



Additions to Reserve/Reserve Creation Toolkit



Version 4.1

June 2024

Copyright © 2024 by the National Aboriginal Lands Managers Association (NALMA). All rights reserved. This course/training or any portion thereof may not be reproduced, distributed, or used in any manner whatsoever without the express written permission of NALMA.

Print copies of the manual are made available to students/participants at NALMA's training.

National Aboriginal Lands Managers Association

Nalma.ca

705-657-7660

705-657-9992



Disclaimer

This toolkit is provided for education and information purposes only. It is not intended to provide legal advice of any kind and should not be relied upon in that respect without seeking independent legal advice.

The Government of Canada created departments under a variety of titles to manage Indians and Indian lands for over two centuries. In more recent times these departments were known as Department of Indian Affairs and Northern Development (DIAND), Indian Affairs and Northern Development (INAC), Aboriginal Affairs and Northern Development Canada (AANDC), and Indigenous and Northern Affairs Canada (INAC). In 2017 the Government of Canada recreated the former INAC by dividing the service delivery into 2 new departments, Indigenous Services Canada (ISC) and Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). For the sake of clarity and brevity, at times both ISC and CIRNAC will be referred to jointly as ISC/CIRNAC. When the specific department is necessary to identify, either ISC or CIRNAC will be used accordingly.

NALMA is a not for profit Indigenous-led organization committed to building capacity in the area of Land Management Programs. Although training through NALMA was initially created to support First Nations in the Reserve Land and Environment Management Program, we provide training and support to all First Nations. Land Management Programs were developed to transfer control over land management from ISC/CIRNAC to First Nations. As such, much of the material and content within this document is extracted directly from pertinent government documents in order to communicate and share information deemed necessary for First Nations' lands practitioners.

Table of Contents

DISCLAIMER.....	I
NALMA BRINGING LANDS MANAGERS TOGETHER.....	IX
NALMA OBJECTIVES	X
NALMA MEMBERS	XI
NALMA MEMBERSHIP SERVICES	XII
CHAPTER 1 - TOOLKIT OVERVIEW.....	1
A WELCOME TO THE USERS OF THIS TOOLKIT	1
ATR/RC TOOLKIT: A PRACTICAL RESOURCE FOR FIRST NATIONS	2
Why was this toolkit developed?	2
What is in this toolkit?	2
When should it be used?	2
Training Options.....	2
Toolkit Assumptions.....	2
Some Handy Acronyms	3
CHAPTER 2 – BASIC CONCEPTS.....	5
AUTHORITY FOR GRANTING AN ADDITIONS TO RESERVE/RESERVE CREATION	5
A NOTE ON THE INDIAN ACT AND THE ROLE OF ISC.....	5
HISTORICAL CONTEXT.....	6
A NOTE ON PROPERTY TAXES	6
4 MAJOR PHASES, 3 MAJOR PLAYERS, 4 MAJOR DELIVERABLES	7
ATR PROCESS	7
Phase 1- Initiation	7
Phase 2 - Assessment and Review	7
Phase 3 - Proposal Completion	8
Phase 4 – Approval.....	8
FOUR MAJOR DELIVERABLES	8
Phase 1.....	8
Phase 2.....	8
Phase 3.....	8
Phase 4.....	8
THREE MAJOR PARTIES.....	8
CHAPTER 3 – BEFORE UNDERTAKING AN ATR.....	11
COMMUNITY LAND USE PLANNING (CLUP)	11
FINANCIAL IMPLICATIONS AND FUNDING	11
Is an ATR Necessary?	12
PRE-RESERVE DESIGNATIONS.....	13
GUARANTEE DISCLAIMER	16
SPECIAL NATURE OF URBAN RESERVES	16
URBAN RESERVES – A SUCCESS STORY	16
Background	17

Building Relationships with Municipalities	17
Economic Benefits.....	17
A THOUGHT ABOUT THE LAND.....	19
RELATED LEGISLATION	19
Addition of Lands to Reserve and Reserve Creation Act	19
Framework Agreement on First Nations Land Management Act.....	20
First Nations Commercial and Industrial Development Act (FNCIDA).....	20
FNCIDA: Resolute Sawmill Example	21
CHAPTER 4 – ATR POLICY CATEGORIES	23
THE THREE POLICY CATEGORIES	23
LEGAL OBLIGATIONS AND AGREEMENTS CATEGORY.....	24
Selection Area	24
Treaty or Claim Settlement Agreement.....	24
Self-Government.....	24
Land Exchange	24
Legal Reversion	25
Landless First Nations	25
Relocation of Communities.....	25
Return of Unsold Surrendered Land	25
COMMUNITY ADDITIONS CATEGORY	26
Selection Area	26
Normal Community Growth	26
Culturally Significant Sites.....	26
Economic Development.....	26
Geographic Enhancements	27
Other Non-Canada Agreements	27
TRIBUNAL DECISIONS CATEGORY	27
Selection Area	27
Failure to Fulfill a Legal Obligation.....	27
Breach of a Legal Obligation	28
Illegal Reserve Lands Disposition	28
CHAPTER 5 – PHASE 1 - INITIATION	29
A ROADMAP TO ATR SUCCESS.....	29
Present Unified Support.....	29
PHASE 1 SUMMARY	29
The ATR Process Chart	30
OPPORTUNITY/NEED IDENTIFIED.....	31
The Opportunity.....	31
Selecting the Land Parcel.....	32
Some things to think about.....	33
ATR PROJECT TEAM APPOINTED.....	34
Appointing the ATR Project Manager	34
Building the ATR team	35
Building the ATR Communications Team.....	35
Legal Counsel	36

Some things to think about.....	37
MEET WITH ISC REGIONAL OFFICER	38
Some things to think about.....	40
REQUIRED DOCUMENTATION FOR PROPOSAL	41
The Information Requirements of Phase I, the Initiation Phase.....	41
ATR POLICY CATEGORY AND JUSTIFICATION	44
Choosing the Policy Category	44
Justifying the Policy Category	44
POLICY CATEGORY JUSTIFICATION – A CASE STUDY FOR COMMUNITY ACTIONS	45
Providing a Rationale	45
Short-Term Needs.....	45
Long-Term Needs.....	45
SELECTION AREA.....	46
LAND USE.....	47
LAND SPECIFICS – OFFER, TITLE, DESCRIPTION.....	48
Land Description	48
Some things to think about.....	51
PROXIMITY TO LOCAL GOVERNMENT	52
MINERAL RIGHTS.....	53
Research Resources for Mines and Minerals.....	54
Some things to think about.....	55
PRELIMINARY ENVIRONMENTAL RESEARCH	56
Environmental History	56
When water boundaries are involved... ..	57
Some things to think about.....	58
VENDOR ENVIRONMENTAL CHECKLIST.....	59
ENVIRONMENTAL INVESTIGATION LETTER	60
BUDGET FOR ANTICIPATED COSTS	61
Some things to think about.....	62
DETERMINING IMPACTS AND BENEFITS OF ATR	63
Some things to think about.....	65
EXISTING ENCUMBRANCES	66
A NOTE ON GOOD/CLEAR TITLE.....	66
A NOTE ON REGISTRATION	68
OTHER INTERESTS – THIRD PARTY INTERESTS/RIGHTS.....	69
Interests - Registered or Not?.....	70
Utilities.....	70
Other FN Members	70
Special Interests	70
Some things to think about.....	70
OTHER INTERESTS – PROVINCIAL GOVERNMENTS, FEDERAL DEPARTMENTS.....	71
Some things to think about.....	72
OTHER INTERESTS – ABORIGINAL AND TREATY RIGHTS.....	72
ABORIGINAL AND TREATY RIGHTS INFORMATION SYSTEM (ATRIS)	73
SERVICE REQUIREMENTS.....	74
Some things to think about.....	75

DRAFT NOTICE TO MUNICIPALITY	76
PREPARING THE BCR DOCUMENTS	77
Initial Documents - NATS	77
BCR AND SUPPORTING DOCUMENTS FOR UPLOADING INTO NATS.....	79
Some things to think about.....	80
PASS BCR FOR ATR PROPOSAL.....	80
BAND COUNCIL RESOLUTION - SAMPLE WORDING	82
CHAPTER 6 – PHASE 2 – ASSESSMENT AND REVIEW.....	85
PHASE 2 SUMMARY	85
REGIONAL OFFICE ATR PACKAGE REVIEW	86
BCR Proposal to ISC Regional Office	86
Check ATR Proposal	86
ISC Processing	86
PROPOSAL ASSESSMENT – DUTY TO CONSULT	87
PROPOSAL ASSESSMENT – FUNDING	89
Funding	89
PROPOSAL ASSESSMENT – OTHER GOVERNMENTS.....	90
Notifications.....	90
PROPOSAL ASSESSMENT – IMPACTS AND BENEFITS	92
Impacts and Benefits Analysis.....	92
PROPOSAL ASSESSMENT COMPLETED.....	93
Title Review.....	93
Review Committee.....	94
ISSUANCE OF THE LOS	95
WHAT HAS HAPPENED TO THE ATR PROPOSAL?	95
CHAPTER 7 – PHASE 3 – PROPOSAL COMPLETION.....	99
PHASE 3 SUMMARY	99
JOINT WORK PLAN.....	100
Keeping Everyone Informed	101
Some things to think about.....	101
ENVIRONMENTAL ISSUES.....	103
Environmental Site Assessment (ESA)	103
Components of an Environmental Assessment	104
NOTES ON THE IMPACT ASSESSMENT ACT (IAA) 2019 (REPLACE CANADIAN ENVIRONMENTAL ASSESSMENT ACT 2012)..	107
What is an Impact Assessment (IA)?	107
What is the purpose of the IAA?	108
Overview of the IAA:	108
Does the IAA apply to First Nations?	108
What does the legislation deal with?	109
NOTES ON THE CANADIAN ENVIRONMENTAL PROTECTION ACT (CEPA) 1999.....	110
What is the purpose of the CEPA?	110
What does the legislation deal with?	110
How does the Act help prevent pollution?	110
How does the Act help control pollution and waste?	110

Does the CEPA apply to First Nations?	110
Is an Environmental Review Necessary?.....	111
Some things to think about.....	111
THE SURVEY.....	112
Some things to think about.....	113
DUTY TO CONSULT	114
Some things to think about.....	115
LOCAL GOVERNMENT	115
Tax Considerations	117
DRAFT MOU WITH MUNICIPALITY	119
Some things to think about.....	121
MINERAL RIGHTS.....	122
Some things to think about.....	123
MINERAL RIGHTS – DRAFT LETTER.....	125
MINERAL RIGHTS – DRAFT FOLLOW-UP LETTER.....	126
CANVASS OTHER GOVERNMENT DEPARTMENTS	128
Some things to think about.....	129
THIRD PARTY INTERESTS	130
Resolving Interests.....	130
Utilities.....	131
Special Interests.....	131
Buy-Outs.....	132
Some things to think about.....	132
Conservation Authority – Draft BCR	133
Special Circumstances.....	134
Annual Work Plan Review	135
Some things to think about.....	137
ALTERNATIVE DISPUTE RESOLUTION	138
Proactive Approach.....	138
First Nation’s Role	138
Mechanisms	138
ISC’s Role.....	139
COMPLETION	139
First Nation Final Step.....	139
Land Transfer	140
Member of Parliament Notification.....	140
ATRs under the 2001 Policy	140
Notifications.....	140
WHAT HAS HAPPENED TO THE ATR PROPOSAL?	141
CHAPTER 8 – PHASE 4 - APPROVAL.....	143
PHASE 4 SUMMARY	143
PREPARING SUBMISSION PACKAGE	144
GRANTING RESERVE STATUS.....	145
WHAT HAS HAPPENED TO THE ATR PROPOSAL?	146
THE COMPLEXITY OF THE ATR PROCESS	146
A NOTE ON THE FUTURE OF THE ATR POLICY	147

CHAPTER 9 – ADDITIONAL RESOURCES	149
GOVERNMENT ACTS AND PUBLICATIONS:	149
HISTORY OF RESERVES	150
ATLANTIC REGION	151
Nova Scotia	151
Prince Edward Island	151
New Brunswick	151
Newfoundland and Labrador	152
QUEBEC	152
ONTARIO	152
MANITOBA	153
SASKATCHEWAN	154
ALBERTA	154
BRITISH COLUMBIA	155
INDEX	157
APPENDIX A - TERMINOLOGY	161
GENERAL TERMINOLOGY	161
APPENDIX B - ACRONYMS	163
ACRONYMS USED IN LAND MANAGEMENT	163
APPENDIX C - FAFNLM	169
FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT	169
APPENDIX D – TRADITIONAL KNOWLEDGE	171
TRADITIONAL KNOWLEDGE IN LAND MANAGEMENT	171
TERMINOLOGY RELATED TO TRADITIONAL KNOWLEDGE	172

NALMA Bringing Lands Managers Together

Our Mission

A national organization of First Nation Lands Managers which will actively network towards the enhancement of professional development and technical expertise in the functions of Lands Management and which will also incorporate First Nation values and beliefs in Lands Management always keeping in mind the grass-root practices when dealing with Lands Management.

