



Government of
Northwest Territories

PUBLIC LAND ACT

Summary of the Act



Introduction

This document is intended to provide a plain language summary of the *Public Land Act* (the Act). For clarity, items described in this summary may be stated as if they are already in force. It is important to note, however, that the Act cannot be brought into force until new regulations, policies and procedures are developed to support it.

This plain language summary is without prejudice to the position that the Government of the Northwest Territories may take on the interpretation of any provision in the Act.

To review the Act, or to learn more about the legislative process, please see the [Legislative Assembly's website](#).

What is the *Public Land Act*?

Historically, the Government of the Northwest Territories (GNWT) held administration and control of small amounts of land in and around some NWT communities and used its own legislation, the *Commissioner's Land Act*, to administer that land. On April 1, 2014, the GNWT gained administration and control over the majority of the public land in the territory from the federal government through a process called devolution. This land was administered under federal legislation called the *Territorial Lands Act*; after devolution, the GNWT mirrored that legislation and renamed it the *Northwest Territories Lands Act*.

The mandate of the Minister and Department of Lands is to manage, administer and plan for the sustainable use of public land in the Northwest Territories in a fair and transparent manner that reflects the interests of the people of the Northwest Territories. The *Public Land Act* (the Act) merges and aligns authorities currently set out in the *Commissioner's Land Act* and the *Northwest Territories Lands Act* to better serve NWT residents. Further, the new Act is part of the GNWT's initiative to improve the NWT land and resource management regime.

Governments use land administration acts to outline the authorities and rules over matters including:

- » Mechanisms to allocate land through grants (sales), and dispositions such as leases, licences and permits
- » Controls and protections for the sale, occupancy and use of land, using a range of tools such as land withdrawals, reservations, securities, inspections and enforcement
- » The ability to make rules or regulations specific to land administration matters such as collecting rents and royalties, and recording and maintaining records of land transactions such as leases, or permits for quarrying materials

Summary of the Public Land Act

The key features of the *Public Land Act* (the Act) are summarized below.

Interpretation and Application

The Act applies to public land in the NWT, which means all land that is under the administration and control of the Commissioner of the Northwest Territories, and is not regulated under another territorial law, such as the *Protected Areas Act* or the *Public Airports Act*. Public land includes the resources on the surface of the land as well as the minerals and substances below the surface, known as the subsurface. The Act provides the general authorities for the administration of various interests in the surface and subsurface of public land.

The Act does not apply to privately owned land or land under the management authority of any other government.

Relevant sections of the Act: 1, 2

Aboriginal and Treaty Rights

The Act is to be interpreted in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in Section 35 of the *Constitution Act, 1982*, including the duty to consult.

Relevant sections of the Act: 4

Interests in Public Land

Land administration tools set out the rights and responsibilities for interests held in a specified parcel of land. Under the Act, the Minister can direct interests in, or to occupy, public land through two types of tools: grants and dispositions.

GRANTS

The Act allows the Minister to sell or grant public land. A grant is a transfer of public land in fee simple, this includes a sale or other manner through which a person obtains the absolute right to use the land, possess it and dispose of it. A grant is not a disposition. Certain reservations and exceptions apply to grants of public land, which means the Commissioner limits the Minister's authority and retains rights and interests set out in the Act. For every grant of public land, the Commissioner reserves:

- » minerals and interests in minerals,
- » the bed of water bodies
- » the shoreline of any water body if the land is adjacent to water,
- » fishery rights and occupation related to fishing.

Additional limits on the Minister's authority to sell land can be set in regulations.

Relevant sections of the Act: 6, 16, 17, 18, 19, 63.e), 65.a)

DISPOSITIONS

The Act allows the Minister to issue dispositions of public land. A disposition is the act of transferring an interest in public land. A disposition is also any instrument, such as a lease, licence, mineral claim, permit, agreement or

authorization that conveys an interest in public land or a right to use or occupy public land. A disposition however, does not include a grant. Examples of dispositions under the *Public Land Act* include:

- » an industrial lease for a diamond mine
- » a licence of occupation for an access road
- » a residential lease inside a community
- » a quarry permit for gravel or sand materials
- » a land use permit for oil and gas development in the Inuvialuit Settlement Region¹
- » other authorizations

Requirements and restrictions that apply to dispositions can be set in regulations, such as lease rents, fees and royalties, terms and conditions, limitations to the allowable size of dispositions, and application procedures. Similar to the current *Commissioner's Land Act* and the *Northwest Territories Lands Act*, regulations such as the Commissioner's Land Regulations, the Quarrying Regulations and Northwest Territories Lands Regulations outline the specific rules for dispositions. Restrictions or limits on the Minister's authority to issue dispositions may also be set in regulations.

