

Transferring Full Authority over Natural Resources to Yukoners
A Formal Proposal from the Government of Canada to devolve Northern
Affairs Program
in the Yukon to the Yukon Government

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EXECUTIVE SUMMARY

In June 1996, the Minister of Indian Affairs and Northern Development released a document entitled, "Devolution of the Northern Affairs Program to the Yukon Government - A federal proposal" for public consultation. In that document, the federal government outlined its proposals and the key principles, positions and the process for completing a comprehensive transfer of powers and programs from the department of Indian Affairs and Northern Development to the Yukon government. Steps were taken to ensure that all Yukoners had an opportunity to participate in the consultations held since the release of the federal proposal until November 15, 1996. A copy of the consultation report is available, upon request, from:

Department of Indian Affairs and Northern Development
Yukon Region 345 - 300 Main Street
Whitehorse, Yukon,
Y1A 2B5

General

Subsequent to the consultations, the Government of Canada has prepared its Formal Proposal to effect the transfer of powers and programs for the consideration of the Yukon government. This Proposal outlines the jurisdictions and powers which will be transferred to the Yukon government from the Government of Canada as the result of the completion of this devolution initiative. The powers and programs remaining with the Northern Affairs Program in the Yukon are intricately intertwined and, therefore, this Formal Proposal contemplates a comprehensive transfer of the remaining powers, **program** and the associated resources.

Post-devolution, it is the intention of the federal government that the Northern Affairs Program will cease operation in the Yukon. The federal government, however, will continue its fiduciary relationship with the Aboriginal peoples of the Yukon. In addition, it will continue to finalize and implement land claims and self-government agreements. It will also maintain its on-going international responsibilities and its federal functions in areas not assumed by the Yukon government or by self-governing First Nations.

Post-devolution, Yukoners will be in a direct position of influencing the decisions of the Yukon government with regard to the management of Yukon resources in their best interests.

Timing: This Formal Proposal is based on the assumption that steps will be taken by the Government of Canada and the Yukon government to complete the transfer of powers, programs, human, financial and associated physical resources and assets by April 1, 1998. The target completion date will provide the certainty necessary to ensure efficient delivery of service to the public and will provide certainty to the affected federal government employees that the devolution will proceed in accordance with a fixed time frame.

The key steps necessary to complete the transfer include the completion of a transfer agreement, the passage of the necessary legislation and the transfer of federal government employees to the Yukon government. It is, therefore, important that if the transfer is to be completed by April 1, 1998, a response by the Yukon government is provided no later than March 31, 1997.

Protection of Aboriginal Interests: First Nations have expressed their preference to complete final and self-government agreements prior to the completion of this devolution initiative. The federal government remains committed to an early conclusion of final and self-government agreements with all Yukon First Nations. The government believes that the Yukon First Nation land claims process and the completion of devolution to the Yukon government can proceed simultaneously.

Land Claims and Land Selections:

The federal government proposes that the devolution implementation legislation include provisions which will authorize the Governor-in-Council to prohibit the granting of third party rights on lands selected for final settlement land selection.

Furthermore, the federal government proposes that the implementation legislation will empower the Governor-in-Council to prohibit the granting of third party rights on lands where, in the opinion of the Minister of Indian Affairs and Northern Development, after consultation with affected parties, the granting of third party rights would be incompatible with, or interfere with, the settlement of aboriginal land claims.

In addition, it is proposed that the devolution implementation legislation enable the Governor-in-Council to take back the administration and control of certain lands where it is considered necessary for the purpose of the settlement of an aboriginal land claim in the Yukon.

Program and Service Transfer Agreements (PSTAs):

The federal government proposes that negotiations with a Yukon First Nation pursuant to Section 17 of the Self-Government Agreement for the assumption by the First Nation of responsibility, and any associated financial resources, for the management, administration and delivery of any program or service which are the subject of this devolution, take into account:

1. the ratio of settlement land of a Yukon First Nation to the total land in the Yukon,
2. the level of program activity within a First Nation jurisdiction (area of responsibility/governance in the settlement area), and
3. due regard for efficiency and economy.

Following devolution, the federal government will maintain its active role in the development of First Nation self-government in the Yukon. Implementation of the principles outlined in Sections 16 and 17 of the Self-Government Agreements will have implications for the federal government, the Canada-Yukon Formula Financing Agreement and for the Financial Transfer Agreements. The federal government, therefore, will remain at the self-government program and service transfer negotiation table, even though, post-devolution the Yukon government will be the government with jurisdiction in the areas of lands, forestry, mines and minerals.

Financial Arrangements: The federal government proposes to transfer all of its financial resources (with the exception of any portion that may be assumed by First Nations under self-government agreements), associated with the transfer of programs contemplated by this comprehensive devolution, to the Yukon government. Upon devolution, these funds will be included in the expenditure side of the Canada-Yukon Formula Financing Agreement.

