

**Standard Operating Procedure**

<b>Applying PLAR to Aboriginal Issues</b>		<b>SOP L01</b>
<b>Audience:</b>	Internal/External	
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## 1. Introduction

### 1.1 Background

Sustainable Resource Development (SRD) is responsible for managing and regulating Alberta's public lands.

*Public Lands Act* amendments that came into force on April 1, 2010, and the Public Lands Administration Regulation (PLAR) include provisions to enable responsible use of public lands for a variety of uses. These include time-limited use of public lands for a listed set of activities and uses (collectively defined as [recreational purposes](#)). Access permits and closures are among the tools in PLAR for managing use of vacant public land.

Part 2 of PLAR provides the right to all persons to enter and occupy [vacant public land](#) for recreational purposes as defined. Recreational purposes include any of the activities listed in section 30 of PLAR (hunting within the meaning of the *Wildlife Act*, camping, fishing, etc) undertaken for a purpose other than a [commercial purpose](#). Vacant public lands include lands that are not disposed and [vacant disposition areas](#) (lands where the disposition holder can't exclude others from the lands under disposition).

### 1.2 Purpose

This Standard Operating Procedure (SOP) describes how PLAR applies to aboriginal issues.

### 1.3 Scope

This SOP is mandatory and will be used by any and all officers who are administering or enforcing PLAR in relation to how PLAR applies to aboriginal issues. The following procedures are included:

- [Managing a field encounter when regulating access to vacant public land under Part 2 of PLAR](#)
- [Reporting violations](#)

## Aboriginal Peoples (Indians and Métis)

PLAR is a provincial law of general application that applies to all persons including Indians and Métis. However, Indians and Métis do or may enjoy constitutionally protected rights to some activities on provincial Crown land in Alberta. Section 35 of the *Constitution Act, 1982* recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada. SRD recognizes these rights in Alberta, and Indians are entitled to hunt, fish, and trap for food on lands to which they have a right of access for such purposes. As a result, portions of PLAR may not be applicable to such persons doing such activities. This SOP document sets out how PLAR implementation should be reconciled with these rights.

In this SOP document, "Indians" means Indians within the meaning of the Natural Resources Transfer Agreement (NRTA). The NRTA is part of the constitutional legislation giving the Government of Alberta ownership and control of public lands.

Under the NRTA, all Indians have the right to hunt, fish, and trap for food on all unoccupied Crown lands and on any other lands to which the Indians may have a right of access for such purposes. In this SOP document, “*Indians exercising Rights*” means Indians hunting, fishing, or trapping for food on unoccupied Crown lands or on other lands to which the Indians have a right of access for such purposes. “*Indians exercising Rights*” may include “[reasonably incidental](#)” activities.

For Métis, SRD has adopted a policy called Métis Harvesting in Alberta, July 2007 – updated June 2010. If an applicant proves eligibility under that policy, SRD recognizes the applicant’s ability to hunt for food year-round on “unoccupied Crown land” and “other land to which they have a right of access for hunting”, but only within 160 km of a specific community. Approved Métis harvesters acting within the scope of the harvesting policy will be treated under PLAR in the same manner as Indians doing the same activity, such as hunting.

### **NRTA Land Categories and PLAR**

The PLAR general access for recreational purposes and the access permit apply only to [vacant public land](#) as defined in PLAR. The term “public land” applies to land that is administered by the Minister responsible for the administration of *Public Lands Act* (i.e. SRD). It does not generally include other provincial Crown lands administered by any other provincial Minister or any federal Crown lands.

The PLAR does not define “unoccupied Crown lands”. Case law interprets the meaning of unoccupied Crown lands for the purposes of the NRTA. It is important to note that there may be NRTA “unoccupied Crown lands” that are not PLAR “vacant public land”. There may also be PLAR “vacant public land” that is not NRTA “unoccupied Crown lands”. Whether specific Crown land is unoccupied is determined by the purpose to which the land has been put. Therefore, what is unoccupied Crown land will continue to be determined on a case-by-case basis.

