

**Additions to Reserves:
Lessons Learned from First
Nations**

Final Report

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Appendix A – References

1.0 Land and reconciliation

Recently, the Government of Canada has taken steps to affirm its goal of developing a new relationship with Indigenous peoples, based on a spirit of reconciliation. Its full adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) demonstrates the Crown's commitment to the full recognition of Indigenous rights in accordance with Canada's Constitution, and to developing a relationship with Indigenous peoples based on cooperation and respect (Government of Canada, 2016). Among the recognized rights of Indigenous peoples are those related to reserve lands.

Reserves are lands held in trust by the Crown for the use and benefit of specific First Nations communities. According to Indigenous and Northern Affairs Canada (INAC), over 3.5 million hectares of reserve land exists nationally, the equivalent of 0.35% of Canada's total land mass (Natural Resources Canada, 2005). These lands hold particular historical, cultural, and social importance to First Nations communities (Indigenous and Northern Affairs Canada, 2008b). They also typically represent the single most valuable asset available to First Nations to support economic development and community self-sufficiency.

A number of outstanding land debts are still owed to First Nations across Canada. Part of meeting the Crown's commitment to reconciliation involves settling these debts through a number of mechanisms. The Treaty Land Entitlement (TLE) process, for example, results in settlement agreements between the Crown and specific First Nations to compensate for communities not having received their full land entitlement under Canada's historic treaties (Indigenous and Northern Affairs Canada, 2009). The federal Specific Claims process, by contrast, is meant to provide compensation for past federal mismanagement of First Nations assets, and can include a land component (Indigenous and Northern Affairs Canada, 2008c).

The compensation provided through the TLE and Specific Claims processes, while addressing historical land debts financially, does not directly address the alienation of First Nations from the land. This is done, in part, through additions to reserve (ATR). ATR is the process by which the Government of Canada converts parcels of land acquired by a First Nation — often using financial compensation — to reserve status (Aboriginal Affairs and Northern Development Canada, 2012). These parcels can be adjacent to an existing reserve or located in another urban or rural area away from existing reserve lands.

The conversion of these parcels to reserve status provides the opportunity for First Nations to exercise their historical treaty rights fully, in relation to these lands. For many, these additions are also seen as a way to support economic development among communities (Aboriginal Affairs and Northern Development Canada, 2012). This assertion is based in part on the observation that “the alienation of land and resources has been a major contributor to the economic marginalization of Aboriginal peoples in Canada” (Parliament of Canada, 2012).

1.1 The ATR process and land management

The ATR process was first created by the Government of Canada in 1972 and was most recently updated in 2016 (Indigenous and Northern Affairs Canada, 2016). Under the policy, First Nations have the right to purchase any parcel of land from a willing seller for the purpose of converting it to reserve lands (INAC, 2008). Under both the 2001 and 2016 policies, an ATR proposal is submitted to INAC following a Band Council Resolution (BCR). The proposal continues through a series of steps, often taking months or years, until it is approved by the department and the conversion of the purchased land takes place.

The following figure provides an overview of the ATR process.