Our History

For many years the idea of forming a National Lands Managers Association had been on the minds of Lands Managers across Canada. In June of 1999 a group of Lands Managers gathered and elected an Ad Hoc Committee and developed a plan of action for the establishment of such an association. The Plan of Action developed provided the basic direction and the mandate of the association.

On December 21, 2000, the National Aboriginal Lands Managers Association

(NALMA) became officially incorporated as a non-profit, non-political organization. There are now over 100 members in NALMA.

Becoming A Member

First Nations belonging to their respective Regional Lands Association are members of NALMA. Although there is currently no membership fee for NALMA, a membership fee may be required to join your Regional Lands Association. Membership fees vary from region to region.

The NALMA Board has placed a high priority on the establishment and continued support of the Regional Lands Associations. In essence, the Regional Lands Associations constitute the structure of NALMA, and together they share similar goals and objectives. See the NALMA website for contact information on your Regional Lands Association.

The website is: nalma.ca

Professional Recognition & Success

As a national organization, it is important to recognize the successful work of lands managers and their dedication and commitment in the field of First Nations Lands Management across Canada. NALMA acknowledges these accomplishments by honouring graduates of the Professional Lands Management Certification Program (PLMCP) and providing awards of excellence.

NALMA Objectives

The objective of NALMA is to provide a working environment that will be comfortable to all First Nation Land Managers; to network between each other on land-related issues; and at the same time create a system that will address First Nation issues in various land management functions. Therefore, NALMA will strive to:

Develop

- ongoing communications across Canada;
- fair and consistent processes for administering First Nations Lands;
- systems of lands management mechanisms and models which can be used by all First Nations;

Promote

- and market the National and Regional Lands Associations across Canada;
- the incorporation of First Nations values, culture and beliefs into Lands Management systems and processes;
- the recognition of First Nations Managers for the successful work they have done in the area of Lands Management;

Provide

- Professional Lands Management Certification Program (PLMCP) to maintain and improve the qualifications and standards of professionals;
- technical expertise and guidance to First Nations and INAC regarding lands management issues;
- unified process for Regional Lands Associations to share information and establish and maintain links across Canada through the Board of Directors;

Participate

- at National, Regional and International Aboriginal Lands Management meetings and conferences;
- in the development and implementation of First Nations Lands policies and procedures.



NALMA Headquarters

NALMA Members

NALMA's corporate body is comprised of eight Regional Lands Associations which are as follows:



Atlantic Region Aboriginal Lands Association (ARALA)

First Nations Lands Managers Association for Québec and Labrador (FNLMAQL)



Ontario Aboriginal Lands Association (OALA)

Manitoba Uske (USKE)



Saskatchewan Aboriginal Lands Technicians (SALT)

Treaty and Aboriginal Land Stewards Association of Alberta (TALSAA)



Planning and Land Administrators
Of Nunavut (PLAN)

British Columbia Aboriginal Land
Managers (BCALM)



NALMA Membership Services

Professional Development

An objective of NALMA is to raise the professional standards for First Nation Land Management. NALMA is committed to taking a leadership role to ensure that Land Managers receive adequate training opportunities required to efficiently and effectively manage their lands.

NALMA is pleased to offer the Professional Lands Management Certification Program (PLMCP) that will meet the existing and emerging needs of First Nation Land Management. PLMCP has two levels of certification: Level One - Post-Secondary Training is offered at a partnering institution, and Level Two - Technical Training, is delivered by NALMA.

NALMA also offers specialized training to First Nations; please visit nalma.ca for a complete list. Each training component is complemented by a toolkit with a comprehensive manual, detailed process flowchart, checklist, and journal.

Networking

NALMA provides a channel for successful networking through open lines of communication, knowledge sharing, gatherings, and the encouragement of partnerships and strategic alliances across Canada.



Centre Of Lands Excellence (COLE)

To effectively deliver programs and services, NALMA has created a Centre of Lands Excellence whereby committed professionals share their experience, skills and knowledge in the areas of instruction, mentoring and technical expertise. Applications to COLE are available on the NALMA website: nalma.ca

Resources

NALMA is committed to ensuring that members have access to lands management resource information. NALMA has established a Resource Library, which is available to members. The NALMA website also shares information and links to current lands management information.

Future Focus

NALMA will continue to provide capacity building opportunities to First Nation Land Managers so they may better serve their communities in the important profession of First Nation Land Management.

National Lands Managers Gathering

NALMA holds National Gatherings to provide the opportunity for Land Managers to network and to build capacity through the exchange of ideas, information, and shared professional development. Every opportunity is sought to maximize partnership opportunities.

Chapter 1 - Toolkit Overview

A Welcome to the Users of this Toolkit



This toolkit was produced by the National Aboriginal Lands Managers Association (NALMA), thanks to funding provided by Indigenous Services Canada (ISC). We hope you find the material easy to access, useful, and presented in an engaging fashion.

NALMA invites your suggestions for any improvements, corrections, and clarifications of the content of the toolkit. We wish you every success in your initiatives.

National Aboriginal Lands Managers Association
1024 Mississauga Street
Curve Lake, Ontario K0L 1R0
Tel: 1-705-657-7660
nalma.ca

ATR/RC Toolkit: A Practical Resource for First Nations

Why was this toolkit developed?

This toolkit has been developed by NALMA to assist First Nations with the navigation of the Additions to Reserve/Reserve Creation (ATR/RC) process. Please note that the acronym for ATR/RC will, for the sake of brevity, be shortened to ATR throughout this toolkit.

The ATR process is relatively straightforward. However, many ATR initiatives prove to be quite complex and extremely time-consuming. Some issues can result in delayed approvals by years. Using this toolkit should get your ATR project off to a good start and assist navigating complex issues.

What is in this toolkit?

This toolkit provides a set of printed materials and is organized with worksheets, flowcharts, checklists, and training materials designed for use by First Nations and their professional associates.

When should it be used?

This toolkit should be used to assist First Nations with the ATR process, before the acquisition of land to be proposed for ATR, and continually throughout the ATR process until completion!

Best Practice

Take an inventory of your available documentation and make sure that you have the latest version of the NALMA toolkits.

Check the schedule of upcoming training opportunities on the NALMA website and determine which staff members should be trained. nalma.ca/events

Training Options

This toolkit was designed for use by lands, resource, and professional advisors working in First Nations across the country. It is relevant to those practitioners who are interested in learning more about additions to reserve and how it can be done to maximize benefits and minimize drawbacks. NALMA also offers training and assistance on other topics related to lands, resource, and environmental management.

Toolkit Assumptions

First and foremost, this toolkit was produced to serve the needs of First Nations personnel. While it deals with technical matters and legislation, it is not assumed here that you are a

professional land manager or someone with extensive experience in land or legal matters. This toolkit presents a number of common principles, best practices, suggested methods, as well as questions for your consideration when preparing for Additions to Reserve.

These principles will be explored in detail throughout the toolkit.

IMPORTANT NOTE

This toolkit is intended to provide information relating to general practices only and should not form the basis for legal advice of any kind.

Ensure that your lawyer is an integral part of your team.

Some Handy Acronyms

Before getting into Additions to Reserve, it will be useful to know some of the acronyms and terminology involved. A more comprehensive list is provided in the Acronyms and Abbreviations list at the end of this manual. Here are a few to get you started!

AIP – Approval in Principle

ALRRCA – Addition of Lands to Reserves and Reserve Creation Act

ATR – Addition(s) To Reserve

BCR – Band Council Resolution

C&C – Chief & Council

CIRNAC – Crown Indigenous Relations and Northern Affairs Canada

DM – Deputy Minister

DOJ – Department of Justice

ER – Environmental Review

ESA – Environmental Site Assessment

FA – Framework Agreement

FN – First Nation

GIC – Governor in Council

HQ - Headquarters

ISC – Indigenous Services Canada

LOS – Letter of Support

MO – Ministerial Order

MSA – Municipal Services Agreement

NALMA – National Aboriginal Lands Managers Association

OIC – Order in Council

RDG – Regional Director General
TLE – Treaty Land Entitlement

Chapter 2 – Basic Concepts

Authority for Granting an Additions to Reserve/Reserve Creation

Additions to Reserve/Reserve Creation (ATR/RC) are not addressed in the *Indian Act*. The authority to set lands apart as reserve rests with the Governor in Council and the Minister of CIRNAC.

Governor in Council (GIC): Previously, reserve lands were set apart by the exercise of the Royal Prerogative by the Governor in Council. “Royal Prerogative” means the power of the Crown, as represented by the Governor in Council, to take action as an exercise of its executive power. Setting aside land as reserve was one such power, exercised by the Governor in Council acting through an Order in Council (OIC) on the recommendation of the Minister of CIRNAC.

Minister of CIRNA: However, with the passage of the *Addition of Lands to Reserve and Reserve Creation Act* (ALRRCA) in 2019, the Minister of CIRNA has been granted the power to set lands apart as reserve by way of a Ministerial Order. ALRRCA displaces the GIC’s royal prerogative with the result that the GIC no longer has the ability to set land aside as reserve.

The process for a Ministerial Order is more streamlined than the process for an Order in Council (OIC). Unless there are exceptional circumstances, lands will be added to reserve by Ministerial Order.

A Note on the Indian Act and the Role of ISC

As specified in the *Indian Act*, a reserve is a “tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band”. The Act gives the Minister of Indian Affairs the right to “determine whether any purpose for which lands in a reserve are used is for the use and benefit of the band”. Individual band members may gain possession and use of a portion of land defined by the band council and be given a certificate of possession or certificate of occupation by the Minister. Transfers of possession can be to the band or to another member of the band only, with permission from the Minister.

Therefore, any matters relating to reserve lands and ATRs will necessarily include officials from ISC. The flow charts included in this toolkit detail the respective roles and interactions between First Nations and ISC.

All provincial regions operate under ISC, while those in the Territories are CIRNAC operations.

Historical Context

A little bit of history may help put the modern ATR policy into context.

The creation of reserves varied from region to region. Prior to 1763, First Nations (FN) and non-Aboriginals co-operated, and each had their own laws.

In 1763, a Royal Proclamation regulated the relationship between the two groups. Lands were then only to be acquired by fair dealing and through Crown consent. The concept of autonomous nationhood of Aboriginals was recognized with the Crown in the role of protector.

Over time, reserves were created by grants from the Crown, by treaty, by Crown purchase, by agreements with provinces, and by government statute.

When Canada became a country in 1867, Aboriginals were excluded from the founding documents. Sub-section 91(24) of the British North America (BNA) Act specified the government's power to make laws relative to "Indians and lands reserved for Indians".

In 1930-31, the Natural Resources Transfer Act Canada gave unused lands to provinces of Alberta, Saskatchewan, and Manitoba, with the provision that they must satisfy obligations to FNs, and that an interest in the natural resources would go to FNs.

Whatever the history of reserve creation, the basic principle remains that the Crown owns the land, but the resident Indian Band administers the land in one of three ways: in accordance with the *Indian Act*, by way of a land code approved in accordance with the *Framework Agreement on First Nations Land Management Act* (FAFNLMA), or pursuant to a self-government agreement that includes land management.