The federal government is also proposing that, post devolution, starting in the year of transfer, twenty (20) percent of resource revenues accruing to the Yukon government from resource royalties and from the administration of resource programs, associated with the devolution of the powers and programs contemplated in this proposal, be exempted from the Formula calculations, each year. All remaining resource revenues accruing to the Yukon government will be included in the Formula. The Economic Development Incentive (EDI) will be applied to the appropriate resource revenues entering the Formula with a corresponding reduction on the expenditure side in the year of transfer. A cap will be applied to the exemption such that when resource revenues equal the Formula transfer payments, the exemption would equal zero.

The federal proposal will enable the Yukon government to earn a net fiscal benefit from this devolution initiative. The extent of fiscal benefits for the Yukon government from natural resource royalties would depend upon the pace of resource development in the Yukon and resource management policies adopted by the Yukon government, post-devolution.

Human Resources and Service to Yukoners: The federal government proposes that, along with the assumption of powers, programs and financial resources from the Department of Indian Affairs and Northern Development, the Yukon government provide offers of permanent employment to all permanent federal government employees affected by this devolution initiative. The federal government is of the view that the Yukon government should also retain term employees employed by the Northern Affairs Program at the date of transfer. The offers of employment to the affected federal employees must be at salary and benefits which are comparable to those earned by the affected employees immediately prior to devolution.

Thus, the federal proposal ensures that the expertise of federal employees remain intact and service to the public is maintained during and after the completion of devolution.

Environmental Management: With respect to the management of the known hazardous waste sites in the Yukon, the federal government proposes, that post-devolution, DIAND continue its plan for containment and remediation of abandoned hazardous sites in accordance with its policies and standards in the Waste Management Program.

The federal government also proposes that in the event that a hazardous waste site is discovered by the Yukon government post-devolution, the federal and Yukon governments will collaborate to ascertain whether such a discovered site was created pre or post-devolution and will jointly assess the requirements for remediation.

With respect to the assessment of projects/initiatives in the Yukon, post-devolution, the territorial government will assume responsibility for issuing authorizations on non-settlement lands in the Yukon. If the Development Assessment Process (DAP) regime is brought into force prior to devolution, it is anticipated that the Yukon government will pass mirror legislation given its assumption of administration and control of public lands in the Yukon.

In the event that the DAP regime is not in place prior to devolution, the federal government proposes that, upon devolution, the Yukon government enact and implement environmental legislation equivalent to the *Canadian Environmental Assessment Act (CEAA)*, until such time that DAP is brought into force. This could be achieved by the Yukon government passing legislation similar to CEAA that would enable it to assume environmental assessment responsibilities until DAP were brought into force.

Alternatively, upon devolution, the Yukon government could amend and implement Part 6 of its *Environment Act*, until DAP becomes effective, which would give the Yukon Minister of Environment powers to ensure that all development activities (currently triggered by CEAA on non-settlement lands) were screened.

1. Introduction

This document constitutes a formal proposal from the Government of Canada to transfer the provincial-like powers, jurisdictions, and responsibilities of the Department of Indian Affairs and Northern Development (DIAND) in the Yukon to the Yukon government. These responsibilities are currently discharged by the Northern Affairs Program. The proposal also outlines the transfer of financial, human and other resources currently available to the Northern Affairs Program in the Yukon and to the Natural Resources and Environment Branch at DIAND headquarters.

If accepted by the Yukon government, this proposal will form the basis for the preparation of a Transfer Agreement between the governments of Canada and Yukon. It is the intention of the federal government that, upon the completion of devolution, the Northern Affairs Program will cease operation in the Yukon and its functions will be carried out by the Yukon government instead. The proposal to transfer financial resources, federal employees and their expertise to the Yukon government will ensure that service to public is maintained.

This formal proposal continues to be guided by the five principles as enunciated in the Federal Devolution Proposal of June 1996, which was released for consultation with the Yukon public and the Yukon First Nations. They are..

Comprehensiveness: The proposed devolution includes the transfer to the Yukon government of all remaining provincial-type powers and programs, currently managed by the Northern Affairs Program in the Yukon. The devolution will enable the Yukon government to establish comprehensive land and natural resource management policies and programs.

Fiscal Fairness: The Yukon government will receive financial and other assets available to the Northern Affairs Program to deliver its mandate in the Yukon (with the exception of any portion that may be assumed by First Nations under self-government agreements). In addition, the federal government proposes that, following devolution, the Yukon government retain additional revenues from natural resource royalties, more fully described in Chapter 4.

Given current fiscal pressures facing the federal government, it cannot further increase the Northern Affairs Program budget beyond its current level. Data in Table 1 shows that in recent years the budget available to the Northern Affairs Program in the Yukon Region has already been augmented by additional resources.

It is the federal government's view that the proposal in its present form, which provides for full transfer of current level of financial resources and an opportunity to expand revenues from natural resource development, will not impose a fiscal pressure on the Yukon government.