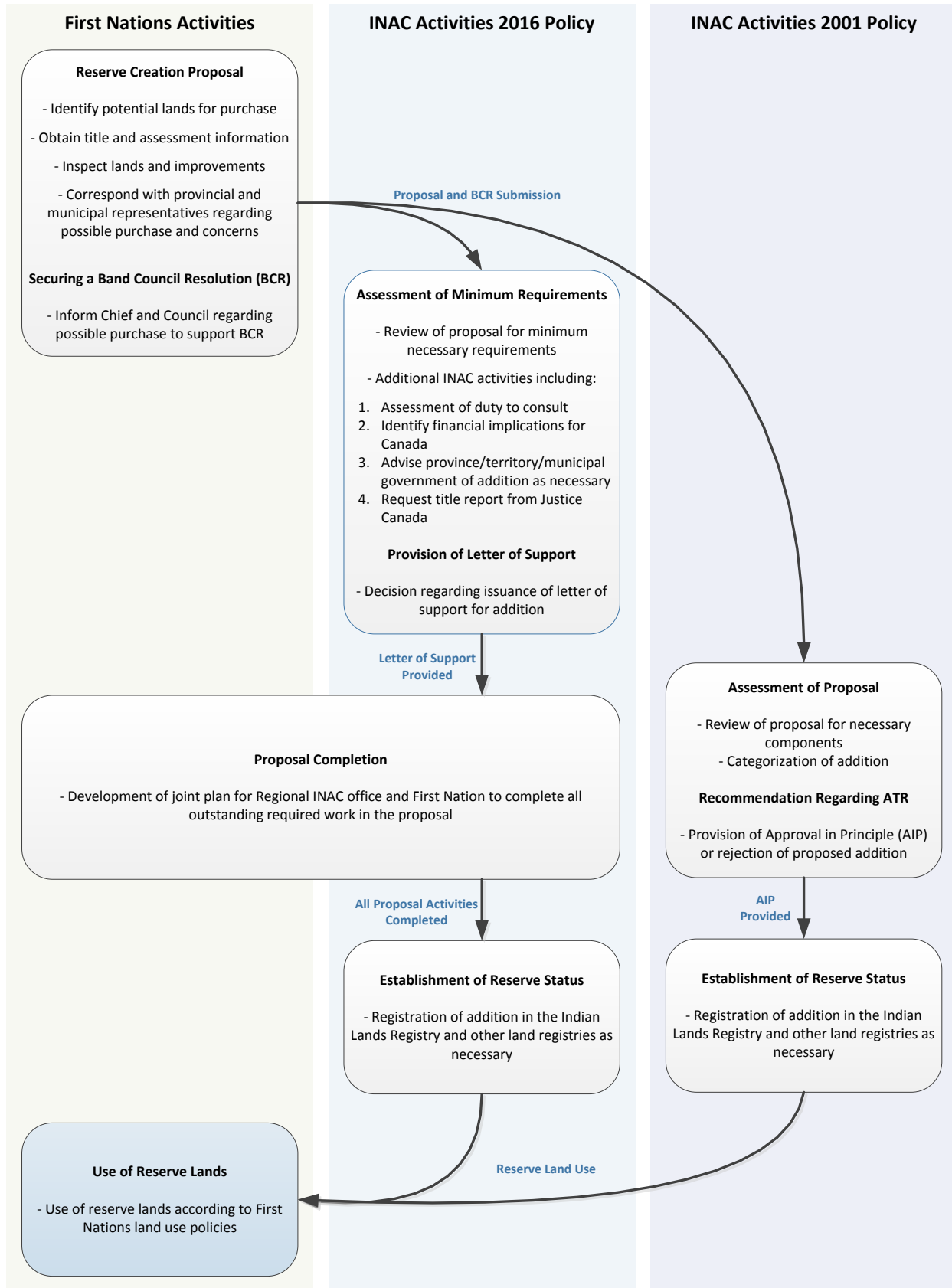


Figure 1: ATR Process Flow Chart

As alluded to in Figure 1, ATR additions may be either urban or rural and need not be contiguous with existing reserve land. Reserves are considered urban when they are either located in or are adjacent to an urban centre. These can include smaller urban centres, such as Portage La Prairie, MB with a population of 13,000, or larger urban centres such as Vancouver, BC with a population of 2 million. In fact, both of these centres currently contain urban reserves (INAC, 2008).

INAC argues that urban reserves provide First Nations with additional economic development opportunities that would not be available in a more rural setting. This may include a broader range of Aboriginal business start-up opportunities and improved access for community members to the off-reserve labour market. These opportunities are seen as a way for First Nations communities to become increasingly financially self-sufficient. The department further suggests that urban reserves provide an economic stimulus to centres where they are located, thus benefitting not only First Nations community members (Aboriginal Affairs and Northern Development Canada, 2010; INAC, 2008).

It is also critical to understand that once an ATR is complete, be it urban or rural, the use of this additional land is affected by the land management regime under which a First Nation operates. For First Nations communities, two land management regimes predominate. Under the first, land management is governed by the *Indian Act* requiring land designations, leases, and permits to be issued though INAC on behalf of the First Nation (Indigenous and Northern Affairs Canada, 2008a). Under the second, First Nations voluntarily opt out of the land management provisions of the *Indian Act* through provisions in the *First Nations Land Management Act* (FNLMA) or the negotiation of comprehensive self-government. In these cases, the community takes on direct responsibility for developing an independent land code and a land management system.

A 2014 Report of the Standing Committee on Aboriginal Affairs and Northern Development studying land management and sustainable economic development on First Nations reserve lands argued that First Nations operating under the First Nations Land Management (FNLMA) Regime available through the FNLMA achieve greater economic development success because they have local decision-making authority regarding lands. The report suggests that this authority allows First Nations to move at the “speed of business,” which ultimately reduces time and costs compared to going through the INAC decision-making process (Standing Committee on Aboriginal Affairs and Northern Development, 2014). Similar autonomy is also available under self-government.

1.2 Understanding ATR

In 2015, the National Aboriginal Economic Development Board (NAEDB) initiated a study examining First Nations experiences with ATR. The study was meant to illustrate some of the ATR benefits and challenges facing First Nations, and provide a list of best practices coming from First Nations ATR success. It built on the findings of two previous studies completed by the Board that examined factors contributing to successful economic development in urban reserves, namely Stage I: *Identifying Success Factors in Urban First Nations* (2014) and Stage II: *Achieving Benefits for First Nations and Local Governments* (2015).

In total, nine communities provided feedback on their experiences with ATR through key informant interviews. Six of these agreed to be identified as part of the study, with three preferring that their contributions remain anonymous. The six communities who agreed to be identified include the following:

Community	Province
Westbank First Nation	British Columbia
Long Plain First Nation	Manitoba
Kahkewistahaw First Nation	Saskatchewan
Opaskwayak Cree Nation	Manitoba
Swan Lake First Nation	Manitoba
Madawaska Maliseet First Nation	New Brunswick

As the figure on the following page suggests, these communities are located across Canada. Their histories and geographic locations throughout the country have provided them with unique experiences with ATR. In addition, they include a mix of urban and rural reserve lands, allowing them to contrast ATR and development experiences in these two environments.