A "History of Reserves" is provided in Chapter 9 – Additional Resources of this toolkit.

A Note on Property Taxes

Tax exemption for First Nations has existed since pre-Confederation. The courts have held that the exemption is to preserve the entitlements of First Nations people to their reserve lands and to ensure that the use of their property on their reserve lands is not eroded by taxation.

Municipalities may face a net loss of property tax revenue when a reserve is created or expanded.

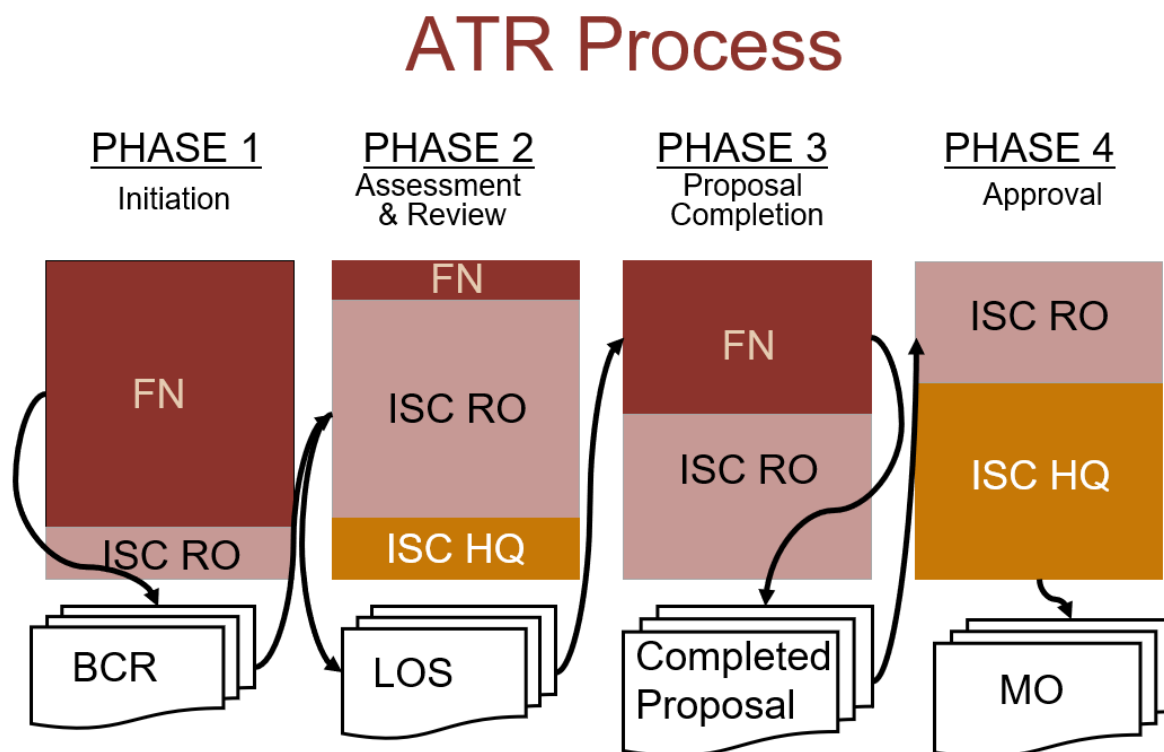
The ATR policy requires that a First Nation negotiate directly with the municipality on reasonable compensation; however, if an ATR is being processed in accordance with a claim settlement agreement, there may be provisions in that agreement respecting tax-adjustment.

The ATR policy requires that tax adjustment be addressed reasonably; it does not require ongoing payments to a municipality.

Clearly, the issue of compensation has the potential to be a sensitive one and care should be given to how this is handled. Emphasis should be placed on developing reconciliation/relationship building relations for the long-term.

Guidance on navigating municipal and 3rd party interests will be provided later in more detail.

4 Major Phases, 3 Major Players, 4 Major Deliverables



ATR Process

Phase 1- Initiation

First Nations take the lead in identifying those lands it wants added to reserve, in preparing the ATR proposal, and in gathering and documenting all the required information.

Phase 2 - Assessment and Review

In this phase, the ISC Regional Office takes the lead to ensure that the proposed ATR meets the requirements of the ATR Policy. This includes the identification of any land transfer and third-party issues. A decision is made whether to issue a Letter of Support (LOS) for the proposal.

Phase 3 - Proposal Completion

Once a Letter of Support has been issued, the FN and ISC develop a work plan identifying all the issues to be addressed and who is responsible. This phase is likely to be the longest phase in the process.

Phase 4 – Approval

In this phase, the ISC Regional Office prepares the MO submission, and ISC review the submission to ensure its readiness for consideration by the Minister. CIRNA has exclusive lead in seeking Ministerial approval.

Four Major Deliverables

Phase 1

All the required documentation is gathered and submitted to the ISC Region.

Phase 2

A Letter of Support is issued.

Phase 3

Issues requiring resolution, as Identified in Phase 1, are resolved.

Phase 4

The land is added to reserve, in most cases by way of a Ministerial Order

Three Major Parties

1. CANADA: CIRNAC/ISC and other relevant departments
2. PROVINCE/MUNICIPALITY: landowners and regulators
3. YOU! The First Nation drives the process, so strap into the driver seat: Do your best not to rely on departmental staff for progress. There is often an impression that ISC regional officials are there to move the proposal in its entirety, which is not correct.

Whereas ISC Regions drive phases 2 and 4, the biggest parts of the process are, by far, Phases 1 and 3. While ISC Regions assist throughout, and have a significant role in Phase 3, you will be the force behind these big phases.

Note that ISC regional officers have, in some places, been located in RLAs. If this trend continues, it will build resources for FNs in moving the ATR process.

A considerable amount of work goes into each of the four major phases. There is no escaping the work involved in each phase; no easy way out.

Survey, Environmental Site Assessments (ESAs), third-party interests, municipal and provincial consultation, and other issues all make the ATR process complex and lengthy. Work continues, however, to streamline the process and make it more manageable. This toolkit is a part of that effort. The objective is to have more ATRs sooner.



Chapter 3 – Before Undertaking an ATR

Community Land Use Planning (CLUP)

The CLUP, sometimes referred to simply as a land use plan (LUP), is a defined analysis and process with a long-term view. It sets goals for developing and managing lands in a sustainable fashion that is best for the community, now and for future generations. This includes an assessment of whether additional reserve lands are necessary.

The CLUP assesses issues related to land, environmental and resource management. It helps each community set goals about how it will grow and develop, and it proposes ways of reaching those goals in the context of important social, economic, environmental, and cultural concerns. It balances the interests of individual property owners with the wider interests and objectives of the community.



A CLUP may already be in place for your community, or it may be in development. The plan may call for the addition of lands to the reserve. If so, ensure that the parcel of land proposed for ATR satisfies the requirements of the CLUP.

Financial Implications and Funding

Financial implications range from the immediate costs of the ATR itself (legal costs, surveys, research, environmental requirements), to short-term costs (such as tax adjustment payments), to long-term costs (such as those incurred if a commercial project is anticipated). These costs impact the First Nation, ISC, and may be extended to other federal programs and departments as well. Some of the funding may come from ISC or from the First Nation's own resources or, in the case of a Framework Agreement or a claim agreement, the funding may have been included in the agreement. Where a commercial project is planned, the investment will typically be made exclusively by the First Nation and any commercial partners.

Is an ATR Necessary?

Know Why You Are Doing An ATR

Before proceeding to a formal ATR process with ISC, the First Nation community should ask itself this fundamental question:

SHOULD WE DO AN ATR FOR THIS LAND ...

...or should it just be kept in fee simple?

Not all land needs to go through the ATR process. If the community can benefit from owning the land without adding it to reserve, thereby avoiding the significant time and cost involved, then it may not want to go through the ATR process. It might make more sense to just view the land as an investment, continue to pay the taxes on it, lease it or develop it, and perhaps sell it later for a profit.

If after careful consideration a decision is made to proceed with ATR, the First Nation should be very clear on its long-term objectives for this land, and be able to proceed pursuant to an ATR Policy justification.

Words of Advice

Build your ATR team. Seek out contacts and counterparts at ISC and provincial governments.

If possible, add a good lawyer to your team, preferably one with experience with ATRs.

Talk to your ISC representative about environmental consultants and the role of Department of Justice lawyers in the ATR process.

The work you do to affect an ATR is work that helps your community establish a better future.

Buyer Beware/Due Diligence

Every buyer of land should “do their homework”, or due diligence. The old saying of “Buyer beware!” still applies. The First Nation should carefully consider the risk-reward equation when contemplating the purchase of any parcel of land. Professional standards of investigation should be applied before final decisions are made. In concert with a careful legal and environmental review, members of the First Nation should put on their boots and walk the land with camera in hand. Notes and photos should be taken of anything that might signal the involvement of third parties, such as old power lines, trails, foundations, etc. Particular note needs to be taken of any signs of environmental damage. Is there anything about the parcel that would indicate it might not be suitable for the proposed use? Be a smart buyer!

Pre-Reserve Designations

Will the land your First Nation proposes for ATR have a specific purpose, like commercial or industrial use, that requires a designation? Consider that up-front! If so, you have the ability to undertake the designation before the land is added to reserve. Previously, pre-reserve designation was available only to First Nations under the Implementation Acts. Under the 2019 *Addition of Lands to Reserve and Reserve Creation Act* (ALRRCA), however, the ability to designate use before land is added has been extended to all First Nations in Canada.

Land Designation is a process available to First Nations to assist in the management of reserve land. *Section 38(2)* of the *Indian Act* allows a First Nation to designate all or part of their reserve land for a specified period of time, by way of surrender that is NOT ABSOLUTE. This process allows the subject land to be used by the First Nation for a specific purpose, including leasing or the granting of an interest to a person or party. In other words, designation allows a First Nation to assign a special status to lands to achieve a more involved, specific use, such as an economic development project involving commercial, industrial, or natural resource operations.

It is important to note that unlike reserve lands that are surrendered absolutely, **designated lands do NOT lose reserve status**. Designated lands remain part of the reserve and are only leased to a lessee for certain purposes for certain limited periods of time. Because reserve status continues to apply, income earned on designated land is non-taxable. It is important to note also that First Nation by-laws may apply to designated land and any projects located on those lands.

In short, a Designation allows a specific portion of reserve land to be allocated for a specific period of time so that it can be leased out for an approved use. It is only valid if a majority of electors of the First Nation voting at a referendum have assented to the transaction, it has been recommended to the Minister by the Band Council, and the Minister has accepted it by Ministerial Order.

In some situations, a First Nation may choose to combine an ATR with a Designation; in this case, it is referred to as a Pre-Reserve Designation (sometimes just called Pre-Designation). **It requires a community vote** giving consent and it **must receive approval by Ministerial Order before the ATR receives its approval.**

For example, a First Nation may want to add land that already has an existing business on it. This third-party interest will have to be bought out or the terms will have to be re-negotiated. Either way, by pre-designating the land before adding it to the reserve, there is the assurance that the business can carry on. It may well be that the business in question is the reason the FN wanted this land in the first place.

As another example, a First Nation may want to add land to reserve **ONLY** if it can be used for economic development.



Perhaps the First Nation wants to secure an area near an urban setting, but only if it can be allowed to undertake a housing development for which it has interested investment partners.

These examples highlight the utility of pre-reserve designations. In the first case, the FN knows up-front that it can proceed with the ATR because the business operation has been authorized. Liabilities associated with assuming the operation, but not being able to allow it to operate, are eliminated. In the second case, the pre-designation process will allow the First Nation to decide whether the community will accept a housing development before proceeding with plans that include investment partners. The investment risks become more manageable with a Pre-Designation, providing outside investors or interested parties with assurance that the intended use is authorized.

The Pre-Designation is a lengthy process involving three distinct phases of work:

Preparation Phase -the First Nation takes the lead in identifying certain lands, and in preparing the comprehensive plan and documents required to affect the Pre-Designation of those lands. Much of the work required in this phase is also required for the ATR.

Referendum Phase – the ISC Regional Office works with the First Nation to ensure that the Designation Referendum meets the requirements of the *Indian Act*, the Indian Referendum Regulations and departmental policies, and that any issues are appropriately addressed.