Whether Indians have a “right of access” to Crown land for the purposes of hunting, fishing, or trapping for food is determined by several factors. In general, if the public has unrestricted access to an area of public land for hunting purposes, an Indian person would have access for hunting for food on that same land. Indians may hunt for food on lands that are not being put to any other use that is visibly incompatible with hunting, as decided on a case-by-case basis. The presence of fences, signs, fields, buildings, domesticated animals or indications of farming or industrial activities all suggest uses that are “visibly incompatible” with hunting. The safety of persons, livestock and domestically raised animals will be of primary importance. For example, unless permission to hunt has first been obtained, Indians may **not** hunt on:

- lands being actively used for mining, lumbering or other industrial purposes
- lands that are fenced, posted or cultivated
- lands containing buildings which may be used or occupied
- lands where livestock or domestically raised animals may be present

Indians may **not** hunt in provincial parks, recreation areas, ecological reserves and other similar lands where no hunting is allowed. They also may **not** hunt in wildlife sanctuaries, including road corridor wildlife sanctuaries, and must follow laws related to accessing leased public land. The *Alberta Guide to Hunting Regulations* contains a summary of hunting access laws.

An Indian does not have an unrestricted access to fish. All fishing in public waters, including fishing for food by Indians, is subject to regulations, both federal and provincial.

### Reasonably Incidental Activities

SRD recognizes that some activities reasonably incidental to the exercise of hunting, fishing, or trapping for food may be legally part of the exercise of that treaty right.

The law on what activities are reasonably incidental is evolving and very fact-specific, but suggests that reasonably incidental activities include “not only those which are essential, or integral” but also those that are “significantly connected” (*R. v. Sundown*, [1999] 1 S.C.R. 393). Depending on the facts of the particular situation, reasonably incidental activities could include camping, or building a temporary shelter. SRD expects PLAR enforcement to take into account whether a particular activity is reasonably incidental to the treaty right to hunt, fish, or trap for food.

### Activities Other Than Hunting, Fishing, or Trapping for Food

In the Government of Alberta’s First Nations Consultation Policy on Land Management and Resource Development (adopted May 16, 2005) and associated guidelines, Alberta makes a policy commitment to consult First Nations about potential adverse impacts to both Rights (hunting, fishing, and trapping for food) and Traditional Uses (uses of public lands such as burial grounds, gathering sites, and historic or ceremonial locations). Traditional Uses (as distinguished from Rights) are not constitutionally protected rights. Therefore, for PLAR enforcement (as distinguished from consultation) the following apply:

- *Indians exercising Rights* may need to be treated differently from other persons, because of treaty and NRTA rights.
- Indians participating in other activities will not be treated differently from other persons. The Government of Alberta does not recognize traditional activities other than hunting, fishing, and trapping for food as existing treaty rights. However, as with any traditional activities of an identifiable group, a culturally sensitive approach should be taken.

### Access Permits

- *Indians exercising Rights* do not need an access permit. For example:
  - The 14-day limit will not be applied to *Indians exercising Rights*.
  - If access is permitted to some persons for the purposes of hunting, fishing, or trapping, then *Indians exercising Rights* on that same land do not need an access permit. Officers encountering *Indians exercising Rights* on such land should not take an enforcement action on the basis that the Indians are in an area without an access permit. However, enforcement action would occur, for example, if the Indians have caused loss or damage to the land or resource by the activity.
- Indians participating in other activities need an access permit whenever other persons are required to do so (for example, for activities over the 14-day limit), unless that other activity is reasonably incidental to *Indians exercising Rights*. What is reasonably incidental will depend on the facts of the particular case.
- In issuing access permits, officers should keep in mind that access permits can be issued only to “persons” (individuals or incorporated bodies). A First Nation (“band” within the meaning of the Indian Act) is neither an individual nor an incorporated body. However, one person may obtain an access permit for an activity attended by, or involving, many persons (for example, for a band-organized event).

## Commercial Purposes

Entry and occupation of vacant public land for commercial purposes generally requires an access permit. Commercial purposes do not include *Indians exercising Rights*.

Commercial purposes do not include First Nation members receiving payment of expenses or an honorarium (for example from consultants) to identify the First Nation's traditional activities on the land. These types of payments relate to the personal services of the First Nation members, not to the use of the land. They would not require an access permit.

## Closures, Prohibitions, and Restrictions

There will be occasions when access to vacant public land is closed, prohibited, or restricted under PLAR. These are tools to address public safety issues (fire, flood, avalanche and other hazards), other emergency situations, and support land management (including conservation of land and resource).

There is no existing treaty or NRTA right to hunt, fish, or trap for food in areas where no person has the right to do so. Officers encountering Indians hunting, fishing or trapping for food on such land should initiate an enforcement action on the basis that the Indians are hunting, fishing, or trapping for food where they have no right to do so.

However, if hunting, fishing or trapping is allowed under the PLAR to the general public in some manner (for example, on beds and shores on foot or by boat), then officers encountering Indians undertaking that activity on such land (for example, in a different manner on beds and shores) should **not** take an enforcement action on the basis that the Indians are in an area without an access permit. However, enforcement action would occur, for example, if the Indians have caused loss or damage to the land or resource by the activity.