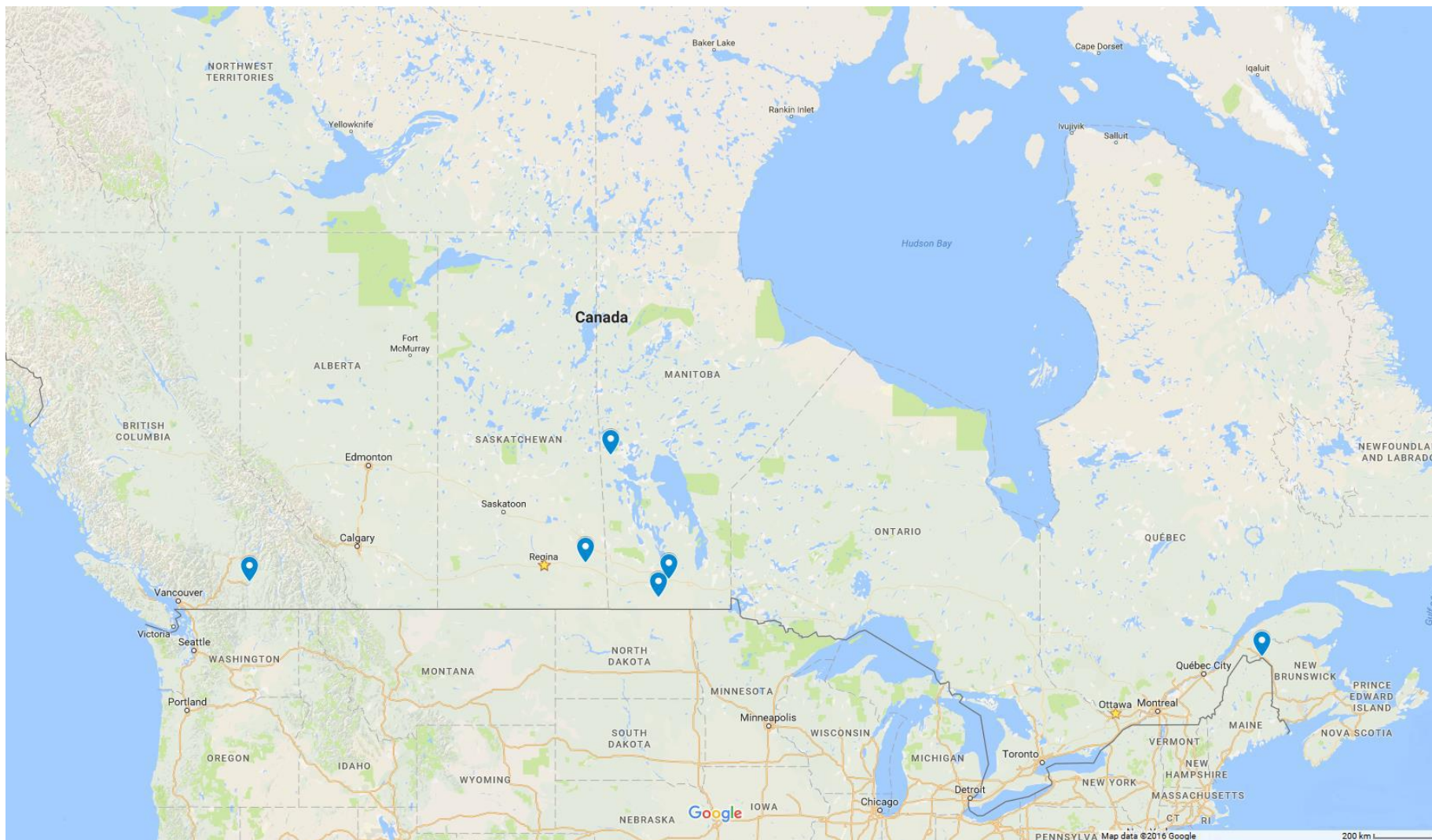


Figure 2: Community Location Map

The remaining sections of this report present findings from the 2015 NAEDB study, along with observations regarding ATR best practices.

2.0 Observations from First Nations communities

The main data collection activity completed as part of this study involved a series of key informant interviews with representatives from nine First Nations communities across Canada. During these interviews, participants were asked questions covering three broad topics.

- ▶ First, they were asked to describe the community, along with their experience with the ATR process and economic development.
- ▶ Second, they were asked to share their experiences with ATR, including suggesting ways in which the process of adding lands to reserve could be improved.
- ▶ Third, they were asked to comment on the economic development activity taking place in the community as a result of land additions.

The information provided during these interviews, taken with the conclusions of the previously completed studies discussed above, form the basis of the findings for the current study.

2.1 Key features and interpretation of results

The communities that participated in the key informant interview process shared a number of important general characteristics, creating similar contexts in which they undertook ATRs. However, it is important to understand that different features existed even among those communities with commonalities. This affects not only the nature of the comments provided by community representatives, but also their interpretation.

As an example, each of the communities had reserve lands that were either in or adjacent to local municipalities. To a greater or lesser extent, these communities have used a portion of these lands to support economic development. However, in some instances, the main economic development activities undertaken by communities took place on lands that had been part of their reserve for some time, and not those that had been recently added through ATR. This meant that certain communities could speak to their experiences with economic development on reserve and the ATR process separately, but not necessarily the additions process with the explicit purpose of development.

"We have no plans at this time for the added land. Everybody just looks at it as land added to our land base.

The development land is adjacent to the boundary on the east end of the original reserve."

Anonymous

This relatively subtle difference is related to the level and type of experience the participating communities had with economic development activity in urban areas. For example, one participating community's main reserve has historically been located in an urban centre, resulting in decades of experience with urban economic development. For others, important urban additions took place before the implementation of the current ATR policy, allowing for a

similar period of economic development capacity building. These communities bring significantly different experience to more current additions than those who might be undertaking urban additions for the first time.

The circumstances that led to the addition process in each community also differed across the nine who contributed to the study. Although some communities had undertaken additions as a result of the TLE process, others had supported additions through Specific Claims. In one instance, the ATR discussed by a community was to support community expansion as a result of natural population growth. To some extent, these differences affected the goals the communities identified for the additions in question.

For all participating communities, supporting continued economic growth remains a goal closely related to the ATR process. Among these communities, however, economic self-sufficiency specifically received varying levels of emphasis. In addition, as mentioned above, accommodating the on-reserve housing needs of a growing population was an important consideration for at least one community when examining the possibility of ATR. For another, it appears that for community members the principle of reacquiring lost historical lands following a specific claim motivated, in part, reserve additions.

"We would like to see a bigger land base for community members. I personally would like to see the 29,000 acres that we lost returned to reserve status.

We have also identified a medicine wheel on some of the land, and we need to get historical information about lands from our elders now before they are gone."

Aaron Louison, Kahkewistahaw First Nation

Following additions, participating communities managed reserve lands under different regimes, including self-government, FNLM, and according to *Indian Act* provisions. These differences allowed for comparisons between insights regarding the interaction between ATR and land management. One participating community currently manages lands under two different regimes, allowing their representative to make direct comparisons between their experiences with both.

"We have a gravel company. We have the gas station on reserve. The restaurant is running with select hours, since there is not as much business anymore. There is a small engine repair business and tire shop. Individuals own some family agricultural businesses ... That is essentially it. Economic activity has dwindled recently."

Aaron Louison, Kahkewistahaw First Nation

Despite the fact that recent studies into the ATR process have pointed to substantial benefits for First Nations communities as a result of land additions, strong recent economic growth was not universal among participating communities. In fact, at least one community noted that the recent economic development in their community has been limited. This is despite the fact that this community had successfully completed a number of additions to their reserve. This difference suggests the need to carefully consider the interaction between land additions and the many

factors that drive development on reserve.