Current Condition of Assets: The federal government believes that the transfer of programs should be based on the assets as currently used by the Northern Affairs Program. The assets will be made available on an "as is, where is" basis without upgrading of conditions.

Protection of Aboriginal Interests: The federal government will ensure that the proposed devolution initiative respects the First Nation land claims and self-government agreements. This proposal also outlines measures which address the concerns of the Aboriginal peoples of the Yukon regarding the ability of First Nations to conclude claims and assume responsibility for delivering programs and services under self-government jurisdictions. Yukon First Nations and their representatives will continue to be consulted and involved in the devolution process until its completion.

Transparency: This formal proposal is made after careful consideration of the views and advice expressed regarding the Federal Devolution Proposal, which was released in June 1996 for consultation.

If the Yukon government indicates its willingness to proceed with this proposal, the Yukon government will be advised on a regular basis of any major operational issues or major policy decisions to be taken by the Minister of Indian Affairs and Northern Development affecting the operations of the Northern Affairs Programs in Yukon until the completion of devolution. The Yukon government will be afforded access and opportunities to verify the data and information contained in this offer, including the verification pertaining to the assets, contracts, leases and other aspects of this proposal.

The transfer of powers and jurisdictions will be completed by the passage of appropriate legislation by both governments. It is anticipated that a number of transitional arrangements will need to be put in place that will ensure uninterrupted service to the public during finalization of this devolution initiative. During this period, federal and Yukon government collaboration for achieving a smooth transition of the Northern Affairs Program's operations and employees to the Yukon government will be essential. In order to complete the legislative initiatives and administrative arrangements by the target date of April 1, 1998, it is imperative that a response from the Yukon government be provided no later than March 31, 1997.

The proposed completion date of April 1, 1998 will provide the certainty necessary to ensure efficient delivery of service to the public and will provide certainty to the affected federal government employees that the devolution will proceed in accordance with a fixed time frame.

If the Yukon government decides not to proceed with this devolution proposal, the Northern Affairs Program in the Yukon will continue to carry out its mandate within the context of the fiscal realities and policies of the federal government. Further attempts at program transfers will be postponed for the foreseeable future.

2. Jurisdictions to be Devolved

The federal government proposes that the Yukon government assume responsibility for the administration and control of lands, forests, water resources, mineral resources (mining and minerals administration) and the management of environmental issues incidental to these natural resources areas. The transfer from the federal government includes all of its current provincialtype programs, responsibilities and powers in this regard. They will include the following elements':

- a) provincial-type legislative powers;
- b) powers to develop, conserve, manage and regulate the natural resource base in the Yukon;
- c) powers to administer and control public lands, including the right to use, sell or otherwise dispose of them and retain the proceeds of the use or disposition of them;
- d) research and resource assessment functions;
- e) powers to levy and collect resource royalty and other revenues from natural resources;
- f) any other authorities normally exercised by provincial governments.

The ownership of the land and resources will continue to rest with Her Majesty in Right of Canada and cannot be transferred in the absence of a territorial Crown. The federal government will be transferring of its administration and control over lands and natural resources to the Yukon government. To change the ownership will require the creation of a territorial Crown which can only be done by amendment to the Constitution Act, 1982. In any case, the transfer of administration and control of land and resources to the Yukon government will enable it to manage Yukon's natural resources in the best interest of Yukoners.

The following is a summary of major functions and activities currently carried out by the Northern Affairs Program in the Yukon..

¹Including any necessary conditions that may relate to on-going international responsibilities of the federal government and any remaining federal responsibilities affected by this devolution.

Mining and Minerals Administration: The promotion of mineral exploration, development and production, development of regulations, monitoring industry compliance, issuing mineral rights, permits, licences, leases, geological mapping, monitoring mineral exploration activity, levying mineral royalties and collecting revenues.

Forest Management: The inventory and management of Yukon forests, forest management planning, forest renewal (silviculture), allocation of timber cutting permits, administration of timber harvesting agreements, determining, levying and collecting forest revenues, the protection of the forest from insects and diseases, planning and undertaking forest fire suppression and fire fighting activities and site protection.

Water Management: The development and implementation of water conservation policies and programs, monitoring, authorizing the use of water, collection of hydrometric and water quality data, conducting water supply studies, flood predictions.

Land Management: The determination and implementation of land use legislation, regulations and policies, in the Yukon and the issuance of surface rights and interests. In the administration of land and related activities, this involves the development of territorial environmental protection strategies, conservation practices, monitoring systems, mitigative measures, compliance requirements and environmental protection legislation.

In past transfers of administration and control of public lands to the Yukon government, the administration and control of the subsurface was exempted. Under the present proposal, this exemption would be eliminated. Subsurface interests that were exempted in previous devolutions to the Yukon government will be included in this initiative. All third party interests existing at the time of transfer will continue after the transfer date.

The federal government will introduce legislation to amend the *Yukon Act* to provide the Yukon government with the legislative jurisdiction for natural resources. The Yukon government will need to put in place, effective at the same time that the federal government vacates these legislative areas, legislation for the administration and control of natural resources for the implementation of this transfer.