Relevant sections of the Act: 6, 7, 8, 63, 65

INFORMATION PROVIDED TO THE PUBLIC

Under the Act, the Minister is required to make certain types of information relating to land management and administration decisions available to the public. This includes dispositions of public land (including mining rights), securities, land withdrawals and reserves. In order to avoid duplication with the land titles process, this provision does not apply to dispositions and grants that are registered under the requirements of the *Land Titles Act*.

Relevant sections of the Act: 8

EXISTING INTERESTS

The interim provisions in the Act ensure that any existing interests, such as current leases, permits and other dispositions issued under the *Northwest Territories Lands Act* and the *Commissioner's Land Act* will continue. In addition, the *Residential Tenancies Act*, which sets out obligations and liabilities that traditional landlord-tenant relationships possess, does not apply to leases issued under the *Public Land Act*.

Relevant sections of the Act: 9, 66 to 71

NOTICE TO MUNICIPALITIES

The Act requires the Minister to provide notice to a municipal corporation of grants, dispositions, withdrawals and reservations of public land where they occur within or adjacent to the boundaries of the municipality. The Minister also has the authority to put the specific notice requirements in regulations.

Relevant sections of the Act: 15, 63

MINERAL RIGHTS AND ROYALTIES

¹ The Minister issues land use permits on public land in the Inuvialuit Settlement Region for conduct of a specific land use activity that is above the threshold as set out in the applicable regulations. The Minister also issues Land Use Permits for quarry materials (i.e., sand and gravel) on public land in the NWT. Land use permitting in the NWT outside of the ISR is governed by the *Mackenzie Valley Resource Management Act*. The [Mackenzie Valley Land and Water Board](#) and its regional panels regulate the use of land, water and the deposit of waste through the issuance of land use permits and water licences.

The Act allows the Minister to issue dispositions of mining rights and make regulations about mining rights and royalties. Currently, mineral rights, such as mineral claims, prospecting permits and coal licences are regulated through the Mining Regulations, Coal Regulations and Dredging Regulations, which are established through authorities in the *Northwest Territories Lands Act*. The *Mineral Resources Act* received assent during the 18th Legislative Assembly but is not yet in force. The *Mineral Resources Act* and its regulations will eventually govern mineral rights administration in the territory. The *Mineral Resources Act* and regulations are expected to come into force over several years which is why the *Public Land Act* retains the authorities currently in the *Northwest Territories Lands Act*. Once the relevant authorities under the *Mineral Resources Act* are in force, those equivalent provisions in the Act will be repealed.

Relevant sections of the Act: 7, 63, 65

SECURITY

Security deposits are funds or financial assurances to ensure that the holder of a disposition uses and restores the land in a responsible manner. The GNWT operates according to the “polluter pays” principle - those who cause contamination should be liable for restoring the land. This means that the owner or operator of a project is financially and legally responsible for cleaning up the site both during the project and once operations cease.

The Act provides the Minister with the authority to require a security deposit as a condition of a lease, licence or other disposition to ensure this principle is integrated into land administration for projects and developments on public land. The Department will develop regulations and other tools that will provide details about which uses will require securities, the forms of security that are acceptable, and how they are calculated. Regulations that clarify security requirements will have to provide sufficient flexibility exemptions to account for securities held under other authorizations such as water licences or land use permits.

Relevant sections of the Act: 8, 10, 65

RESERVES

The Minister can reserve land for government use or other public purposes. A reserve is not a disposition, but an administrative tool used to manage public land for the use of governments or government departments. For example, land may be reserved for permanent government use, such as utility lines, hospitals, parks or infrastructure. It may also be reserved for short-term use by a government department, such as environmental monitoring or sampling.