Finally, it is important to stress that certain communities operate in truly unique contexts as a result of past agreements or historical circumstances. For example, one participating community described the unique tax agreement established decades ago with the province to equalize

taxation on and off reserve and then share tax revenues. These unique circumstances provide a point of contrast for other community experiences, with lessons that can be taken from them.

2.2 The ATR process

Despite the fact that discussions surrounding the ATR process were detailed and wide-ranging, a number of common themes emerged. Topics included both challenges that make the ATR process time-consuming and complicated, and strategies to mitigate those challenges.

2.2.1 Relationship building and ATR

Echoing the concerns identified in previous studies of ATR, many community representatives highlighted the time-consuming nature of the ATR process. One of the most commonly cited stumbling blocks during the process, which was also noted in the previous literature, involved addressing municipal concerns regarding lands identified for ATR. A number of interviewees suggested that part of the difficulty in dealing with municipalities stems from a continued lack of understanding on the part of municipalities and their residents regarding First Nations in Canada.

“They look down on us, especially in rural parts of Manitoba, where there is still a lot of backward thinking. One community requested a 100, 150-metre buffer zone. And they were advancing these positions in this day and age.

So what do you do, when there are objections like that? Is there any way of forcing the process at that point?”

Chief Dennis Meeches, Long Plain First Nation

As one interviewee suggested, there is a limited understanding of Indigenous history in Canada among non-Indigenous Canadians. This perpetuates negative stereotypes regarding First Nations people, making it difficult for residents to accept the idea of a reserve community in or adjacent to an urban centre. Citing one of their own experiences, this interviewee recalled that residents of the local municipality asked for a 100 to 150-metre buffer zone between the planned reserve addition and existing local housing. This requirement grew out of concern that their property values would be affected by the existence of a local urban reserve.

In another case, an interviewee noted that during one of their own ATR processes, negative comments regarding the First Nation became so common that they began undertaking workshops

“There were a lot of negative comments about the nation, really bad, and of course our people saw that. We had a lot of workshops and information sessions with our citizens.

Once we got over this issue, we were able to move on to the substance of the agreement. Let people talk – they have no idea.”

Anonymous

and information sessions for First Nations community members. The workshops were meant to clarify why the ATR process was taking place, and to provide an opportunity for members to discuss what they heard from the broader local community.

Despite the fact that community members may not fully understand Indigenous history and the ATR process, one interviewee highlighted the importance of ensuring that

municipal governments, in particular, understand ATR and its relationship to economic development. Participants in the study cited a range of experiences with local municipalities

from long-term positive working relationships to acrimonious interactions. While many individuals noted that stronger relationships generally existed with municipalities that have known the First Nation and its members for a long time, the experience in one member's community highlighted the fact that this is not a sufficient condition for positive working relationships.

In this case, this relatively small reserve community had been located within a municipality since it first formed. Despite this history and a long-standing municipal service agreement for fire protection, water, and sewage, the community did not have a positive working relationship with the municipality. This only changed substantively when the First Nation and the local municipality entered into a joint community economic development process. This process was funded by INAC and delivered by the Canadian Federation of Municipalities, following a request for proposals from First Nations communities and adjacent non-Indigenous municipal centres.

"The local municipality for the main reserve, they gave us the land right away. They had no problem to transfer the lands because they knew us. But we had trouble with the Rural Municipality of South Cypress at the Carberry location."

Bob Green, Swan Lake First Nation

"This has not been a long positive relationship.

However, Madawaska Maliseet was among six First Nations involved in a successful proposal for a joint economic development initiative with the local municipality. Now, the mayor and I have a direct line to each other. If any issue arises, he can send me a quick text message and we can deal with the issue immediately. Right now, I would say I have a very good relationship with the mayor."

Chief Patricia Bernard, Madawaska Maliseet First Nation

The community representative noted that the accepted proposal identified the goal of developing a joint economic development plan between the two parties. However, this goal was never achieved. Despite this, they highlighted the fact that the First Nation and the municipality were able to develop a formal communication plan and, perhaps more importantly, open up ongoing informal lines of communication. They noted that this has improved the working relationship significantly, facilitating a new service agreement with the

municipality. They further noted that, despite the fact that they do not have a template for dealing with every issue that might come up between the two parties, the improved working relationship has made it much simpler to deal with issues as they arise.

2.2.2 Specific municipal concerns

According to interviewees who participated in the study, the most common concern among municipalities involves the reduction of the municipal tax base as a result of ATRs. Once converted to reserve status, municipalities can no longer levy taxes on these lands. This represents a potentially large revenue loss, and is cited as one of the main motivators for opposing or delaying ATRs.

“The local government has been a big challenge, because the number one question that comes out is the municipal taxation loss, regional district taxation loss.”

Raf De Guevara, Westbank First Nation

Negotiating service agreements with municipalities for the provision of water, sewer, and other services provides an opportunity to compensate municipalities for potential tax losses. To the extent that revenues from these service agreements cover municipal tax losses, municipalities will not face a net tax loss as a result of ATR. However, key informants noted that negotiating these agreements can be difficult.

Comments from interviewees suggest that initial agreements with municipalities are particularly challenging. Those who had previously negotiated an agreement often said that subsequent agreements would use this earlier one as a template, thus facilitating negotiation. In addition, in situations where municipal service agreements already exist, scaling these up for more extensive business and economic activity appeared much simpler than developing a new agreement from scratch.

“Doing ATR in and around municipal areas is by far the more significant challenge, because of taxation loss and the fact that local government doesn’t understand First Nations history in Canada.”

Education is so important to understand that we’re in this together, and you are not losing something. For example, from the revenues that are generated from taxation, our community contributes \$50 million to Canada and \$30 million to BC.”

Raf De Guevara, Westbank First Nation

Earlier findings in the literature, along with comments from interviewees, suggest that even if municipal tax losses result, increases in federal and provincial tax revenue may compensate. For example, a representative from one community who participated in the study noted that an analysis commissioned by their community highlighted that Canada and the Government of British Columbia stood to gain \$50 million and \$30 million in tax revenue, respectively, from increased off-reserve economic activity near their urban reserve.