The Yukon government will acknowledge and accommodate future requirements for lands for federal purposes and without cost to federal departments, including but not limited to the settlement of final claims with the Yukon First Nations, National Defence, the creation of national parks or conservation areas, and infrastructure requirements for energy or transportation.

Residual Federal Responsibilities

Following devolution, the federal government will continue its fiduciary relationship with the Aboriginal peoples of Yukon. The federal government will continue to finalize and implement

land claims and self-government agreements. It will also maintain its on-going international responsibilities and its federal functions in areas not assumed by the Yukon government or by self-governing First Nations. This will include the trans-boundary and international aspects of the federal role as they affect the Canadian North including, but not limited to, areas such as environmental matters or Arctic science and technology. With respect to the management of residual environmental issues, the federal government will:

- continue its role in coordinating contaminants research;
- continue remediation activities of abandoned hazardous waste sites created pre-devolution in accordance with the requirements of the *Canadian Environmental Protection Act* and the *Fisheries Act*; and
- will continue to participate in the development of the Development Assessment Process (DAP) regime in the Yukon.

3. Protection of Aboriginal Interests

Nothing in the Transfer Agreement with the Yukon government will be construed so as to abrogate, derogate from nor identify or define, any existing Aboriginal or treaty rights of the Aboriginal peoples of Canada under Section 35 of the *Constitution Act, 1982*.

The federal government will take steps to consult with the Yukon First Nations in order to address concerns they may have with the devolution of powers and responsibilities to the Yukon government contemplated by this proposal.

Aboriginal people have expressed a concern with respect to land and fiscal implications of this devolution initiative. This proposal deals with these concerns.

Commitment to Complete Yukon Land Claims and Self-Government Agreements

The federal government recognizes the legitimate concerns of Yukon First Nations which have not yet concluded land claim or self-government agreements. Some of the concerns centre around their ability to select lands for the settlement of their claims, which may be hindered by third party rights granted as a result of changes in approach to the administration of land and resources. First Nations have expressed their preference to complete final land claim agreements prior to the completion of the devolution of provincial-like powers and programs from the federal government to the Yukon government. The timing and devolution process proposed by the federal government takes into account the land selection process and the federal government will make every reasonable effort to make it a realistic possibility.

The federal and Yukon governments are committed to, and will be taking necessary steps towards, an early completion of all remaining final land claim and self-government agreements in the Yukon. Both governments believe that the Yukon First Nation land claims process and the completion of devolution to the Yukon government can proceed simultaneously.

The proposed date for the implementation of a devolution agreement with the Yukon government is April 1, 1998,

Non-Completion of the Remaining Yukon Land Claims Prior to Devolution

If, despite best intentions of and efforts by all parties, not all remaining final land claims and selfgovernment agreements are concluded prior to the implementation of the Transfer Agreement with the Yukon government, the federal government proposes the following to address concerns of the Yukon First Nations:

Completion of Land Selections

Land selection is an important step which will provide First Nations interim protection against unwanted third party rights. The federal government commits to expeditiously negotiate settlement land selections with the concerned Yukon First Nations and with the Yukon government.

The federal government proposes that the devolution implementation legislation include provisions which will authorize the Governor-in-Council to prohibit the granting of third party rights in lands selected for final settlement land selection.

Non-Completion of Land Selections

It is possible that, at the time of devolution, some Yukon First Nations may have commenced but not yet completed the land selection process. To address this possible situation, the federal government proposes that the devolution implementation legislation empower the Governor-in-Council to prohibit the granting of third party rights on lands where, in the opinion of the Minister of Indian Affairs and Northern Development, after consultation with affected parties, the granting of third party rights would be incompatible with, or interfere with, the settlement of aboriginal land claims.

In addition, it is proposed that the Governor-in-Council be enabled to take back the administration and control of certain lands where it is considered necessary for the purpose of the settlement of an aboriginal land claim in the Yukon.

Program and Service Transfer Agreements (PSTAs)

The federal government, the Yukon government, and a number of individual Yukon First Nations have entered into First Nation self-government agreements. Under these agreements, the First Nation governments can negotiate to assume responsibilities for programs and services within their areas of jurisdiction.

In this respect, the federal government has begun negotiations for program and service transfer agreements with a number of the Yukon First Nations with self-government agreements. It will begin negotiations with the remaining Yukon First Nations as soon as their self-government agreements are in effect and as the Yukon First Nations indicate their desire to negotiate the transfer of programs. These negotiations may involve areas of the Northern Affairs Program's responsibility which are within the jurisdiction of the Yukon First Nations and which have not already been funded through claims and/or self-government implementation. Some of the funds transferred or transferrable to the Yukon government as a result of this devolution initiative may become part of the program and service transfer negotiations.