Approval Phase - ISC Headquarters assumes the critical role and moves the Pre- Designation proposal to final resolution to obtain the Ministerial Order resulting in the land being successfully pre-designated. This last phase must be completed before the ATR can receive its approval.

Note that...

Pre-Reserve Designations require a formal process that may take more than 18 months to complete.

All Band members have a right to express their approval or disapproval of initiatives that change the status of reserve lands in a major way. There will necessarily be a referendum voting process as part of the Pre-Designation initiative. Members must be educated about the issues involved.

Benefits of Designated Lands on Reserve

There are many benefits to a First Nation where land has been designated, whether for an immediate project or as part of a long-range plan. Land designations:

- optimize long-range land planning for the whole community.
- create the potential for economic development for the reserve.
- set up land that is shelf-ready for opportunities when they occur.
- allow parcels of reserve land to be leased and put to beneficial use for the FN community.
- allow the land to be leased, and the leases are mortgageable.
- create business opportunities, and...
- ... then these businesses in turn create jobs.
- through all these factors, enhance economic sustainability.

For further information on Land Designations, please refer to:

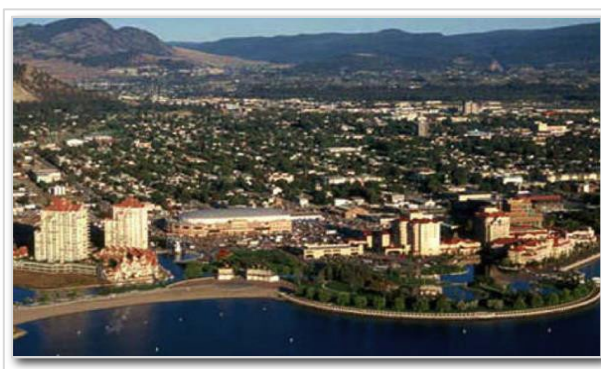
- NALMA's Land Designation Toolkit

- ISC's Land Management Manual, Chapter 5

Guarantee Disclaimer

It must be noted that while the policy provides guidelines for developing and completing an ATR proposal, it does NOT guarantee that any such proposal will result in the final approval setting the proposed land apart as reserve land. The final decision rests with the Minister of CIRNAC or the Governor in Council.

Special Nature of Urban Reserves



Urban reserves play an important role in offering First Nations economic, educational, and social opportunities that are generally unavailable in rural areas. Benefits may flow to First Nations people living on and off the reserve as well as to non-First Nation citizens living in the urban area.

By working to improve the standard of living and purchasing power of their urban citizens,

First Nations are contributing in a very direct way to the economic and social fabric of urban municipalities.

Urban ATRs will almost always involve a range of third parties, from municipal and provincial governments to private landowners. A solid communications plan will be essential to your success.

Urban Reserves – A Success Story

Many First Nations are located in rural areas, far from the cities and towns where most wealth and jobs are created. This geographic remoteness can sometimes pose challenges for First Nations trying to increase their economic self-sufficiency. Urban reserves are one of the most successful ways to address this issue.

An urban reserve is defined as a reserve within or adjacent to an urban centre. Urban reserves can be found in smaller urban centres such as Portage La Prairie, MB, which has a population of 13,000 people, or in larger cities such as Vancouver, BC, with over 2 million people.

Urban reserves offer residents economic opportunities that are generally unavailable in more remote areas. They give First Nation businesses the chance to establish themselves while also providing employment and training opportunities. At the same time, urban reserves can create jobs for Aboriginal and non-Aboriginal people and contribute to the revitalization of the host

community. There are now more than 160 urban reserves across Canada that have been established under the ATR policy and Treaty Land Entitlement agreements.

Background

A reserve creation may stem from Canada's legal obligation to settle and implement outstanding land claims. The majority of urban reserves are created as a result of specific claim and 6 settlements, which often provide First Nations with cash payments that may be used to purchase land. These agreements may also specify that land acquired by the First Nation may be proposed for addition to reserve pursuant to the agreement. Such a provision provides the policy justification under which the ATR may proceed. Urban reserves can also be created outside the claims context. Like any private individual or corporation, First Nations have the right to buy land from a willing seller. Once it is acquired, the First Nation may propose it for addition to reserve under the Community Additions policy category. The ATR Policy applies to an urban reserve proposal as it does elsewhere, but there are challenges to urban ATRs that can make the process more complex. For instance, municipalities are likely to be much more engaged when significant property tax loss or land use harmonization is at issue, which are higher visibility issues in an urban setting. Where such concerns exist, First Nations will engage negotiations more challenging than those encountered in a rural ATR.

Building Relationships with Municipalities

Because urban land is mostly likely serviced already, First Nations with urban ATRs will be striking servicing agreements with municipalities. Water provision, garbage collection, and police and fire protection are common subjects of municipal services agreements. Importantly, fees collected by municipalities under these service agreements can compensate for property tax loss caused by an ATR, which reduces municipal concern with revenue losses. Education tax adjustment and service agreements with affected school divisions must also be negotiated by the FN. Ensure that any servicing agreement includes a mechanism for settling disputes.

The same sales tax exemptions that apply to reserves in rural areas also apply to urban reserves. Under current tax law, First Nation businesses located on reserve are typically required to collect provincial and federal sales tax and are subject to all applicable taxes outlined by law or the servicing agreement negotiated with the municipality. Only First Nations people who earn a living on reserve can take advantage of the sales tax exemption when purchasing goods and services on reserve. The net effect for those individuals is having slightly more money to spend in the local economy.

Economic Benefits

Urban reserves can be viewed as a stepping-stone for the development of new Aboriginal businesses and a way into the mainstream job market for First Nations people. They can also provide much-needed economic stimulus to urban centres as a whole.

Muskeg Lake Cree Nation's Cattail Centre and Asimakaniseekan Askiy is a good example of these reciprocal benefits. Located on the east side of Saskatoon, Asimakaniseekan Askiy was the first Canadian reserve to be built on land previously set aside for city development. Established in 1988, it breathed new life into a part of the city that had once been home to an active railway. Now home to dozens of Aboriginal and non-Aboriginal businesses, Asimakaniseekan Askiy has become the new commercial hub in southeast Saskatoon.

A smaller but no less dynamic urban reserve has been established at Wendake near Quebec City. Home to the Huron-Wendat First Nation, Wendake has become an important tourism and cultural centre in Quebec, with festivals and pow-wows throughout the year.

In preparation for Quebec City's 400th anniversary celebrations, Wendake opened a four-star hotel in March 2008. Built in the style of the Traditional Huron Longhouse, the hotel also functions as a museum, with video projections, artefacts, and collections on display. The cultural site as a whole has generated some 300 full and part-time jobs for members of the community, and a place for local artisans to sell their crafts.

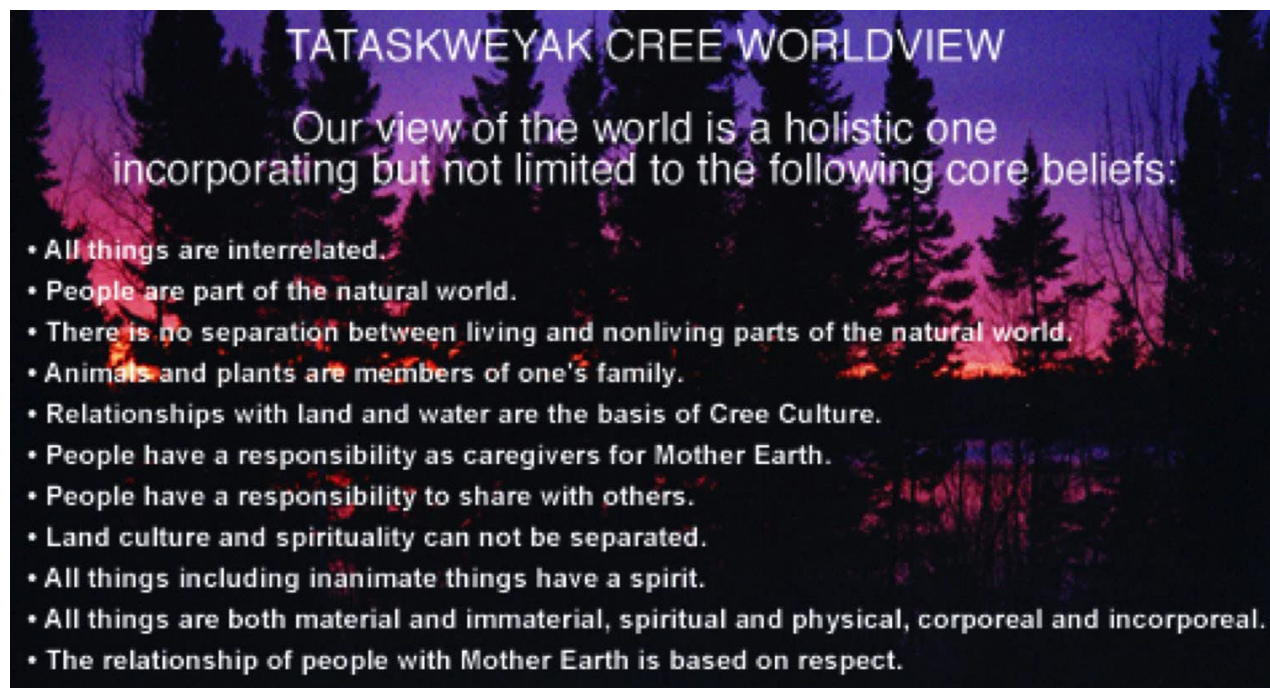
Improving the social and economic circumstances of First Nation people is a major priority for both the Government of Canada and First Nations themselves. By offering First Nations economic opportunities that are unavailable in rural areas, urban reserves can serve as springboards into the mainstream economy. They reduce operating costs and provide better access to capital markets and transportation routes, enabling First Nations to diversify their economic base. At the same time, they contribute to the economic and business development of urban centres across Canada. All Canadians can benefit from their success.

Huron-Wendat Nation of Wendake, Museum and Hotel, Quebec City



A Thought About the Land

In the hustle and bustle of the modern world, it is all too easy to develop an attitude that “land” is just something on a survey or map, to be traded back and forth to the highest bidder. Of course, land is so much more than that, as reflected so eloquently in the Tataskweyak Cree Worldview statement below.



Related Legislation

Addition of Lands to Reserve and Reserve Creation Act

The *Addition of Lands to Reserve and Reserve Creation Act* (ALRRCA) came into effect on August 27, 2019. It applies to all First Nations across Canada.

This legislation allows for additions to reserve to be approved by Ministerial Order, which can be a more streamlined approval process than the previous Order in Council process.

Furthermore, it provides all First Nations access to the same procedural tools that were once only available in Manitoba, Saskatchewan, and Alberta under the former Claim Settlements Implementation Acts.

ALRRCA provides technical tools intended to facilitate the additions to reserve process. These include:

- The approval of additions to reserve by way of Ministerial Order rather than Governor in Council approval. Ministerial Orders can be processed in less time than Orders in Council, as the latter involves a more extensive, extra-departmental process.
- The ability for First Nations to designate lands for leasing prior to the lands being added to reserve (also known as pre-reserve designation, discussed more fully in the previous section of this toolkit).
- The ability for First Nations to arrange for leases and permits prior to the land being added to reserve.
- Statutory easements and voluntary land exchanges linked to an addition to reserve proposal are approved by Ministerial Order rather than by Governor in Council approval.

Note that ALRRCA repeals the Albert and Saskatchewan Claim Settlements Implementation Acts and the additions to reserve portions of the Manitoba Claim Settlements Implementation Act. Those became redundant with the coming into force of ALRRCA, which now provides the benefits of these acts to all First Nations under national legislation.

Framework Agreement on First Nations Land Management Act

The Framework Agreement on First Nation Land Management Act allows for ATR land to be included under a FNLM FN's Land Code as part of the Ministerial Order adding the land to reserve.

Previously, lands that were added to reserve were included under the Land Code by way of an amendment to the Individual Agreement.