However, despite these mechanisms for addressing key municipal concerns, there is the potential for municipalities to leverage the ATR process in an attempt to extract concessions from other orders of government. Many interviewees noted that in the absence of strong political will, concerns raised on the part of municipalities will delay or halt the ATR process. In one particular case, the interviewee suggested that the local municipality understood this and was prepared to raise concerns until the Alberta government agreed to support infrastructure development in their area. Although the extent of such situations across the country is unknown, a de facto municipal veto on the ATR process presents a risk that it will continue to occur.

2.2.3 Third party interests in the land

Interviewees participating in the study consistently noted that third party interests also present a challenge for the ATR process. These interests include rights-of-way for utilities, as well as private allowances for businesses or individuals on particular parcels of land. Based on comments from interviewees, accommodating these interests can be challenging because of the many details that must be discussed and addressed. As one interviewee noted, this process could take years. In addition, the existence of third party interests increases the number of stakeholders at the table, requiring First Nations to balance the needs of these third parties with those of municipalities and others.

Key informants further suggest that in instances where third parties have particularly unreasonable demands, the ATR process can be stalled indefinitely. One key informant cited an example of a private right-of-way for a driveway on a parcel of land that the community was considering purchasing. Despite a mechanism for accommodating this right-of-way through the issuance of a permit by the Minister of Indigenous Affairs, the third party requested financial compensation from the First Nation for the transfer. The community was unable to come to an agreement, and was forced to change their land purchase to exclude the right-of-way.

2.2.4 Consultation requirements

Although only mentioned on a few occasions, a potentially emerging issue involves the interaction between the ATR process and the Crown's duty to consult. To the extent that a particular addition could reasonably impact established Aboriginal rights, the Crown has a duty to consult with the potentially affected communities. On three occasions, interviewees noted that neighbouring communities had to be consulted in order for their ATR to progress. These consultations have the potential to add additional time to the overall ATR process.

"The biggest challenge that we had initially was both the province and Canada had to go through First Nations consultation with the other First Nations.

We had some initial consultation with them and one of them, once they heard about our deal, had a lawyer write us a letter saying it was part of their land claim."

Anonymous

2.2.5 The role of federal and provincial governments

Throughout key informant interviews, two related issues were raised in a number of different contexts. First, some participants argued that the ATR process does not favour First Nations communities. They suggested that it is geared towards the needs of government, since provincial and federal governments can more readily influence and, by extension, address the concerns of municipalities and third parties. When ATRs are driven exclusively by the needs of First Nations, and do not align with provincial or federal planning, addressing these concerns becomes far more complicated.

“So, we have three parcels of land that were government-driven and were extremely quickly added to reserve.

Now, we have a piece of land that the First Nation purchased in 2003 that was adjacent to the reserve. We have been trying to add this to reserve since then.

These experiences lead me to believe that if the addition is First Nations-driven, it may take a decade to two decades to complete. However, if it is government-driven, they will railroad over all of the obstacles to the addition.”

Chief Patricia Bernard, Madawaska Maliseet First Nation

Second, other participants stressed that given sufficient government motivation, ATR timelines can be significantly reduced. Based on their own experience, some interviewees noted that in situations where either the provincial or federal government is particularly interested in a specific addition, ATR timelines appeared to be shorter than they would be otherwise. They hypothesized that this is the result of one or both of

these orders of government using their political influence to limit municipal or third party concerns.

These comments speak to the important role that both the provincial and federal governments can play in the ATR process. However, a further facilitative role for the federal government was outlined by another interviewee. They noted that in one instance, a representative of their local municipality was concerned about their interests in a parcel of land that was to be converted to reserve. Specifically, they wanted assurances that their interests would be protected from the point that the land was acquired by the First Nation to the point that it was converted into reserve land. Reassurances from the community were insufficient for the municipality, and correspondence from a senior representative within INAC was required to facilitate the transaction.

While highlighting the roles that the federal government can play in facilitating the ATR process, some interviewees also raised concerns about the impact of staffing within the department on ATRs. Throughout the discussions, all interviewees stressed the complexity of the work required to successfully add lands to reserve. In order to be completed efficiently, this requires a significant amount of knowledge on the part of both participating First Nations and INAC staff. As one key informant acknowledged, having a regional staff person to work with who understood the ATR process made a significant difference in their ability to undertake additions. At the same time, others raised concerns about turnover and possible retirements within INAC and the effect that this might have on the efficiency of ATR.

2.2.6 Costs associated with the ATR process

Comments from interviewees suggest that successfully completing ATR can also be impacted by the costs associated with the process. For a number of interviewees, the increasing price of land has limited their ability to undertake certain additions. As one individual noted, agricultural land has increased in price throughout the country. They further noted that purchasing urban lands can be even more expensive.

“There’s another parcel, known as the Number 10 Addition, that has a third party interest there in the form of 21 Manitoba Housing units.

We’ll purchase the units, but before Canada transfers the land, the properties have to be built up to the national building code. This will cost \$500,000 from our capital account to aid the repair of the units.”

Lori Lathlin, Opaskwayak Cree Nation

The existence of buildings or other improvements on the land can also add to these costs. Setting aside the initial purchase price for these, upgrades or repairs may be needed to facilitate an ATR. One interviewee in particular recalled that their First Nation was interested in purchasing a property which included a housing unit, and

adding this property to the reserve. However, the housing unit needed to be upgraded to current building code standards in order to secure an approval for the addition. This represented a nearly \$500,000 cost for the community. In other instances, the development of infrastructure may be prohibitively expensive, making a land purchase infeasible. This was the case for one interviewee’s community when examining the possibility of a purchase near Fort Qu’Appelle, SK.

Reflecting on their own situation, one interviewee highlighted that the costs of undertaking an ATR are not equivalent for all First Nations. They noted that their own community had a large membership that was geographically dispersed. This means that community consultation and travel to complete the required ATR work is often quite expensive. It is reasonable to assume that these costs would be quite different for a smaller community with a contiguous reserve land base.