The federal government proposes that negotiations with a Yukon First Nation pursuant to Section 17 of the Self Government Agreement for the assumption by the First Nation of responsibility, and any associated financial resources, for the management, administration and delivery of any program or service which are the subject of this devolution, take into account:

1. the ratio of settlement land of a Yukon First Nation to the total land in the Yukon,
2. the level of program activity within a First Nation jurisdiction (area of responsibility/governance in the settlement area), and
3. due regard for efficiency and economy.

Following devolution, the federal government will maintain its active role in the development of First Nation self-government in the Yukon. Implementation of the principles outlined in Sections 16 and 17 of the Self-Government Agreements will have implications for the federal government, the Canada-Yukon Formula Financing Agreement and for the Financial Transfer Agreements. The federal government, therefore, will remain at the self-government program and service transfer negotiation table, even though, post-devolution the Yukon government will be the government with jurisdiction in the areas of lands, forestry, mines and minerals.

4. Financial Arrangements

The federal government proposes that once the Transfer Agreement is signed between the federal and the Yukon governments, the level of funding existing at that time in the categories noted below, will be maintained until April 1, 1998 (the proposed date for transfer), when these funds will be included in the Canada-Yukon Formula Financing Agreement. This commitment from the federal government will shelter the financial resources to be transferred to the Yukon government from future potential reductions.

Salaries and Benefits:

- salary and benefits budget allocated to the Northern Affairs Program's Yukon region including salaries and benefits for full-time and seasonal indeterminate and for term or temporary employees in the Northern Affairs Program's Yukon Region; and
- salary and benefits for the positions identified in the Natural Resources and Environment Branch of the Northern Affairs Program in Ottawa/Hull.

In addition, the Yukon government will be provided one-time funds pertaining to severance obligations and annual leave credits of employees transferred to the Yukon government as a result of this devolution.

Operating and Maintenance: This category includes the non-salary budget allocated to the Northern Affairs Program in the Yukon Region and a portion of the Operating and Maintenance budget from the Northern Resources and Environment Branch of the Northern Affairs Program at the headquarters in Ottawa/Hull attributable to the Yukon regional operation.

Specifically, this category includes expenses pertaining to non-salary expenditures, equipment maintenance and replacement, maintenance of building and any leases.

A summary of Northern Affairs Program budget data is provided in Table 1.

Grants-in-Lieu of Taxes: This category includes all grants-in-lieu of taxes paid by the Department of Indian Affairs and Northern Development and by the Department of Public Works and Government Services Canada on behalf of the Northern Affairs Program, on the real assets owned by the federal government and used by the Northern Affairs Program in the Yukon.

Table 1

**Estimated Summary Budget Data
Available for Yukon Devolution
1995/96, 1996/97 and 1997/98**

	(\$ Million)		
	<u>1995-1996</u>	<u>1996-1997</u>	<u>1997-1998</u>
Salaries	12.63	13.63	14.73
Operating and Maintenance	18.19	17.70	18.42
Total ²	30.82	31.33	33.15
Allocated FTEs	233.5	241.0	270.0

² Includes allocation from the Natural Resources and Environment Branch at the Northern Affairs Program's headquarters.

Method of Transfer of Funds

On-going funds will be transferred to the Yukon government in accordance with the terms specified in the Canada-Yukon Formula Financing Agreement (Formula)³. In summary, the funds will be included in the Yukon's Gross Expenditure Base of the Formula in the year of transfer and will be subject to the annual Population Adjusted Gross Expenditure (PAGE) escalator.

One-time funds pertaining to the employee severance payments will be provided to the Yukon government through an adjustment to Yukon's Gross Expenditure Base as a "one-time payment", in the year of transfer, and will not be subject to the PAGE.

Treatment of Revenues

The devolution of responsibility to the Yukon government over natural resource management will provide the Yukon government with new powers to levy and collect revenues from the administration of lands and waters, including royalties from the production of natural resources, in the Yukon.

Post devolution, resource revenues raised by the Yukon government in those areas devolved to it pursuant to the Transfer Agreement will be included in the Formula grant calculations, on an annual basis starting in the year of transfer. These revenues will be considered Hypothetical Own Revenues and Own Recoveries, as defined and described in the Canada-Yukon Formula Financing Agreement and will be subject to adjustment in accordance with the Canada-Yukon Formula Financing Agreement. Currently, under the terms of the Formula, increased revenue from natural resource management results in a decrease in the Formula financing payments to the Yukon government

Net Fiscal Benefit

The federal government is proposing that, post devolution, the Yukon government receive a net fiscal benefit from resource revenues. In order to avoid the full impact of the Formula financing payment reductions, which will otherwise apply, the federal government proposes that:

. Starting in the year of transfer, twenty (20) percent of resource revenues accruing to the Yukon government from resource royalties and from the administration of resource programs, associated with the devolution of the powers and programs contemplated in this proposal, be exempted from the Formula calculations, each year. All remaining resource revenues accruing to the Yukon government will be included in the Formula as Hypothetical Own Revenues and Own Recoveries.

