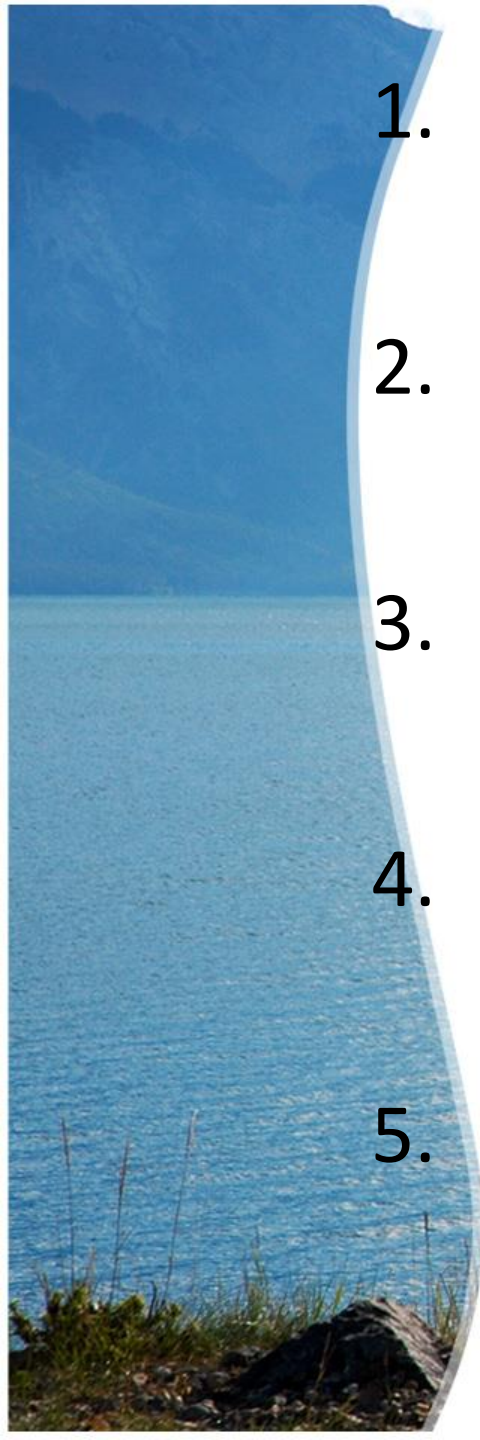
# Best Practice


- Some FNs have small Information Meetings for the elders in advance of the main meeting.
- This preliminary meeting is to clear up any questions that the elders may have & to gain their support for the project.



# Ask Yourself

Name ten reasons why designation project sometimes fail!

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1. Lack of community involvement & support for the initiative
  2. Poor communication of objectives & benefits
  3. Inadequate funds to complete the necessary research & process steps
  4. Poor project management & lack of trained staff
  5. Inadequate infrastructure or municipal services to support planned uses

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6. Land unsuitable for planned uses due to geographical or environmental factors
  7. Excessive delays in preparing for or approving the initiative
  8. Political &/or activist opposition to project
  9. Widespread reluctance to change within community
  10. Social impact on community seen negatively



# Summary of Referendum Phase

1. Section 10 or 11 Bands Voter List
2. Assemble Mail-Out Referendum Package
3. Post the Notice of Referendum
4. Mail Referendum Package & Mail-In Ballots
5. Information Meetings
6. First Vote
7. Successful Referendum



# **Critical Milestone Achieved**





- **BCR Requesting Ministerial Acceptance:**

- C&C request Minister to accept Designation
- Document given to EO to form part of package to go to RO & HQ



# Major Milestone

“Referendum Phase Complete”


# Approval Phase

- **INAC RO Review & Submission:**
  - Review documents and forward to HQ
- **HQ Review & Submission:**
  - HQ reviews package
  - Forwards to Minister's Office
- **Ministerial Order:**
  - HQ Forwards to INAC RO
  - INAC RO forwards to:
    - FN
    - ILR



# Amendments to the Designation Provisions

- The Government has amended the designation provisions to alleviate the overly complex & lengthy process of designating land
- The amendments are intended to expedite the process for designating lands under the *Indian Act*

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- **Specifically, the amendments are:**
    - Lower the voting threshold to a simple majority from a majority-of-a-majority, rendering a second vote unnecessary; and
    - Change responsibility for approving designations to the Minister of INAC from the Governor in Council.