FNLM FNs can negotiate third party replacement interests by way of their Land Code instruments, not those required under the Indian Act. This may involve efficiencies where land codes do not require, for instance, the lengthy designation process.

First Nations Commercial and Industrial Development Act (FNCIDA)

FNCIDA is an opt-in legislative tool available to First Nations. It enables complex economic development projects on reserve to be regulated in the same manner as they would be off reserve. For many proposed projects on reserve, a regulatory gap creates uncertainty and prevents the project from advancing. A regulatory gap exists where the federal government does not have an adequate regulatory regime in place for a specific commercial or industrial project. In many cases, the province has a range of monitoring and enforcement systems, but it is unclear if they apply on reserve lands. Projects on reserve land are often administered under land instruments such as leases or permits. While this can be effective, it lacks legal certainty and enforceability compared to a regulation and is not well suited for large and complex projects.

FNCIDA works by allowing the federal government to produce federal regulations that incorporate provincial regulatory regimes so they apply on a specific parcel of reserve land. The idea is to create a regulatory environment on-reserve that is the same as off-reserve. A regulatory environment on reserve that operates seamlessly with that off reserve can help attract large scale investment and facilitate ATR's where businesses already exist (see Fort William example below). In order for ISC to move forward with FNCIDA regulations, a First Nation must opt-in through a Band Council Resolution. Under an FNCIDA regulatory regime, provincial governments may play a role in monitoring and enforcing the regime. In most cases, the province would assume the same role they would for a similar project off reserve.

Consider whether economic development projects your First Nation is pursuing, whether on existing reserve land or lands proposed for addition to reserve, may benefit from FNCIDA regulations.

For more information, please contact the Research, Policy, and Legislative Initiatives Directorate of ISC.

FNCIDA: Resolute Sawmill Example

Land on which a state-of-the-art sawmill facility is situated was added to Fort William First Nation's reserve in 2011. Fort William had entered a business partnership with Resolute that involved significant economic development for the First Nation. This sawmill was operating under provincial environmental law, and required a solid environmental regulatory regime given the size of the operation and its proximity to water. The First Nation opted for FNCIDA regulations so that provincial environmental laws could continue to apply once the land became reserve, thereby avoiding the costs and delays that would result from creating a different regime. The regulations also provided greater security by establishing a statutory basis for enforcement of any violations.



The Resolute sawmill employs approximately 260 people, many of whom are Indigenous, and is the first facility in Canada to operate under the *First Nations Commercial and Industrial Development Act*. On May 6, 2022, Fort William First Nation and Resolute officially broke ground on a \$17 million project to expand the sawmill.

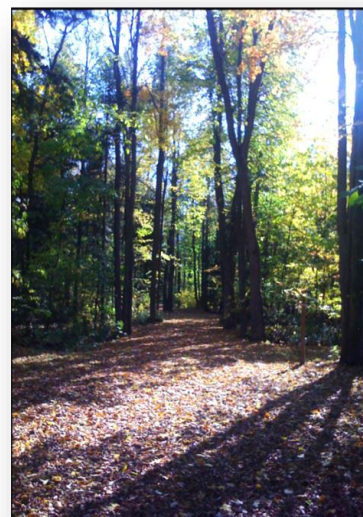
Chapter 4 – ATR Policy Categories

The Three Policy Categories

An ATR initiative must clearly fit into one of these categories:

1. **Legal Obligations and Agreements:** to fulfill a legal obligation arising from, for instance, a land claim settlement or a court settlement.
2. **Community Additions:** to accommodate the need for more land to assist, for example, community growth, protection of cultural sites, or economic development.
3. **Tribunal Decisions:** to meet a First Nation's ATR needs with funds awarded by the Specific Claims Tribunal.

The following pages provide more detailed information about these three categories, as well as some principles guiding their use.



Consult ISC Regional Office

It is important that the FN ATR Manager and the Chief and Council have a clear understanding of the three policy categories outlined here.

Your ISC regional representative should be an integral part of your ATR team. Talk to that person early in the game and ask for guidance on the use of these categories. If you don't understand or don't agree with matters related to the policy categories, seek a review from your departmental representative.

Did you know that...

...while ATRs may be time consuming to complete, in the end new lands on reserve can lead to economic development for the First Nation, which in turn leads to more jobs; new businesses attract others, creating still more opportunities.

Legal Obligations and Agreements Category

The category for Legal Obligations and Agreements involves both additions to existing reserves and the creation of new reserves, arising from any of the obligations and commitments listed below. Note that the ATR provisions of agreements prevail over the Policy.

Selection Area

The land selected for ATR should normally be located within the FN's Treaty or Traditional Territory. Note that land selection areas established under claim agreements derive from the terms of the claim negotiation, but these are also usually within Treaty/Traditional territories. The Saskatchewan TLE Framework Agreement allowed for selections anywhere in the province, while Manitoba's TLE selections are limited to the treaty or traditional area of the Entitlement First Nation (EFN). The ATR policy applies in all cases.

Treaty or Claim Settlement Agreement

Treaty Land Entitlement (TLE) and Specific Claim settlement agreements having land acquisition provisions which typically provide for the purchase of land on a "willing seller, willing buyer" basis.

Specific claims arise from the alleged non-fulfillment of Indian treaties or the improper administration of lands or other assets under the Indian Act and its regulations. TLE is a kind of specific claim that arises from the failure to provide a First Nation with the full amount of land that it was entitled to under a treaty. Provincial governments are involved in TLE settlements along with the federal government and EFNs. Specific claim settlements are between the federal government and individual FNs. TLE and Specific Claim settlements currently account for the majority of ATRs.

Self-Government

Some Self-Governments Agreements have provisions for ATR built into the Agreement.

Land Exchange

A land exchange agreement allows for an exchange of reserve land for non-reserve land. These are negotiated where, for instance, low-lying land that is unusable due to possible flooding is

exchanged for elevated lands, or where roads intended to be closed and made reserve were missed and left out of the reserve, which necessitated the provision of replacement land.

Legal Reversion

A legal reversion involves the return of land to Canada when it is no longer required for the original purpose for which it was taken under section 35 of the Indian Act. It is important to note that legal reversions typically do not specify returning the land to reserve status, but that the land will be returned to Canada. To return the land to reserve status, an ATR proposal must be prepared, and requirements of the ATR policy met.

Landless First Nations

A First Nation that has never had a reserve base can negotiate an agreement to create one.

NEW RESERVES EXAMPLE – Lake Nipigon Reserve

The Ojibway of Northern Ontario finally realized their dream of a new and permanent home some three hours' drive northeast of Thunder Bay, Ontario. After completing an ATR, the Animbiigoo Zaagi'igan Anishinaabek now have 12.5 square kilometres at Partridge Lake.



Relocation of Communities

A First Nation can seek a new reserve based on emergency situations. For example, a community situated in a flood zone that experiences destructive flooding may enter into discussions on relocation of the reserve to higher ground. Another example is a community whose remoteness excludes it from health and educational services that could be accessed in another location. The emergency situation may also necessitate expansion of the current reserve.

Return of Unsold Surrendered Land

In some cases, reserve land that was surrendered for sale remains unsold. Given that the lands were once reserve, and that the proceeds from an intended sale were never realized for the benefit of the First Nation, such lands are good candidates for addition to reserve.

A TLE EXAMPLE - COWESSESS FIRST NATION SASKATCHEWAN



Under the TLE Framework Agreement in Saskatchewan, Cowessess has undertaken a number of successful ATRs. They have a full-time TLE Executive Director who has made it his business to proactively manage the ATR process. Consequently, over the past number of years, they have learned how to “plan the work and work the plan”.

The manager has developed a good sense of when to follow up on items and how to move things along. Sitting passively and waiting until something happens is NOT how things get done in Cowessess!

Community Additions Category

This category involves additions to reserves resulting from normal community growth (where the existing land base is not suitable or insufficient for the intended use), geographic enhancements, or the return of unsold surrendered land.

Selection Area

The selected land should normally be located within the First Nation’s Treaty or Traditional Territory.

Normal Community Growth

A community growth proposal to expand an existing reserve land base usually occurs when there is not enough land available to satisfy a community’s short- or long-term requirements. A proposal under this category usually involves land for housing, schools, recreational areas, and community economic projects.

Culturally Significant Sites

In order to protect or to use a culturally significant site, a FN may want to include it in the reserve. Such sites include burial grounds, archaeological sites, or ceremonial sites.

Economic Development

ATR proposals may be submitted for commercial or industrial purposes that can only be achieved through reserve status. This type of proposal represents an economic development opportunity and should be supported by a business plan and an identification of how additional costs will be managed. Unless otherwise specified, the operation and its related costs are not eligible for funding from ISC.

Geographic Enhancements

Geographic enhancements involve ATR proposals that are small adjustments to roads, rights-of-way, or geographic in-filling, where the addition would enhance the physical integrity of the reserve. The most common ATRs in this category involve road right-of-way corrections.

Other Non-Canada Agreements

In some instances, a First Nation might enter into a lands agreement to which Canada is not a party. Such agreements could involve the acquisition of land for ATR purposes from a province, municipality, or Crown agency, such as a hydro agency. In such cases, Canada, not being a party to the agreement, has no obligation to grant reserve status to the subject land. However, where the business case is strong, Canada may not only support the ATR but may do so even where exceptional circumstances exist (e.g., contaminated land).

Tribunal Decisions Category

The Specific Claims Tribunal, established in 2008, is part of the Federal Government's 'Justice at Last' policy and joint initiative with the Assembly of First Nations. The Specific Claims Tribunal is a collection of judges who resolve Specific Claims. Its aim is to accelerate the resolution of specific claims. FNs may file a claim with the Tribunal.

The term "specific claims" generally refers to monetary damage claims made by an FN against the Crown regarding the administration of land and other FN assets. The claim can also relate to the fulfillment of Indian treaties. Specific Claims eligible for submission to the Tribunal have not been accepted for negotiation or have not been resolved through a negotiated settlement within a specified time frame.

The Tribunal may provide funds for the acquisition of lands. In the past, funding could form part of the Tribunal decision, but it could not be used to acquire land, even if the decision was about loss of land. Now, the Tribunal decision funds can be used to acquire lands.

This policy makes for parity between those First Nations who may now purchase land with Tribunal funds and those First Nations who are receiving lands under Treaty Land Entitlements.

Selection Area

The selected land should normally be located within the First Nation's Treaty or Traditional Territory.

Failure to Fulfill a Legal Obligation

Tribunal claims can involve lands promised under Treaty that fell short of the specified quantum or the specified quality.

Breach of a Legal Obligation

Tribunal claims can involve an alleged statutory breach under the *Indian Act*. For instance:

- a surrender may have involved voting irregularities of which Canada should have been aware;
- improper application of the voting regulations;
- a failure to consult where a duty to consult existed;
- a survey error resulting in less land than the FN was entitled to receive.

Illegal Reserve Lands Disposition

Tribunal cases can involve cases in which, for instance:

- land was unlawfully expropriated or surrendered;
- no vote was held where there should have been one;
- a fraudulent land transfer;
- uninformed consent.