³ The Canada-Yukon Formula Financing Agreement (Formula) is the primary mechanism for the calculation and transfer of grants to the Yukon government. The Formula includes provisions for expenditure levels, revenues level of taxation levied by the Yukon government.

. The Economic Development Incentive (EDI) will be applied to the appropriate resource revenues entering the Formula with a corresponding reduction on the expenditure side in the year of transfer.

. A cap will be applied to the exemption such that, when resource revenues equal the Formula transfer payments, the exemption would equal zero.

The extent of fiscal benefits for the Yukon government from natural resource royalties would depend upon the pace of resource development in the Yukon and resource management policies adopted by the Yukon government, post-devolution.

5. Human Resources Transfer

Northern Affairs - Yukon Region

Based on the 1996-1997 data, the Northern Affairs Program in the Yukon Region has 241 Full-Time Equivalents (FTEs)⁴. The Yukon Regional Office employs regular indeterminate employees, seasonal indeterminate employees and term employees who will be directly affected by this devolution. The number of employees and their employment status changes continuously, therefore, the exact number of employees affected by this initiative will be assessed closer to the date of transfer.

The Yukon government will offer continuing employment to all affected regular indeterminate and indeterminate seasonal employees of Northern Affairs Program affected by this devolution.

In addition, the federal government strongly encourages the Yukon government to offer employment to term employees affected by this devolution.

Funds covering salary and benefits for all 241 FTEs, including funds currently covering the salary and benefits for DIAND's affected term employees, will be provided to the Yukon government on an on-going basis (see Chapter 4).

Northern Affairs - Headquarters

Northern Affairs Program's headquarters functions can be broadly divided into three categories: federal-type functions, provincial-type functions, and administrative/management functions. The provincial-type functions are carried out by the Natural Resources and Environment Branch in the headquarters of the Department of Indian Affairs and Northern Development and these functions support both the Yukon and the Northwest Territories.

⁴A Full Time Equivalent (FTE) is a term used in the federal government for allocating salary and employee budgets to its departments. One FTE means salary and benefits budget for one person for one year.

Based on the 1996-97 data, an estimated 20 FTEs and associated total budget of about \$2.2 million from the Natural Resources and Environment Branch will be transferrable to the Yukon government'. This allocation will be revised and will be based on budgets available at the date of signing the Transfer Agreement.

Indeterminate employees working in the Natural Resources and Environment Branch identified by DIAND, who are affected by this transfer, will be provided offers of indeterminate employment by the Yukon government⁵. They will have to relocate to the Yukon. Relocation expenses for such employees will be granted to employees as per the Government of Canada *Public Service Relocation Directive*, the cost of which will be borne by DIAND.

DIAND will identify employees and their status of employment with the federal Public Service (in the Yukon Region and at the Northern Affairs Program headquarters) who will receive offers of employment from the Yukon government. DIAND will issue necessary notices of alternative delivery service to its affected employees.

The federal government proposes that the Yukon government provide offers of employment to the affected DIAND employees so as to meet "Type 2" requirements, as described in Part VII of the Government of Canada *Work Force Adjustment Directive (WFAD)*. In addition, the offers must be based on the following principles:

Compensation (salary and benefits): At levels which are similar to the affected employees compensation levels in the federal government at the time of transfer without the imposition of waiting periods respecting benefits. Salary is defined as salary plus equalization adjustment and supervisory differential.

⁵Since none of the headquarters positions nor the associated budgets involved with the provincial-type functions can be identified as uniquely dedicated to the Yukon, the allocation of the human and associated financial resources of the Natural Resources and Environment Branch will be based on the following:

1. salary and benefits budget equivalent to 40 percent of the FTEs associated with the provincialtype functions of the Natural Resources and Environment Branch,
2. One-third of administrative/management functions of the Natural Resources and Environment Branch, and
3. Associated operating and maintenance funds of the Natural Resources and Environment Branch of the Northern Affairs Program.

Other terms of employment and benefits (including the carry-over of annual, sick and other leave and benefits from the federal government to the Yukon government) will be in accordance with the Yukon government's collective agreement of January 1995.

Recognition of Service: The number of years of service with the Public Service of Canada be recognized as continuing service with the Yukon government for the purposes of probation and for determining entitlements under collective agreement.

Comparable Jobs: Individual employment offers will closely resemble their federal positions occupied by the affected DIAND employees at the time of transfer. The expertise, skills and experience earned by employees while working in the federal public service should be comparable to those skills required for their new positions with the Yukon government,

Severance Obligations: Severance payment will not be made to the transferred DIAND employees at the time of the transfer. As at the transfer date, the Yukon government will assume responsibility for discharging this obligation in accordance with its collective agreement(s). The Yukon government will be provided funds as of the date of transfer (actuarial value to be prepared by the Office of Superintendent of Financial Institutions) pertaining to the severance obligation owing to the transferred DIAND employees.