2.2.7 Community support for ATR

All interviewees suggested that community members supported ATRs in principle. In fact, the idea of adding to the reserve land base was characterized as having essentially universal appeal. Community consultations and information sessions generally focussed on particular aspects of a given addition. For example, one community spent a significant amount of time discussing the nature of a given addition, including its size, location, and the type of land being considered. This seemed to be particularly important in this case, as existing reserve lands were being surrendered in exchange for replacement lands in another area. As another interviewee noted, making the case for a given addition often involves establishing a credible business case for its use, in order to obtain support from the community.

“Within our own community, for all decisions, there has always been full support. Nobody opposes acquiring or getting new land, or the exchange of lands.”

Raf De Guevara, Westbank First Nation

During other discussions, interviewees suggested that while the idea of adding land to reserves is generally seen positively, there are occasional concerns about designations or the planned use for lands among members. For example, members may be concerned about designating parcels of land specifically for economic development purposes. Others noted that not all members are supportive of all the activities required to undertake an ATR.

2.2.8 Suggestions regarding ATR

As the discussion above suggests, participants in the study identified a number of issues with the ATR process. However, they were also explicitly asked to provide suggestions about how the ATR process could be improved. Based on their comments, a number of suggestions emerged, including the following:

- ▶ Given the time-consuming nature of the consultations necessary for the ATR process, developing a streamlined and joint consultation process involving all stakeholders was suggested as a means of reducing the time required to complete additions.
- ▶ Finalizing the draft ATR policy was suggested as a means of providing better direction and clarity to all individuals involved in the ATR process.
- ▶ Having hard deadlines attached to various stages of the ATR process was suggested as a means of reducing the overall time required for additions. This was seen as a means of motivating those involved with the process to complete their work in a timely fashion and reduce the degree to which identified concerns can be used to delay or stall the process.
- ▶ Certain interviewees suggested allowing for additions to take place once support from the affected stakeholders (such as municipalities) is secured, even if all the details of negotiation, such as those surrounding service agreements, are not yet finalized.
- ▶ Although only available in some regions, certain interviewees suggested that a comprehensive list of steps that their particular First Nation needed to undertake as part of the ATR process would be valuable.

2.3 Economic and social development on reserve

In and of itself, the addition of reserve land rarely results in economic or social development benefits for First Nations communities. Rather, additions provide an asset which communities can use to generate positive economic and social outcomes. Participants in the study were asked to comment on the relationship between ATRs and economic development, including the economic and social benefits resulting from the use of reserve lands, and the factors driving how effectively these additions are used.

2.3.1 Identified benefits of economic development

Throughout the interview process, participants consistently stressed how economic development activities on reserve lands have the potential to provide significant benefits to community members. They stressed that these benefits were not limited to those living on reserve, as revenue generated through the use of reserve lands could be used to support education, social development, housing, and other programming for community members regardless of their place of residence.

Generally speaking, the identified economic benefits discussed can be grouped into two broad categories. The first includes direct revenues from lands such as lease revenues and revenues from taxes and fees levied by First Nations. These typically supported own-source revenue for communities, which could then be used for a variety of activities like community programming. The second included indirect revenues generated by businesses operating on reserve. While in some cases, these businesses may have been community operated, many were independently owned. Here, benefits to community members came in the form of profits — if the businesses were Indigenously owned and operated — or in the form of employment for community members.

“One of our primary goals is to be self-sufficient. Right now, our current annual budget is \$35+ million, and we’re down to about 17% attributed to Canada. So we’ve almost gotten rid of Canada as a funder.”

Raf De Guevara, Westbank First Nation

Many of the interviewees further noted that economic development on reserve also benefited adjacent non-Indigenous communities. In addition to profits generated through non-Indigenously owned businesses operating on reserve, a number of key informants noted that on-reserve businesses often employ individuals from the surrounding municipalities. Beyond this, more than one interviewee stressed that improving the economic circumstances of First Nations community members was also beneficial to non-members. This is because a portion of all expenditures made by community members take place at non-Indigenous businesses, and improving members’ economic circumstances is likely to result in an increase in spending.

In one case, an interviewee noted that development on reserve also has the potential to improve the infrastructure available to non-First Nations community members living in adjacent areas. As an example, they cited a roadway built through their community, connecting the local municipality to a hospital. This provided additional access not only for the First Nations community members, but also for individuals living in the adjacent municipality.

When discussing the degree to which reserve lands used for development could support First Nations culture, many interviewees pointed to investments made in traditional activities using the revenues generated through leases, taxes, fees, and business activity. Some highlighted situations where culture could be strengthened directly through the addition of lands to reserve. In more than one instance, interviewees pointed to additions that included important community cultural sites or that supported traditional activities.

2.4 Factors affecting economic development success

As with discussions of the ATR process, participants highlighted a number of factors related to economic development success. Again, as with the ATR process, a number of key themes emerged including the following:

- ▶ the location of reserve lands
- ▶ land management
- ▶ tax policy
- ▶ support for individual business needs

2.4.1 Location

The location of parcels of land appears to be fundamental to the way in which First Nations can undertake economic development on reserve. From both direct statements and anecdotes regarding economic development, it seems clear that the range and type of economic activities on urban reserve lands appears greater than in rural areas. This is not to say that interviewees had no examples of agricultural activity undertaken on reserve land in rural areas. It is simply that the breadth and depth of opportunity is greater on lands located close to larger population centres.

One interviewee stressed this point by contrasting their situation to that of a number of other communities in their province. They suggested that their own situation, where they were located inside a municipality, offered them significant advantages over their neighbouring First Nations communities who were farther removed. At the same time, anecdotes provided by other interviewees suggest that in certain cases, the location can provide unique opportunities. For example, for one community, the location of their community next to a major urban centre allows them to take advantage of economic development activities associated with highway expansion close to the community.