- **Voting Thresholds**

1. **Surrender Absolute**

- **Majority of a Majority** means that a majority of eligible voters must vote and that a majority of those who vote must vote in favour.

2. **Designation**

- **Simple majority** requires that a majority of those who participate in the vote, vote in favour of the designation, regardless of the number of persons eligible to vote.



- **Approving Designations:**

1. **Governor in Council:** This is typically the lengthiest step in the designation process.
2. **The Minister:** The Minister can respond more quickly therefore reducing the approval step in the designation process.

A vertical strip on the left side of the slide, showing a blue lake and mountains. The strip is curved on the right side and contains a photograph of a large blue lake with mountains in the background. The water is a deep blue, and the mountains are a lighter blue. The sky is a clear, bright blue. The foreground shows some green grass and a piece of driftwood.


# Test Yourself

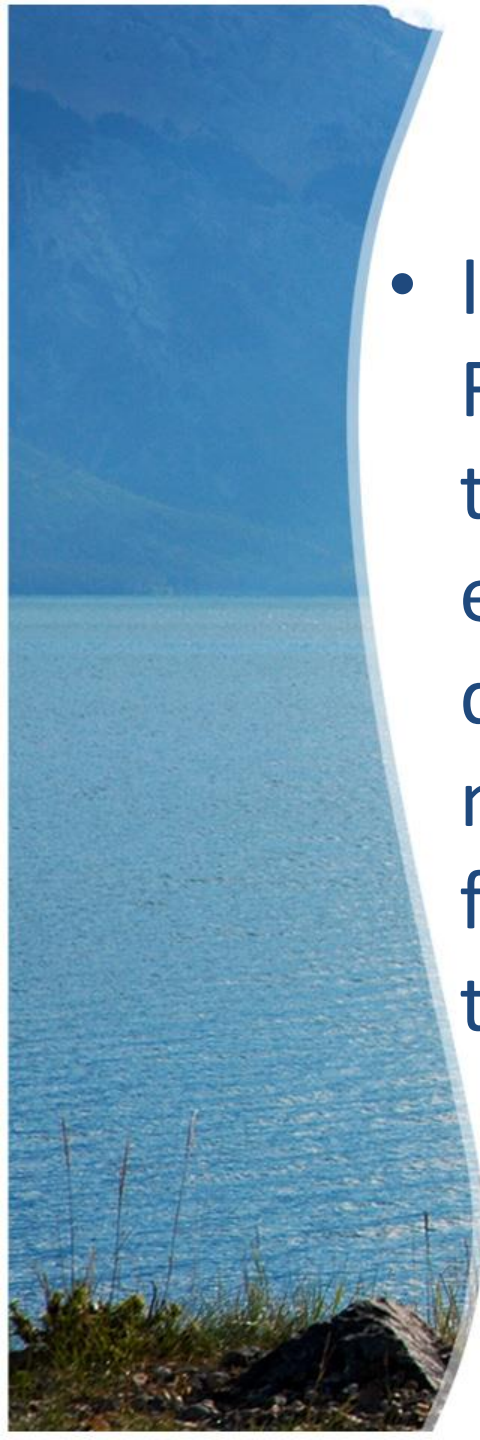




# Amendments to the CEAA

- *CEAA 2012* focuses on major projects that have a greater potential to cause adverse environmental effects
- Most projects on reserve land do not fall under this category, therefore will be exempt from federal environmental assessment

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- The new approach will identify specific projects that require a federal review based on establishing a project list.
  - The list will describe the categories of projects to which the federal environmental assessment process will apply, such as energy and mining projects.
  - INAC's new environmental review process for non-designated projects on reserve land is still being developed.

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- In the interim, INAC will be working with First Nations to review those projects that are no longer subject to an environmental assessment to help determine what additional information may be required in order for INAC to fulfill its legislative requirements under the new system.