Pay Equity

In the event of the granting of pay equity to the transferred DIAND employees, DIAND's responsibility will be limited to payments covering periods in which the employees were in the Public Service of Canada prior to the devolution date.

6. Office Accommodation and Other Assets

The federal government owns and manages a broad range of real estate properties across Canada. Some of these properties are owned and managed directly by federal department and agencies. Other properties are owned and managed by the Department of Public Works and Government Services Canada and are occupied by various federal departments and agencies.

Sole Occupancy: The ownership of the federal office buildings and other properties located in the Yukon, which are occupied solely by the Northern Affairs Program for the management of the provincial-type programs and which are not required by the federal government for other purposes, will be transferred to the Yukon government as a part of this devolution initiative. If, however, the building is required by the federal government for other purposes, alternative funding and/or rental arrangements will be made between the Department of Public Works and Government Services Canada and the Yukon government.

Multiple Occupancy: The ownership of the federal office buildings located in the Yukon which are occupied by the Northern Affairs Program along with other tenants, and which are required by the federal government for other purposes, will continue to be retained by the federal government.

The federal government proposes that, in the case of office buildings with multiple occupancy, the Yukon government and the Department of Public Works and Government Services Canada enter into commercial lease arrangements. Such arrangements will be effective as of the transfer date, initially, for a period of five years and will be on market rent basis. Other terms and conditions of accommodation will be essentially equivalent to those of the current DIAND occupancy. Funds equivalent to market rent for such space will be provided to the Yukon government through adjustments to the Canada-Yukon Formula Financing Agreement.

Other assets which are not major capital assets, such as, trucks, cars, computers, machinery, equipment, furniture, etc., used by the Northern Affairs Program in the Yukon region will be transferred to the Yukon government at no cost on an "as is, where is" basis. The assets will not be subject to a "condition audit" or upgrade and no depreciation account will accompany them. It should be noted that operating and maintenance (O&M) funds available to the Yukon Regional office, which are used to maintain and repair these assets, will be transferred to the Yukon government (see Chapter 4). When this offer is accepted, an inventory print-out of all asset items will be provided to the Yukon government and DIAND will undertake normal repair, maintenance, replacement and disposal of these assets until the conclusion of the transfer.

7. Environmental Management

The Department of Indian Affairs and Northern Development has the responsibility for the regulation, environmental protection and monitoring of lands, waters, and active mine sites as part of the administration of lands, water and mines and minerals, in the Yukon. It also includes the management, administration of the policy for and regulations related to forest resources, the contaminants program, and the waste management program of hazardous abandoned sites.

The Northern Contaminants Program

Assessment and monitoring activities relating to trans-boundary pollution is an on-going federal responsibility in the national interest and, therefore, is not considered for devolution to the Yukon government.

The Waste Management Program

In terms of the Waste Management Program, the Yukon Regional Office of DIAND maintains and updates on a continuous basis an inventory of existing hazardous abandoned sites in the Yukon. In addition, a number of mineral claims in good standing with accumulated waste from previous ownership or operations but not currently under active development, are also identified in the inventory. This inventory is continually updated and revised as assessments are completed and as remediation actions are completed. The most up-to-date inventory of abandoned waste sites in the Yukon will be attached to the devolution agreement as an annex. As Yukon government officials are currently involved in DIAND's regional assessment and on the Yukon Waste Management Committee, the Yukon government is aware of both the inventory of abandoned waste sites and federal strategies towards remediation action.

In the remediation of abandoned waste sites, the focus of the Northern Affairs Program's efforts on public lands in the Yukon is to remove risks to human health and safety and meet any legal obligations. The Northern Affairs Program follows a process of prioritizing the inventoried sites in the Yukon for remediation action based on the level of risk and ability to manage the identified risk(s), for each abandoned waste site. The criteria used for establishing risk emphasize human health and safety, and meeting legal obligations under federal legislation such as the *Fisheries Act* and the *Canadian Environmental Protection Act (CEPA)*.

A. Existing Hazardous Sites:

There are approximately 400 abandoned waste sites in the Yukon, of which 20 are currently deemed to require remediation to reach standards set in the *CEPA* and the *Fisheries Act*. Of the 74 abandoned mine sites, approximately 20 are in potential need of remediation to federal standards.

The federal government proposes, that post-devolution, DIAND continue its plan for containment and remediation of existing abandoned hazardous sites, identified prior to devolution, in accordance with its policies and standards in the Waste Management Program. The administration and control over these lands will be transferred to the Yukon government upon remediation. Administration and control of all other public lands will be transferred to the Yukon government at the time of devolution.

The federal government proposes that in the event a hazardous waste site is discovered by the Yukon government post-devolution, the federal and Yukon governments will collaborate to ascertain whether such a discovered site was created pre or post-devolution and will jointly assess the requirements for and appropriate cost of remediation.