Relevant sections of the Act: 8, 13, 14, 16, 17, 18, 19, 65

LAND MANAGEMENT ZONES

The Act retains a section currently found in Section 3 of the *Northwest Territories Lands Act* which allows the Commissioner in Executive Council to designate land management zones and make regulations for dispositions in a management zone. This authority is necessary to the regulation of land use operations on public land where the federal *Mackenzie Valley Resource Management Act* does not apply. It allows the Department of Lands to issue land use permits in the Inuvialuit Settlement Region under the Northwest Territories Land Use Regulations.

Relevant sections of the Act: 13 and 65

LAND WITHDRAWALS

The Act allows the Commissioner to withdraw public land. When a land withdrawal is in place, the issuance of new grants or dispositions may be limited or prohibited. Land withdrawals must be approved by the Commissioner in Executive Council, which means the Commissioner of the NWT on recommendation of Cabinet. Land withdrawals are used by the GNWT to prevent the sale (grant) of public land or the establishment of new interests in public land that would interfere with a significant land management objective or negotiations.

Relevant sections of the Act: 8, 12 and 65

Use of Public Land

Under the Act, a person must have lawful authority to use, possess or occupy public land. Certain uses and activities on public land may require a person to obtain a disposition from the Department of Lands, or other authorization. Regulations will be developed that set out in more detail the uses and activities that are allowed on public land without a disposition or authorization and also those that require a disposition or other authorization.

Relevant sections of the Act: 5 and 63

TRESPASS AND UNAUTHORIZED USE OF PUBLIC LAND

The Act includes options to address unauthorized use and occupancy of public land. An inspector, appointed under the Act, can determine whether a situation is a trespass, and can directly apply to justice for a summons directing a person to vacate public land. A person may show cause for why an order or warrant should not be issued for their removal from the land (e.g., they may present a case for lawful authority to occupy the land without a disposition).

- » Offence and punishment: The Act makes it an offence to use, possess or occupy public land without lawful authority, and to remain on public land after having been ordered to vacate it
- » Order or warrant for removal: Once a summons has been served, an inspector can issue an order or warrant to a person to remove unauthorized structures or other goods on public land

The Act mirrors a provision found in the *Northwest Territories Lands Act* which provides that a person cannot acquire any interest in public land by prescription. This means that a person cannot establish rights or interests in land by continued use or occupancy.

Relevant sections of the Act: 5, 21, 30, 35, 61

Compliance and Enforcement

POWERS OF INSPECTORS

Inspectors have a number of responsibilities and authorities in relation to monitoring compliance with the Act and regulations and enforcement through various tools. The Act grants new authorities to the Department's inspectors. Under the Act, an inspector is a peace officer and has the powers and protections provided to peace officers under the *Criminal Code* and common law.

The Act also provides the Minister with the authority to appoint inspectors and sets out the powers of inspectors during inspections. The Minister can also designate inspector status to groups of people in certain jobs or positions under the *Public Land Act*, providing operational and practical flexibility.

INSPECTION AND INVESTIGATION

The Act includes provisions that enable the GNWT to monitor compliance, investigate potential offences, and

enforce provisions of the Act and regulations. Some of these provisions are new to ensure alignment with the GNWT's legislation and enforcement practices.

To support new enforcement provisions an inspector can obtain either consent of the occupant or a warrant to enter a "dwelling place" (which includes any building, structure (including a tent or other temporary shelter) or mobile unit that is either a permanent or temporary residence). A justice can also issue a warrant for an inspector to seize items in a place that have been used to commit an offence.

During an inspection a person must co-operate and must provide records, information or the expressed requests of an inspector for the purposes of carrying out the inspection. If an inspector makes an order during an inspection, a person is required to comply with the order.