Chapter 5 – Phase 1 - Initiation

A Roadmap to ATR Success

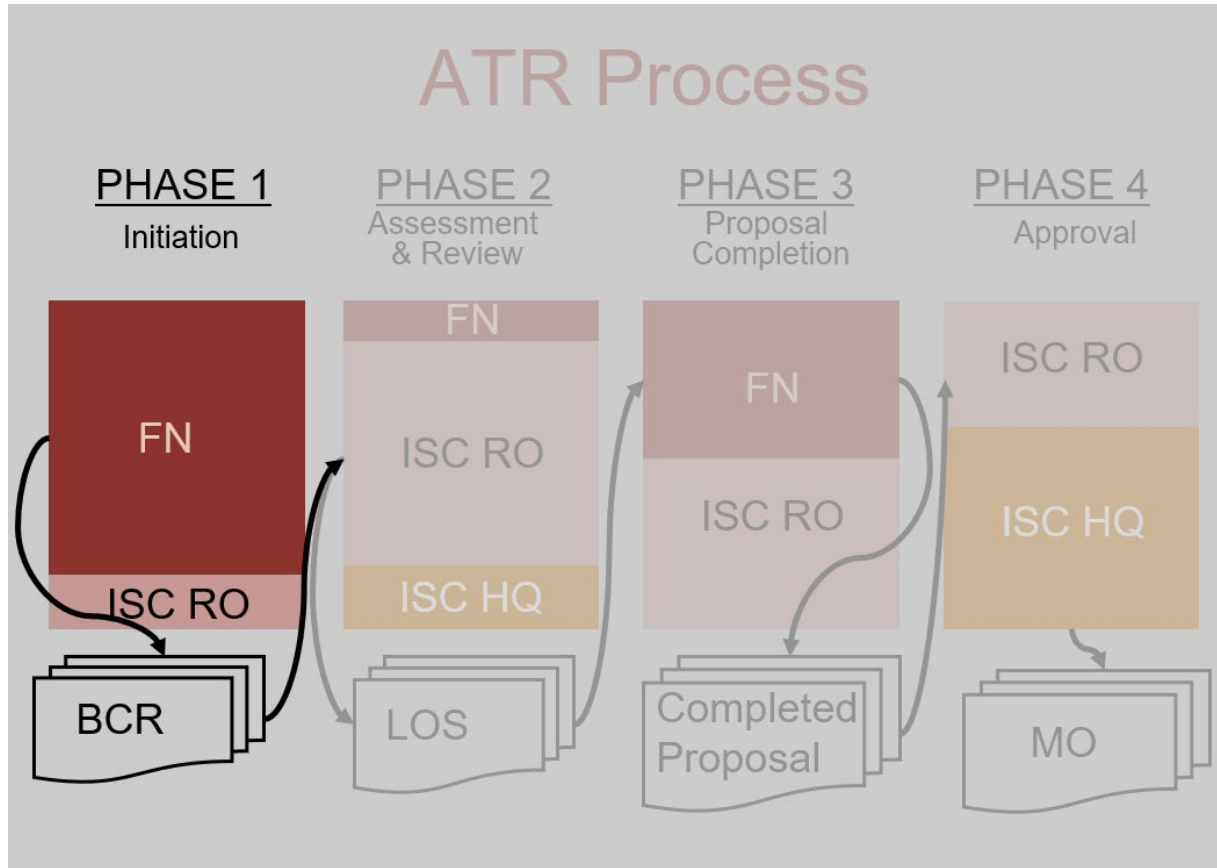
The following pages provide a step-by-step guide to Phase 1 of the ATR Process.

Present Unified Support

A consensus must be reached as to whether the band really is intent on the expansion of the reserve.

ATRs are difficult enough without problems created by differing views on the need for an ATR. Get everybody on board early in the process!

Phase 1 Summary



Phase 1 of the Additions to Reserve process, Initiation, is a planning phase in which the First Nation researches the information required to satisfy the requirements of the ATR Policy, identifies all legal requirements, prepares the documents to support the proposal, and passes a Band Council Resolution (BCR) requesting the addition. This BCR is submitted to ISC along with the relevant documentation. Note that these are First Nation responsibilities. However, the ISC Regional Office is available for consultation and support as appropriate.

A formal file should be started and should be maintained throughout the process. It should include all the following information:

- all activities;
- meetings and participants, with contact information;
- deliverables and deliverable dates;
- responsibilities assigned;
- names of all identified involved parties with contact information;
- decisions taken;
- a proposed timeline for the completion of the ATR.

See the ATR Journal...

Included with this toolkit, you will find an aid called the ATR Journal. It has been provided so that you have a handy place to keep notes regarding the progress of your ATR. The journal includes the steps that are outlined in the ATR Process Chart and which are documented in this manual.

Keeping your notes and action reminders in one place may well help you make better progress and will be most useful if there is any staff turnover.

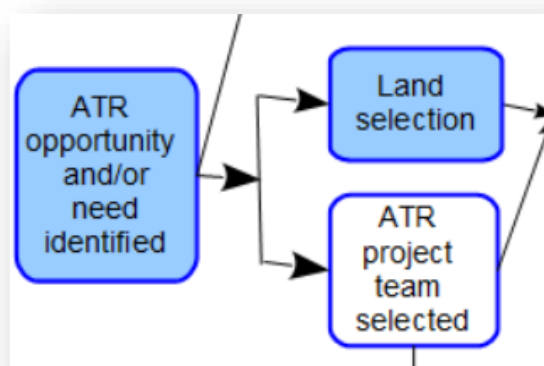
The ATR Process Chart

- Please study the ATR Phase Overview Chart on the foldout page as your starting point.
- Note that the partial chart illustration in each section is taken from the Overview Chart. The step being discussed is shaded.
- Refer back to the Overview Chart to see how each step fits into the bigger picture and how the work flows.

This is a long project...

- Don't lose momentum.
- Keep it alive by communicating accomplishments and milestones met.
- Manage the expectations, especially related to the expected timeline.

Opportunity/Need Identified



The Opportunity

At some point, a First Nation will discuss the possibility of an ATR. Perhaps this discussion will occur as part of a land use plan or an organized study of long-term community needs for extra housing. It may also proceed regarding community facilities, such as schools or halls, or for cultural purposes. Or the discussion might occur as a result of economic planning considerations. Sometimes there is an opportunity to purchase a particular parcel of land that is just too good to pass up. The ATR may also proceed pursuant to a negotiated settlement agreement.

Where these discussions conclude that a need for more reserve land is required, an addition to reserve proposal should now proceed.

The Chief and Council (C&C) must be fully briefed on the proposed ATR. Their support is necessary not only for the authority to proceed, but for the sometimes numerous BCRs that will need to be produced throughout the ATR process.

As you will see from what follows, the First Nation's case for its addition to reserve proposal should be prepared as thoroughly as possible. You will need to establish a team, set your agenda, identify issues requiring resolution, and gain critical support for, and awareness of,

your ATR: within your own community, at ISC, with local governments and provinces, and among various interested third parties.

Selecting the Land Parcel

In an ideal situation, you would develop a long-range plan for land acquisition. This would involve an investigation of parcels of land that would meet community needs, comprehensive consultation with ISC and a variety of experts before making financial commitments, then acquisition of the land and engagement with the ATR process.

In common practice, this sort of planning is not always undertaken, or may not be possible. Many FNs have purchased land first and only engaged the ATR process some time afterwards. This approach can lead to problems. For example, the land acquired by the FN may prove to be inadequate for community planning, or use of the land prior to ATR may complicate the ATR process (e.g., environmental contamination that makes the land unsuitable for residential use). Although it is quite possible that the land may turn out to be suitable for ATR, good planning in making a land selection will reduce the possibility of complications.

Best Practice

A good practice is to include “subject to” clauses in the Offer to Purchase. For instance: “Subject to acceptable environmental condition.”

Selecting land should also be considered in light of boundary issues. If the land is adjacent to a waterway or a lake, there might be implications, especially for proposed land use that could contaminate the water or interfere with navigation. If the land is adjacent to a park, whether municipal, provincial, or federal, there may be issues such as access. In either case, legal issues will have to be addressed. Factors like these can increase significantly the complexity of the ATR, and therefore the time and cost the FN may have to expend.

It isn’t always possible for FNs to wait for the ideal selection. Sometimes, if you don’t act quickly, an opportunity may be lost. Perhaps someone has decided to retire and is willing to sell their neighbouring property to the First Nation on the condition that the deal closes quickly; maybe the real estate market is hot and you have to make a quick decision to purchase.

In short, when it comes to buying land, the risk/reward equation has to be evaluated carefully and often quickly. Try to make sure the land purchase fits well with any community’s comprehensive land plan, where available. To be a “smart buyer” is imperative, whether you have the luxury of time or a pressured decision to make. Exercising your due diligence will

result in smart selections at the right price. Getting professional appraisals, especially where the purchase price is substantial, is highly recommended.

Land selected for purchase may be held by the federal or provincial Crown or may be held in fee simple by a municipality, a corporation, or an individual. Crown lands may only be acquired through agreement with the relevant government, and the acquisition usually involves a lengthy process. In the case of fee simple lands, the land can only be purchased on a “willing seller, willing buyer” basis.

A list of things to consider when selecting lands to purchase for ATR is provided on the next page.

Best Practice

Buy the land through an incorporated holding company wholly owned by the Band, either holding it in fee simple or in trust. Talk to your legal counsel about this point. As discussed further on, registering a parcel in the First Nation’s name is likely to cause problems at the time of transferring land to Canada for ATR.

Best Practice

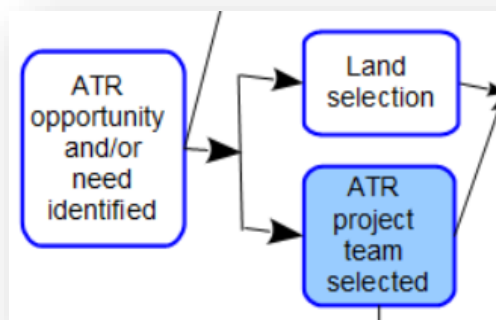
There may be several parties you consult in seeking to purchase land, so be sure you engage the party who has the authority to approve the sale.

Some things to think about...

- Has need/objective for ATR been identified and documented?
- Is proposal affected by other circumstances, e.g., FNLMA or FNCIDA?
- Do the Chief & Council (C&C) support the proposal?
- Does the land align with the Band Community Plan?
- Has the timeline for use of land been determined?
- Has basic research on the ATR been undertaken?
- Has the Process been explained to the FN?

- Does community research support or clarify the ATR?
- Has the land/area been identified?
- Are any photographs of the land available?
- Are there maps showing the location of the lands?
- Who owns the land?
- Has a preliminary walk-about been conducted to identify potential issues?
- What timeline is required by the vendor?
- Who will hold interim title (e.g., FN corporation wholly owned by the FN band)?
- Is there legal access, and access for the intended use?
- Is there information on prior uses of the land?
- Is there a water boundary?
- Is the current zoning of the land known?
- Have any environmental concerns been identified?
- Is land suitable for intended use?
- Has a proper purchase agreement been drafted?
- Have land title searches been carried out?
- Have searches been made for registered and unregistered interests?

ATR Project Team Appointed



Appointing the ATR Project Manager

It is critical that the Chief & Council appoint as ATR project manager someone in whom they have confidence, and that they support this person throughout the project's life. ATRs cost

money, so as part of setting up the project team, an on-going budget will need to be established for the project.

A Land Manager may be tasked with an ATR project, which could significantly increase an already heavy file load. Land Managers must evaluate their capacity to take on a file that will involve many tasks and maybe many years to complete.

In many cases, it will be necessary to appoint someone from the First Nation who is new to lands and to ATRs specifically. If this is the case, it would be highly desirable for the new Project Manager to receive training as soon as possible through organizations such as NALMA.

The Project Manager must:

- be well organized,
- a good communicator,
- demonstrate leadership abilities, and
- able to coordinate many parties and moving parts.

ATR Expertise...

...is not in abundant supply, but it is out there and may be accessible to you. Ask your Regional Lands Associations, other First Nations, and ISC officers to give you their suggestions about people who have successfully managed ATRs before. You may be able to “pick their brains” or even engage them as consultants for your ATR initiative.

Building the ATR team

The Project Manager, once identified, has two immediate tasks: to start building an ATR team, and to start building the formal case for the ATR. Ideally, the team should consist of a project manager, at least one dedicated assistant (or people who can be available when needed), an administrative assistant, and advisors (legal, communications, etc.). During the months ahead, the team will be interacting with parties whose input will be required (e.g., surveyors, environmental assessors), who will be involved in negotiations (Chief and Council, ISC, government departments, municipalities, etc.), and who will be requesting information that must be provided. It is critical that there be one point of contact for the team. Choose someone with great communications skills, and someone who is exceptionally well organized.

Building the ATR Communications Team

For all but the most basic ATRs, it is a good idea to build a communications team. The team should include the ATR coordinator, a writer, a researcher, and a spokesperson. Put together a

small team of people who have experience in the field of communications, and who have both a solid reputation in the community and good interpersonal skills. This team will be communicating with internal and external parties, so look for those people who can make a strong case to different audiences for advancing the ATR project.