B. Active Mine Sites and Mine Sites Under Care and Maintenance:

The Faro Mine⁶ in Yukon requires extensive remediation action. If at the time of devolution this mine is active, it will fall under the jurisdiction of the new territorial legislation and regulations. If the status of the Faro mine is uncertain at the time of devolution, the federal government proposes to collaborate with the territorial government, the owners, and other stakeholders in planning a remediation action.

In addition, there are a number of hazardous waste sites which are not active mines, however, some exploration activity is currently taking place on these sites⁷. The Northern Affairs Program monitors these sites with respect to regulatory compliance on a regular basis. The federal government proposes that, post-devolution, the Yukon government continue these functions.

C. Hazardous Waste Sites Created Post-Devolution:

Following devolution, the Yukon government will assume administration and control over public lands in the Yukon. As a result, the Yukon government will be responsible for the regulation, monitoring and remediation of any new hazardous waste sites in the Yukon

Post-devolution, the Yukon government will have the powers to enact legislation that will enable it to hold site owners accountable for remediation of any newly created waste sites. It will also be in a position to require and enforce reclamation plans.

⁶ The Faro Mine has suspended operation as of December 20, 1996 for three months.

⁷These sites include the United Keno Hill Mines, the Ketza River Mine, the Sa Dena Hes Mine and the Cassiar Asbestos Mines at Clinton Creek. Status of these mines is continuously evolving.

Development Assessment Process (DAP)

The Yukon First Nation Final Agreements concluded to date provide for the implementation through legislation of a co-management Development Assessment Process (DAP) for the Yukon. The purpose of DAP is to establish a Yukon-specific environmental and socio-economic assessment process for all development projects and activities. DAP will apply to federal, territorial and First Nation governments, on settlement and on non-settlement lands throughout the Yukon.

It is expected that the DAP regime will be in place in time for the devolution of powers to the Yukon government.

Current Situation

Public Lands:

Currently, *Canadian Environmental Assessment Act (CEAA)* applies to federal departments or agencies where one of the following triggers exists:

- a project is proposed by the federal government,
- federal funds are involved,
- the federal government administers land and resources,
- federal authorization on the Law List

Settlement Lands:

With the assumption of powers by First Nations in relation to Settlement Land, the First Nation government will control the land use activities on settlement lands and CEAA will not apply, unless there is a federal trigger.

Lands Administered by the Commissioner:

CEAA specifically states that the "federal authority" does not include the Commissioner in Council or an agency or body of the Yukon Territory. Thus CEAA does not apply to projects or activities that occur on lands administered by the Yukon government except where there is a federal trigger.

The Yukon government has passed an *Environment Act* which allows (in Part 6) for a process for development approvals and environmental screening either using an existing environmental assessment (such as the federal process) or a development assessment process. This part of the Act (Part 6), however, has not been brought into force.

Situation Post-Devolution

Post-devolution, the territorial government will assume responsibility for issuing authorizations on non-settlement lands in the Yukon. If the DAP regime is brought into force prior to devolution, it is anticipated that the Yukon government will pass mirror legislation given its assumption of administration and control of public lands in the Yukon.

In the event that the DAP regime is not in place prior to devolution, this will create an environmental assessment gap on non-settlement lands, since the Yukon government, as a nonfederal agency, does not trigger CEAA applications.

To avoid such a scenario, the federal government proposes that, upon devolution, the Yukon government enact and implement environmental legislation equivalent to CEAA, until such time that DAP is brought into force. This could be achieved by the Yukon government passing legislation similar to CEAA that would enable it to assume environmental assessment responsibilities until DAP is brought into force.

Alternatively, upon devolution, the Yukon government could amend and implement Part 6 of its *Environment Act*, until DAP becomes effective, which would give the Yukon Minister of Environment powers to ensure that all development activities (currently triggered by CEAA on non-settlement lands) were screened.

The environmental and environmentally-related responsibilities of other federal departments and agencies would not be altered by this devolution initiative.

8. Conclusions

The Formal Proposal reflects a considered position of the Government of Canada having reviewed the views expressed by the Yukon First Nations, their representative organizations, interested parties and individual Yukoners, in response to the release in June 1996 of the federal proposal for the "Devolution of the Northern Affairs Program to the Yukon Government".

The Formal Proposal is based on the premise that the devolution will proceed on a basis of a comprehensive transfer of powers, programs, human and physical assets and resources to the Yukon government, and not on a program-by-program basis as has been the approach in previous transfers of powers and programs to the Yukon government.

Commitments provided in this Formal Proposal, particularly with respect to the maintenance of financial resources, DIAND headquarters resources and the exemption of resource revenues from the Formula calculations, are made on the premise that the devolution will be completed by the proposed date of April 1, 1998.

It is the federal government's view that the devolution proposal set out in this document is fair, balanced and reasonable and that it meets the desires of a majority of Yukoners to have a much greater say in decisions affecting their well being and livelihoods and to have these decisions made in the Yukon by the Yukoners. The federal government agrees that this is in the best interests of all concerned. It is this belief that led it to enter into the process which has after three years resulted in this Proposal.