“We have the benefit of our geographic location. However, there are other First Nations in the province that are located in rural locations and business development activity is not as easy. Additions to reserve are what allow a First Nation to have a piece of reserve land, not necessarily contiguous to the reserve, but perhaps located in the place where they can take advantage of some type of economic development.”

*Chief Patricia Bernard, Madawaska
Maliseet First Nation*

With that said, community representatives stressed that urban ATR can be more difficult, given the larger number of stakeholders that are often involved. Addressing the concerns of municipalities and a range of third party interests can make what would otherwise be a parcel of land capable of supporting significant development a questionable investment for the community. As one community representative suggested, given the challenges of adding economically viable urban lands, discussion sometimes centres on maximizing the potential of the existing reserve land and focussing ATR activity on those areas where additions seem most feasible. This trade-off appears potentially problematic for communities with little available urban reserve lands.

2.4.2 Land management

“The biggest problem is the land code and for bands to have control of their lands, because a lot of businesses and opportunities are lost because it takes so long for Indian Affairs to approve a lease for anything.”

Bob Green, Swan Lake First Nation

Comments from participants in the study appear to suggest that land management, and the approach that communities take to it, is closely linked to economic development. To begin, interviewees echoed findings from previous research, suggesting that operating under an independent land management regime provides certain advantages to First Nations communities. Not the least of these is the ability to designate and then lease lands for commercial activity in a timely manner. This is important, given the need to move quickly on development activities, which was mentioned throughout the interview process.

Communities who continued to operate land management under the *Indian Act* were nonetheless able to designate and then lease lands for their benefit. One community in particular described their own situation where they had completed a number of designations for community lands as well as issued a number of certificates of possession for individual members. They stressed that part of the effective use of these lands rests on making financial institutions understand the way in which the land lease system in their community can be used as collateral for financing. Although this took time and a number of sessions with financial institutions, the interviewee stressed that they now have a number of banking institutions that are comfortable with their leasehold structure.

“What we do put in place is the 99-year lease structure on reserve. We’ve done a lot of education, through conferences, on how a lease works here and how it can be used to secure capital. Now we’ve got at least 13 different banking institutions on our reserve lands. We have a lot of people confident in the lease-hold structure, allowing people to build on reserve.”

Raf De Guevara, Westbank First Nation

For some communities, discussions of land management highlighted an important point regarding community planning. During one interview, the interviewee noted how economic development took off in their community following their land designation process. Despite the fact that they had an advantageous location prior to this point, undertaking the planning and discussions necessary to successfully designate land for commercial leasing supported a shift in community attitude towards economic development. They attributed this shift, in part, to the upswing in growth.

In contrast, another community representative noted that they had worked on developing a community land management plan for years, and yet were unsuccessful in getting it adopted. The plan was meant to outline community development priorities and help focus ATR efforts along with subsequent leasing and business growth. They suggested that without this plan in place, it was more challenging to focus their ATR efforts and maximize potential benefits for community members.

2.4.3 Tax policy

As suggested in the previously discussed literature, taxes and fees levied on on-reserve economic activity provide an opportunity for First Nations to generate revenue for a range of community activities. A number of interviewees noted that their communities currently operate with such taxes and fees. However, one interviewee, when describing the unique tax arrangement in the province, highlighted how tax policy can be used to not only generate revenue but also manage relationships between First Nations communities and local off-reserve businesses.

“In New Brunswick, the provincial government has agreements with First Nations agreeing that any HST collected on reserve would result in a percentage of the PST portion being returned to reserves. First Nations are thus better off trying to bring in businesses than not, since the PST portion comes back to the First Nation.”

Chief Patricia Bernard, Madawaska Maliseet First Nation

This individual noted that in New Brunswick, the provincial government signed an agreement with First Nations regarding the collection of taxes for on-reserve business activity. The agreement grew out of concern for a potentially uneven playing field that different tax regimes on and off

reserve would create in an urban setting. At the time of the agreement, off-reserve businesses were concerned that with reserve-based businesses being so close and not being required to charge the same level of taxes, off-reserve businesses would be placed at a systematic disadvantage.

The agreement, which is over 20 years old, involved First Nations collecting HST on on-reserve transactions. The provincial government would then return a percentage of the provincial portion of the HST back to First Nations communities. The federal portion of the HST would then continue to be paid to the federal government. Since this agreement was signed, revenues to First Nations communities from this agreement have risen and now are approximately \$47 million annually. At the same time, the federal government receives tax revenue that would otherwise be unavailable. This creates an environment where equivalent pricing exists on and off reserve. While unique, and not necessarily appropriate for all communities, this arrangement demonstrates how tax policy can be used to not only provide revenue for First Nations communities, but also to achieve other important economic development goals, such as maintaining positive relationships with neighbouring businesses.

2.4.4 Support for individual business needs

Throughout the course of the study, key informants highlighted how addressing a number of important individual business needs can effectively support economic development. As suggested by the previous literature, access to capital was among these needs. Key informants suggested that not only was it challenging to access capital for early economic development activities, but that financial stability at the community level was necessary so that First Nations are able to find the resources necessary to undertake this development work. Others noted that the availability of federal economic development funding made early activity for their community a possibility.

Key informants further discussed partnering with existing businesses to provide opportunities for First Nations. These partnerships can help establish tenants from reserve leases, and help develop business activity that can provide employment for community members. In addition, control over reserve lands also allows First Nations the opportunity to negotiate on behalf of members when developing these partnerships, to help ensure that the community does in fact benefit. This can involve not only negotiating concessions from businesses, but also bringing businesses together to see how business operations can be arranged to better benefit community members. In one example provided, the community discussed cross-shifting with two local businesses, so as to provide greater full-time employment for community members while maintaining the part-time shift schedules at each business.

A transparent and efficient approach to business development appears to be an important factor in accessing capital and maintaining partnerships. As one interviewee noted, reflecting on their own community's business development success, it is important that businesses and potential investors in on-reserve activities understand the details of how development works on-reserve.