OFFENCE AND PUNISHMENT

If an offence of non-compliance is identified, an inspector can order the offender to come into compliance with the Act, the regulations or the terms and conditions of a disposition instrument, such as a lease. Inspectors have the authority to make three specific types of orders:

- A person that holds a disposition instrument (such as a lease, licence or permit) to come into compliance with the terms and conditions of the instrument
- A person to remove an unauthorized structure, improvement, equipment or other goods from public land, for example a building or a fence that was constructed without permission; or a vehicle or piece of machinery that is being stored on public land without permission
- A person to stop an activity that is prohibited

A person is guilty of an offence who:

- Breaks a rule that is set out in the Act or the regulations,
- Violates a term or condition of a disposition issued under the Act, or
- Does not follow an order to vacate public land and continues to use, occupy or possess public land.

Inspectors can also initiate prosecution against a person alleged to have committed an offence.

Consistent with the *Northwest Territories Lands Act*, the Act outlines maximum penalties for offences as \$100,000 for a person and \$200,000 for a corporation. If a person is convicted of an offence again, the maximum amount of the fine can be doubled.

Relevant sections of the Act: 22 to 36

Administrative Monetary Penalties

The Act provides the authority to create an administrative monetary penalty regime. These are financial penalties that can be imposed on any person contravening a prescribed provision of the Act. The goal of any administrative monetary penalty regime is to encourage compliance by imposing monetary penalties, rather than issuing punitive or criminal penalties after an offence happens where the person or persons knowingly or deliberately broke the law. In order to put this type of regime in place, the GNWT would have to develop regulations to set out how it will work. These sections of the Act are almost mirrored from the *Northwest Territories Lands Act* and the federal *Territorial Lands Act*, which continues to apply to many federal lands in the NWT (to which the *Public Land Act* does not apply). At this time, the Department is not developing regulations for administrative monetary penalties. Relevant sections of the Act: 37 to 55, 64

Annual Report

The Act requires the Department of Lands to table an annual report in the legislative assembly that contains a significant amount of information such as the number of grants and dispositions issued in the year, the amount of security being managed by the Department, and a summary of inspection and enforcement activities carried out during the year.

Relevant sections of the Act: 56

Regulations and Orders

Enabling legislation, like the Act, should set the general framework and powers or authorities to guide how the government must act. Regulations are a secondary form of legislation that contain the details for how the broader objectives in the parent statute, such as the Act, will be carried out.

The Act provides authorities to make regulations to address specific matters. The powers to make regulations are divided between the Commissioner in Executive Council (the Commissioner on recommendation of Cabinet) and the Commissioner, on the recommendation of the Minister. The division is based upon the origin of the authority in either the *Northwest Territories Lands Act* or the *Commissioner's Land Act*. Authorities are divided based on whether the matter to be regulated will have significant, long lasting impacts or relates to broad government objectives (designated to Cabinet) and if it is more technical and administrative in nature (designated to the Minister's authority). Some examples in the Act include the authority to make regulations about:

- » Requirements and procedures for applying for a disposition of public land, such as a lease or a licence
- » Limitations and conditions that apply to dispositions of public land
- » Prices, fees, rents and royalties that apply to dispositions of public land
- » Requirements for security and calculation of security amounts
- » Other matters necessary for carrying out the Act

In other words, the Act provides general authorities and rules, and the specific rules that define and control land interests and the processes to administer them will be described in regulations. Regulations will have the necessary detail, and retain the flexibility, to be amended as the needs of NWT residents evolve.

Relevant sections of the Act: 63, 64, 65

Repeal and Coming into Force

The Act will come into force (or effect) on a day set by the Commissioner. On that day, the new Act will repeal the *Commissioner's Land Act* and the *Northwest Territories Lands Act*.

Relevant sections of the Act: 83 and 84

Other Land Management Legislation

This Act is not the only legislation that affects public land and it must not overlap into responsibilities under other authorities. The Act must provide clarity regarding land administration and function alongside other government authorities and legislation, some of which include:

- » The administration of public land identified for specific purposes under other legislation such as the *Public Highways Act*, the *Public Airports Act*, and the *Protected Areas Act*
- » The ability to designate and regulate specific areas for development through the *Area Development Act*
- » The regulation of land and water use, environmental assessment and land use planning in the federal *Mackenzie Valley Resource Management Act*
- » The management of specific resources on public land such as authorizations under the *Forest Management Act*, the *Petroleum Resources Act*, or the *Tourism Act*