## Consultation

If a contemplated closure, prohibition, or restriction (for example, under a disturbance standard) is longer term and its implementation has potential adverse impact on a First Nation's treaty rights (to hunt, trap and fish for food), SRD should consider whether there is a need for consultation, as required under the Government of Alberta's First Nations Consultation Policy on Land Management and Resource Development (adopted May 16, 2005) and associated guidelines.

## 2. Procedures

### Managing a Field Encounter When Regulating Access to Vacant Public Land Under Part 2 of PLAR

When regulating access to vacant public land under Part 2 of PLAR, officers should ask themselves the following questions:

- a. Is the person an Indian? SRD encourages Indians to carry identification, such as a card issued by Indian and Northern Affairs Canada, which officially identifies them as a status Indian, when hunting, fishing, or trapping for food.

- b. If the person is an Indian, is it a case of Indians hunting, fishing, or trapping for food?
- c. If the person is an Indian, are they participating in an activity “reasonably incidental” to hunting, fishing, or trapping for food?
- d. If the person is an Indian hunting, fishing, trapping for food, are they participating in it on land where they have a right to do so (unoccupied Crown lands or on lands to which Indians have a right of access for that purpose)?
- e. If the person is an Indian participating in traditional activities other than hunting, fishing, or trapping for food, are there cultural sensitivities (for example, undue disruption of ceremonies) that should be taken into account?

The above factors could be established in a variety of ways, including direct inquiry (such as asking the person who they are and what they are doing) or observation of the circumstances (such as the person’s location, activities, or equipment).

### **Reporting Violations**

Due to the complexity of matters involving members of aboriginal peoples and their established or asserted constitutionally protected rights, any officer who encounters or investigates a violation as part of PLAR enforcement where such rights are potentially at issue should notify the Compliance and Enforcement Manager, Project Management Branch, Lands Division (780-638-3499) of the charges as soon as possible (prior to proceeding with any charges).

### **3. References**

To learn more about the legislation that applies to this procedure, visit the Government of Alberta Queen’s Printer website at [qp.alberta.ca](http://qp.alberta.ca) and search for the following:

- *Public Lands Act*
  - Public Lands Administration Regulation

You may also be interested in reading supporting documents on Aboriginal Rights & Responsibilities found at [srd.alberta.ca](http://srd.alberta.ca) under Fish & Wildlife:

- Métis Harvesting in Alberta, July 2007
- Hunting by Treaty Indians in Alberta
- Government of Alberta’s First Nations Consultation Policy on Land Management and Resource Development (adopted May 16, 2005) and associated guidelines

### **4. Definitions**

The following definitions are referenced within this SOP:

- Access permit: In this part (Part 2), access permit means an authorization issued under Section 37.

- Commercial purposes: a use or an activity undertaken i) with the intention that the use or activity may produce an economic benefit whether for the person or persons that undertake the use or activity or for a charity or other person, or ii) in connection with the business of the person or persons that undertake the use or activity.
  
- Recreational purposes: a use or activity, including without limitation the following, that is undertaken for a purpose other than a commercial purpose:
  - hunting as defined by the *Wildlife Act*
  - camping, fishing, boating
  - nature study, including viewing, drawing and photographing
  - staging for air travel, including hang-gliding and hot-air ballooning, but not including air travel by aerodromes within the meaning of the *Aeronautics Act (Canada)*
  - human-powered travel, including hiking, swimming, underwater diving, snorkelling, skiing, snowshoeing, skating, and sliding
  - animal-powered travel, including dog-sledding, horseback riding, carting, tracking
  - the use of any conveyance
  
- Vacant disposition area: public land (i) on which no development is occurring or is likely to occur for 90 days, (ii) that is under the administration of the Minister and (iii) that is the subject of:
  - an authorization, easement, miscellaneous permit, commercial trail riding permit, pipeline agreement, or provincial grazing reserve
  - a licence of occupation, unless the public land is a closed road within the meaning of Section 54.01 of the *Public Lands Act*
  - a timber disposition under the *Forests Act*
  - a grazing allotment under the *Forest Reserves Act*
  - a registered fur management licence
  
- Vacant public land: a vacant disposition area or other land that is under the administration of the Minister and that is not the subject of any formal disposition.

## 5. Contacts

Contact the Director, Project Management Branch at (780) 427-4768 if you have any questions about this SOP.

## 6. Approval

*Original Signed*

Glenn Selland, Assistant Deputy Minister  
Lands Division