3.0 Conclusions on best practices

Initially created in 1972, the Government of Canada's ATR policy is seen as a tool for development for First Nations. In principle, reserve lands represent an asset which First Nations communities can use to support economic, social, cultural, and other development activities. Over the last 15 years, a number of studies have examined both the ATR policy and its potential impacts on economic development. They have identified a number of shortcomings as well as many potential benefits.

In a very broad sense, findings from this work suggest that the process of adding lands to reserve can be long and complicated with a number of key barriers presenting challenges to reserve addition. These studies also suggest that despite the fact that reserve lands have been effectively used by a number of First Nations communities for economic development, the success of this development activity rests, in part, on a number of key factors that often vary from community to community.

The current study gathered information directly from individuals from nine First Nations communities across Canada. These individuals provided insight into the ATR process and the use of reserve lands for economic development, based on their own experiences with both. Observations made by these participants, when taken with findings from earlier studies of ATR, suggest a number of best practices to support and improve the use of ATR as an economic development tool.

Some of these best practices, for both First Nations and other ATR stakeholders, include the following:

- ▶ ***Leveraging opportunities for relationship building between First Nations and nearby municipalities and their residents.*** Most individuals highlighted that addressing municipal and third party concerns remains the principal stumbling block for the ATR process. Some suggested that concerns are often raised as the result of a lack of understanding about First Nations communities on the part of non-First Nations citizens and governments in general. Based on the experiences of the participating communities,

developing strong relationships with both citizens and government can result in a more positive working relationship to address many of these concerns more effectively.

- ▶ ***Communicating with non-First Nations ATR stakeholders regarding land management and economic development on reserve.*** Throughout the study, interviewees provided examples of communication processes implemented by their communities, to better inform non-First Nations stakeholders about the ATR process, land management on reserve, and the economic development potential of these lands. They suggested that this type of communication could help alleviate concerns regarding tax loss among municipal governments, demonstrate how service agreements can compensate for these losses, and help decision-makers understand how economic development can proceed on reserve despite differing land management and taxing structures. In fact, the experiences in many communities demonstrated how with increasing familiarity, concerns regarding the ATR process can be more readily addressed.
- ▶ ***Actively considering the increasing importance of the Crown's duty to consult in the context of ATR.*** Although seemingly a recent development, more than one community noted that consultations with other Indigenous groups were a necessity during certain additions. Given that ATRs need not be adjacent to existing reserve lands, in the future it is possible that the additions planned by some communities will potentially impact on the rights of other communities close to the planned ATR land. At present, there appears to be little consensus about how to best undertake these consultations in the context of ATR.
- ▶ ***Developing a dispute resolution/negotiation mechanism for concerns raised by municipalities and third parties.*** As mentioned above, addressing these concerns is among the most challenging aspects of the ATR process. Some interviewees alluded to the fact that with the ability to delay the ATR process for a significant amount of time, if not indefinitely, these stakeholders can exercise a de facto veto over the additions process. While some participants in the study suggested that implementing binding timelines throughout the ATR process could help address this and other delays, others have pointed to the fact that the provincial and federal governments often exert sufficient influence to speed the negotiation process with municipalities and third parties. Thus, it appears that developing this dispute resolution mechanism should consider not only procedural elements of negotiations, but also the potentially positive role that the federal provincial governments can have in managing these concerns. This extends to the negotiation of service agreements with municipalities as well.
- ▶ ***Finalizing INAC's draft ATR policy and then developing a First Nation-specific additions process that is aligned with the new policy.*** During the study, more than one interviewee suggested that finalizing the current draft ATR policy would provide additional clarity around ATRs. This is seen as a means of ensuring that all parties have the same understanding of how ATRs take place and the requirements for completion. However, even under the current policy, the seemingly simple process of adding lands to reserve involves a number of complicated steps for First Nations and government representatives. In addition, the process driving additions in a particular community — for example, TLEs or Specific Claims — can result in unique requirements on the part of First Nations to complete these steps. Communities who have developed detailed process charts for their own ATR situation, in consultation with regional INAC staff and other

relevant professionals, point to the value of these documents in facilitating the ATR process.

- ▶ ***Allowing for additions to take place, despite ongoing negotiations with municipalities and third parties to resolve concerns.*** One participant suggested that INAC allow for additions under the ATR process, despite having not fully completed negotiations with municipalities and third parties regarding the details of addressing specific concerns. Under the suggestion, all that would be required for the addition to proceed would be a letter of support from concerned parties with an indication of the specifics of the underlying issues to be addressed over time. While it is likely that this would speed the additions process, there was recognition that this could raise a number of liability or other concerns on the part of INAC.
- ▶ ***Focussing on the addition of urban lands specifically for First Nations involved in the ATR process.*** There was a strong consensus among study participants that urban reserve lands provide a breadth and depth of economic development possibilities not otherwise available in more rural settings. As one key informant suggested, having such urban lands should be a key feature in the economic development approach for First Nations across the country.
- ▶ ***Effectively using land management policy to support economic development.*** The previous literature and comments from key informants during the study suggested that both self-government and the FNLM provide an opportunity for First Nations to more efficiently address the land needs of businesses operating on reserve. However, comments from certain communities operating under the *Indian Act* suggest that with sufficient pre-planning, communities can develop a stable land management approach that is well understood and functional for businesses and funders. In other cases, it appears that considerable community planning is required to make the best use of the existing land management regime.
- ▶ ***Using taxation and fee structures on reserve to support economic development.*** Interviewees suggested that taxes and fees levied on reserve economic activity represented important direct revenue source for communities. At the same time, a number of examples suggest how these may also be used to facilitate positive relationships with local stakeholders and the competitive environment where businesses can succeed.
- ▶ ***Providing active support to businesses operating on reserve.*** A number of individual examples point to the ways in which communities can support business development on reserve, urban or otherwise. Access to capital for business start-up, for example, can be provided directly from own-source revenue from the First Nation or secured through private financing by ensuring that financial institutions understand the ways in which on-reserve land management policies allow for the collateralization of long-term leases or other land-based assets. Regardless of the form it takes, providing these types of supports appears instrumental in ongoing economic development.

Appendix A – References

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