Best Practice for Communications with Membership

It would be beneficial to have a plan in place to inform the Band members. It should include the reasons for the ATR, information concerning the land itself and its proposed use, benefits to the FN, as well as any anticipated costs associated with the project. Keep your membership in the loop.

Legal Counsel

Retaining good legal counsel will greatly assist your ATR project. Legal counsel with Indigenous and ATR experience is a major asset. Whoever you retain, ensure that the lawyer is willing to work with you over an extended period of time and at a rate you can afford. The lawyer should understand that this is not just a one-time review of a standard legal transaction, like the purchase of a house. Look for someone who is prepared to work closely with you, maybe for several years, and who knows real property. You may decide that you need more than one lawyer, each with a specific area of expertise. Contact other bands for recommendations.

To help ensure that you and your legal counsel both understand and agree to the scope of the work ahead, develop a “Terms of Reference” for the duties that you expect your lawyer to complete. Create a budget that matches the amount of work to be done and the legal expertise required. Some of the typical responsibilities are described here.

As a result of meetings with ISC, and during the preparation of the initial proposal documents, certain legal requirements, including those flowing from agreements, may be identified. For example, if an ATR is proceeding pursuant to a claim settlement agreement, the provisions of that agreement will apply.

Research must be carried out to determine if there are any registered or unregistered interests in the land, or any caveats affecting it. Such issues must be dealt with before the land becomes reserve. Reserve land is a unique form of landholding that requires all interests and encumbrances to be addressed prior to being created.

Non-registered Interest?

A non-registered interest could have been acquired or agreed to many years ago. For instance, it might be a former exploration agreement, a former lease, a former permit, former special renewal permit, an exploration license, a trapper's cabin, a production license, or a significant discovery license. Your lawyer will need to help you identify and address these interests.

Some ATRs, especially those in urban areas that involve industrial/commercial use, will require the preparation of substantial legal documentation before the ATR can be completed. Complex ATR proposals can involve the production of over 100 documents, such as head leases, sub-leases, process agreements, municipal service agreements, purchase agreements, and memoranda of understandings (MOU), to name just a few.

ISC will also require the completion of its own documentation, and the requirements of the Department of Justice must be met as well. Such requirements necessitate the retention of legal counsel to provide you advice and prepare the necessary documentation.

Your lawyer should be involved early and should be accessible for advice throughout the process. It is important to keep in mind, however, that those parts of the process that don't require legal attention are best addressed by you and your team. Legal involvement is expensive and should not be incurred for work you can do yourself. If your workload is such that external assistance is required, consider consultants who are likely to charge much less than a lawyer.

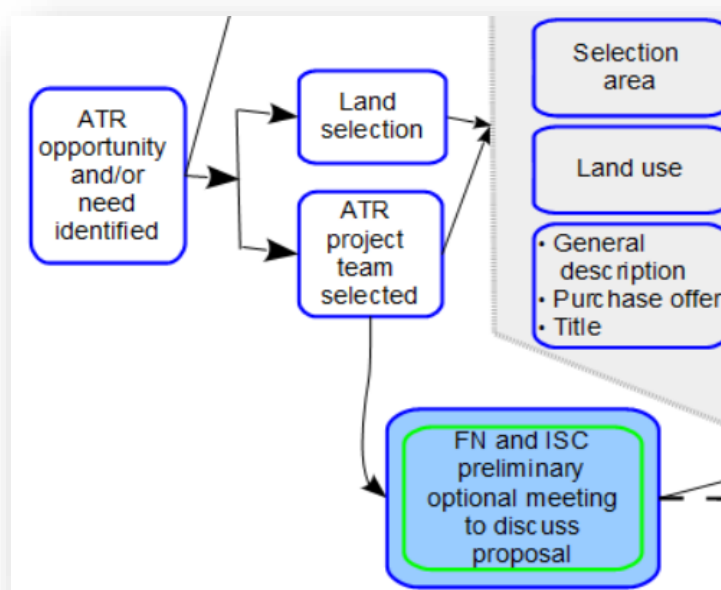
Remember that you are the project leader and that lawyers work for you. You will rely on their advice where their expertise warrants it. But your control of the process is essential, not simply to contain costs, but because you know the First Nation's vision for the land and are best positioned to effect it.

Some things to think about...

- Has a Project Manager been appointed?
- Has an Administrative Clerk been identified?
- Have special resources been identified (e.g., staff to conduct research, consultants)?
- Has a spokesperson been appointed?
- Has a lawyer been selected?
- Have legal issues been identified?

- What work can be addressed without legal advice?
- What legal work requires outside expertise?
- Have the terms of reference for legal work been identified?
- Has an initial plan been defined, with transparency/accountability between parties?
- How long might the ATR take, and can team members plan for the duration?
- Have the benefits of the ATR been properly expressed to the Team and C&C?
- Have FN departments been notified, e.g., Housing, Economic Development?
- Has the FN community been briefed on the ATR?

Meet with ISC Regional Officer



This meeting is initiated by the First Nation to inform ISC that an ATR Proposal is being undertaken. Though optional, it is a good idea to arrange the meeting. You need to know, for example, which officer will be working with your FN for this ATR. Just as importantly, the meeting is an opportunity for the FN to acquire any information that it may require from ISC. Your proposal needs to be reviewed by the ISC regional office from the outset so the ATR process can be engaged on the basis of your file's specific requirements.

This initial meeting, undertaken at the outset of the proposal, is also important because it sets the stage for how further FN/departmental meetings will proceed, and allows a preliminary identification of what issues need to be addressed. How often meetings should occur, what parties should be involved, what experts will need to be retained, etc., should be discussed.

Who is really in charge of the ATR process?

The answer is that the First Nation is the driver of a process set by the departments. While ISC will be there to help with your responsibilities, and will be tasked with completing its own responsibilities, the most time-consuming elements of the ATR proposal are almost always in the hands of the First Nation.

As the proponent of the proposal, you are the main driver. Don't rely on anyone but you and your team to push the ATR to its completion. Even where the departments are the drivers of their responsibilities, check in with them to make sure things are getting done.

This is your project. Strap in and drive it!

Best Practice

If there are multiple ATRs to be proposed, the First Nation should prioritize them for ISC. The FN may wish to see some proposals proceed sooner than others, and the ISC regional offices, which are often dealing with multiple ATR files, may only be able to proceed with select files in the near term.

It is a good practice for the FN to schedule regular meetings with the ISC regional office. Where possible, monthly meetings should be held to keep up to date on progress, review issues, and keep the project on track. A joint workplan, which will be established at the outset of the file, should be brought forward and updated at every meeting. Proper minutes should also be taken, and should include the following information:

- meeting purpose
- participants, with contact information
- review of previous meeting
- update on activities noting goals achieved or issues encountered
- decisions taken or agreements made
- responsibilities assigned with due dates
- re-adjusted timeline when needed

- date of next meeting

The ATR Experience Factor

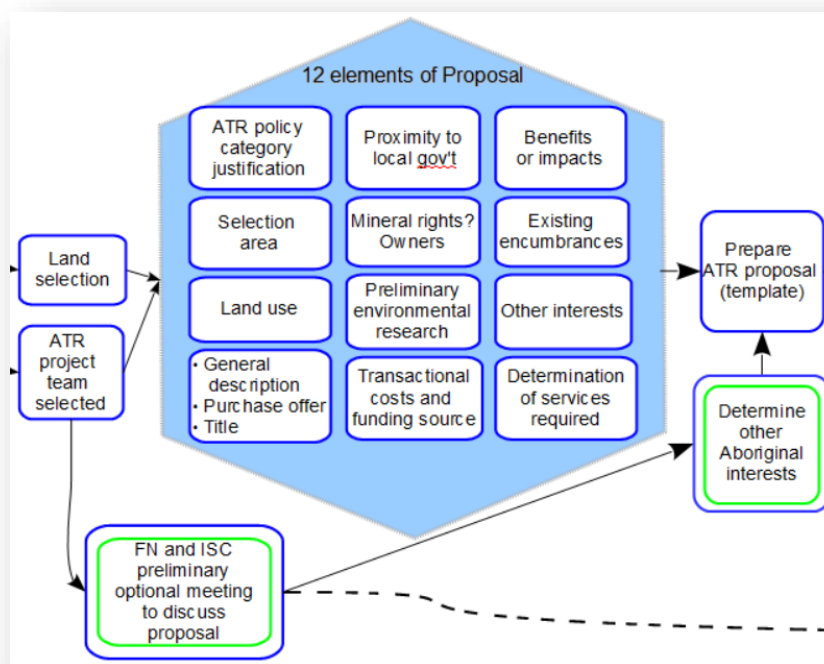
This toolkit has been developed to help you better understand the road ahead and give you the necessary knowledge to guide you in the process.

Some things to think about...

- Who is organizing the first meeting?
- Who should be invited from the C&C?
- Who is attending from ISC?
- Has a FN work team held planning sessions to determine the goals of meeting?
- Should any others from ISC be invited (e.g., economic development, those responsible for band monies)?
- Have all stakeholders been identified?
- Has a recording secretary been identified?
- Has a draft of the proposal been sent to ISC in advance?
- Have briefing notes been prepared for attendees?
- What documents will be brought to the meeting?
- Has a contact list been created?
- Does ISC understand your requirements, resources, and capacity?
- Have action items been identified from the meeting?
- Have roles and responsibilities been clearly assigned/outlined?
- Are timelines with due dates defined for each item?
- Has funding for the ATR been identified and when will it be available?
- Have templates for draft documents been obtained from ISC?
- Have meeting results been documented?
- Have next meetings been scheduled?
- Has Council been given a follow-up briefing?

- Have all meeting minutes been prepared and circulated within an appropriate timeframe?

Required Documentation for Proposal



The Information Requirements of Phase I, the Initiation Phase

Once the decision has been reached to go ahead with a proposal for an ATR, you must plan for what is likely to be a multi-year process. For your ATR submission to be successful, all the criteria set out in Directive 10-2 of the ATR Policy, “Reserve Creation Process”, must be met.

At the initiation stage, some, and perhaps most, of the information is preliminary, in that it only identifies information that is currently available. Detailed information will become available as the issues identified are sorted through and resolved. This detailed information will be required at a later date in the process.

In Phase 1, the intent is to maximize the amount of information collected without incurring a large expense. You will want ISC to provide a LOS for the proposal before making further financial commitment to the resolution of the issues you’ve identified.

Documentation must be prepared to address the policy requirements. These are the 12 elements that comprise the Reserve Creation Proposal, and that must accompany the BCR to ISC:

1. The applicable policy category;
2. Selection area;
3. Land Use – unless otherwise stated in an Agreement, the First Nation must describe the current and intended use of the proposed reserve land;
4. A general description of proposed reserve land sufficient to identify its location, and, where available, the offer to purchase and a title search that includes identification of the registered owner(s);
5. Proximity of the proposed reserve land to a local government;
6. Whether mineral rights are to be included and, if so, the registered owner(s);
7. Any environmental information regarding the historical, current and intended use of the proposed reserve land;
8. Transaction costs applicable under the policy (and the potential source of funds);
9. Other impacts and benefits of your proposed reserve land use;
10. Results of investigations identifying existing encumbrances;
11. Any known provincial, territorial, local government, Aboriginal, or other interests; and,
12. If services are required, identify and indicate how services will be secured.

Each of these 12 elements will be given further detail in the sections that follow. It is important to reiterate that the issues in the initiation phase only need to be identified, not resolved. Resolution can await Phase 3 of the ATR process.

Note also that communications make an ATR process smoother. Your community needs to know plans for reserve expansion, so surprises are avoided, and objections are addressed. For more complex proposals, a communications plan may need to be developed that anticipates the involvement of external parties, such as municipalities, the province, third parties, and the public. We'll deal with those requirements in the chapter dealing with Phase 3.

In preparing this documentation, the name and number of the existing reserve must be clearly indicated. In the case of a new reserve, include the proposed name and number, keeping in mind that the name should be in accordance with the Geographical Names Board of Canada.

Managing Expectations

At first, the ATR process may sound simple enough to the members of your community. How hard can a 4-phase process be? It should all be completed in under a year, right?

WRONG! If you don't set realistic expectations up-front, and manage those expectations, disappointment and discouragement is sure to follow.

The Need for Teamwork!

The First Nation ATR Project Manager and the ISC Regional Officer need to work as a team. Regular meetings should be arranged to ensure progress on the many issues that arise in the ATR process.

Action items must be outlined, and roles and responsibilities assigned. First Nations should also consult regularly with their legal counsel throughout the process. This will ensure that legal documents and agreements are properly developed and processed.

Some Positive Approaches

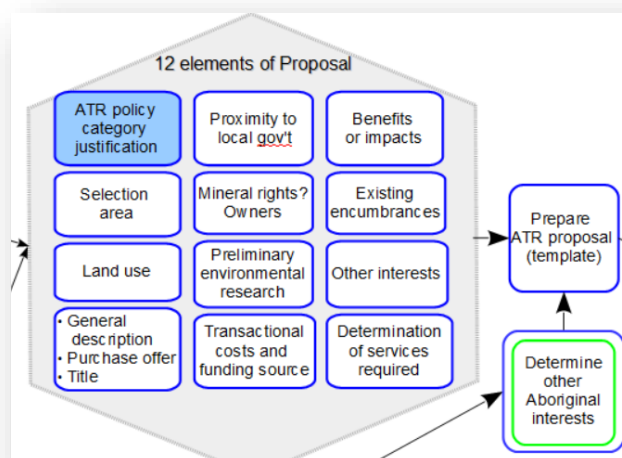
Promote cooperation at every opportunity.

Look for solutions that offer benefits for all parties. Look for win-win opportunities.

Avoid surprises, especially those that can derail progress. If problems are anticipated or encountered, keep your counterparts fully informed to retain their trust.

Stay positive and be the champion for your ATR!

ATR Policy Category and Justification



Choosing the Policy Category

As outlined earlier in this toolkit, every ATR initiative must fit into one of three policy categories:

1. Legal Obligations and Agreements
2. Community Additions
3. Tribunal Decisions

Justifying the Policy Category

Providing reasons and justifications will help to determine what type of ATR is being proposed. For instance:

- If the reason is to satisfy a legal obligation, reference must be made to the Agreement. Some Agreements may refer to a previous version of the ATR Policy, in which case the justification will have to reflect the Agreement and the specified ATR Policy.
- If the category is for a community addition, explain how the current reserve is insufficient/inadequate to accommodate the proposed use of the ATR land. A projection of the land required for community growth will further support a community addition proposal.
- If the ATR proposal is pursuant to a Tribunal Decision, refer to the date and case file number.

Muskeg Lake Cree Nation Urban Lands

Muskeg Lake Cree Nation has an urban reserve on the east side of Saskatoon. As a result of a Specific Claim settlement, Muskeg Lake has a \$3 million commercial centre housing Peace Hills Trust and many small businesses on reserve in Saskatoon.

Policy Category Justification – A Case Study for Community Actions

Providing a Rationale



The following is the rationale provided by the Hiawatha First Nation for a “Community Addition” ATR.

Hiawatha First Nation is a growing community that is currently encountering difficulty meeting all the needs of its members due to its limited land base. The addition of land as outlined will allow the Band to address many of their needs on both a short- and long-term basis. As the land purchased consists of two contiguous parcels, located directly between the north and south section of the existing reserve, it

falls within the service area of the reserve and embraces it by linking it together geographically.

Short-Term Needs

Recreational Areas - additional land is required for the expansion of traditional hunting grounds. At the present time, land for this purpose is very limited and the activity is now beginning to encroach on residential properties. The geographical terrain of the 198 acres purchased includes both forest and marsh wetlands, making the area ideal for both deer and duck hunting.

Cultural Activities - from a cultural perspective, it is increasingly important for the community to have an area for traditional ceremonies, retreats, and a site for the annual Powwow. This event grows in popularity each year and continues to attract additional members and many friends and neighbours from the extended community. At the present time it is held in the community ballpark, but this venue is close to capacity.

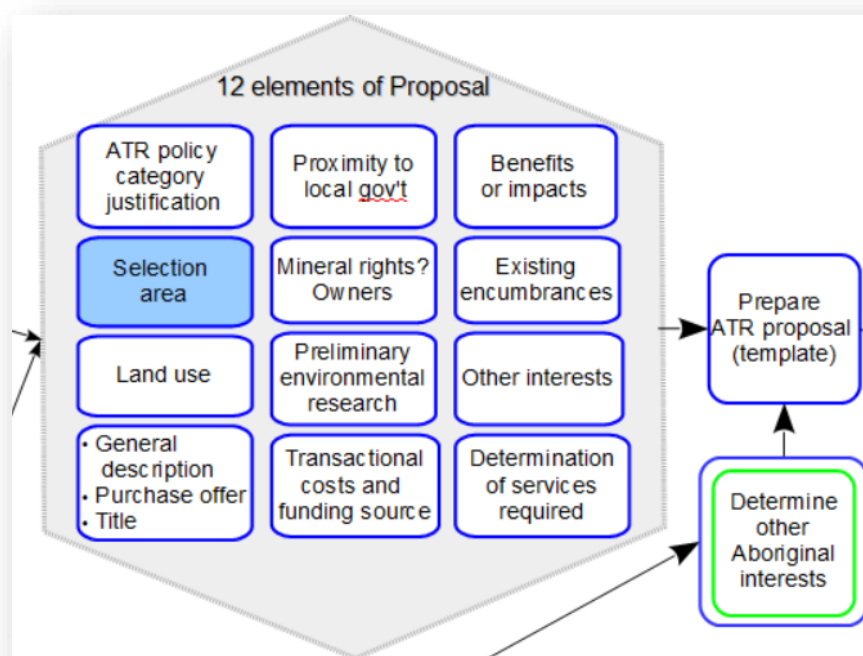
Long-Term Needs

Community Centre - the community has identified the need for a community centre where Elders, families and youth can gather for recreational activities, community socials, meetings, feasts and events. A portion of the land purchased is clear of trees and abuts a county road with year-round access, making it an ideal location for such a facility.

Band Community Housing - a large percentage of the existing reserve is held in individual certificates of possession by members, which significantly restricts the amount of land available for the development of Band-owned community housing. This is further complicated because portions of the Band-owned property are landlocked by individual owners. The newly acquired land abuts 2.2 km of county road, making it accessible year-round and less restrictive and costly for the development of new housing. There are over 60 families registered on the Band's Members List waiting for new housing.

Economic Development - economic development plans for the purchased land have not been specifically identified at this time. However, granting "reserve status" to these 198 acres of prime land will provide an important component of future development plans.

Selection Area



Lands proposed for ATR must be situated within a selection area that is determined as follows:

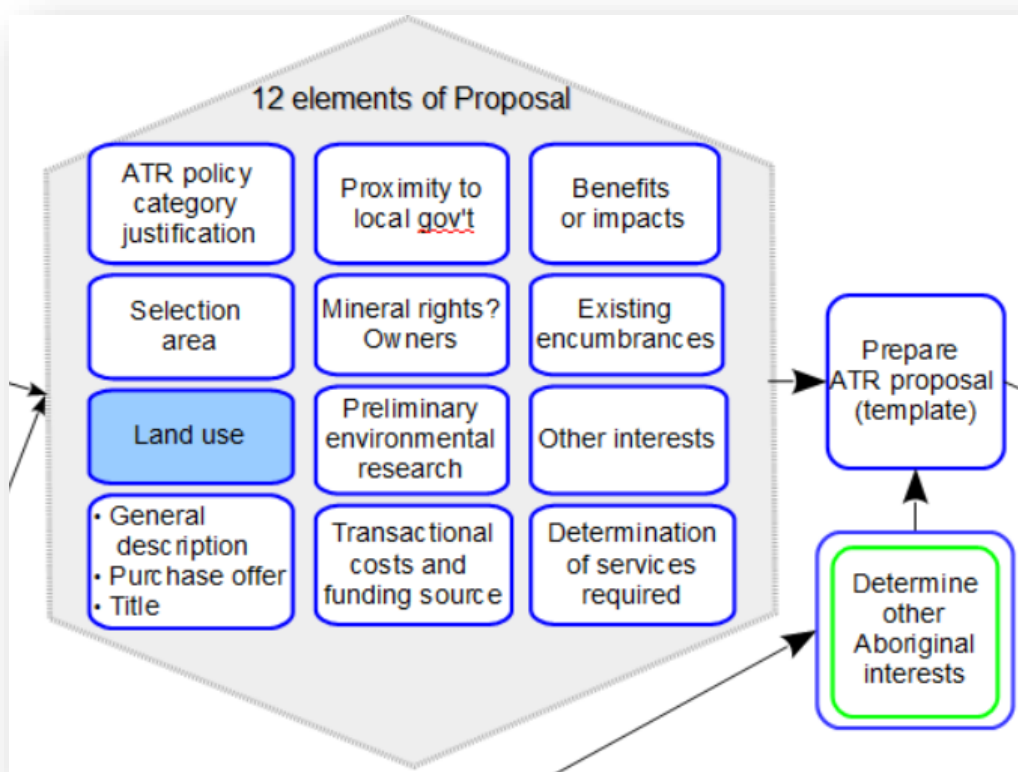
- Legal Obligation ATRs: In situations in which land is being acquired pursuant to a claim settlement agreement, that agreement may stipulate a selection area within which land may be acquired for ATR. If the agreement does not specify a selection area, the land must be located within the First Nations' Treaty or traditional territory. If provision is made for a selection area that extends beyond the Treaty or traditional territory, the land selected for ATR must nevertheless be within the province where the majority of the reserve is situated. A rationale explaining the need for land outside the Treaty/traditional territory must be provided in the proposal.

- Other Types of ATR: When the ATR is for a Community Addition or is being added as a result of a Tribunal Decision, the land should normally be located within the First Nations' Treaty or traditional territory.

If there is any question about the extent of the traditional territory, ISC may be able to help in establishing certainty.

If the land proposed for ATR has been purchased by the Band, determine whether it meets the selection area criteria described above before proceeding with the proposal.

Land Use

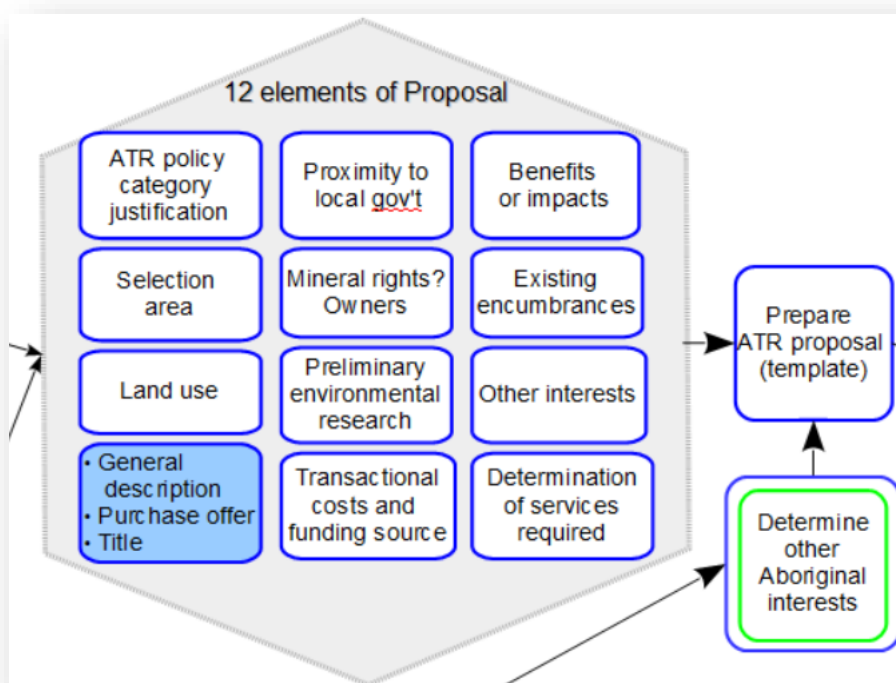


A description of the intended land use must form part of the proposal documentation. Your First Nation's community needs will often determine which land is selected for ATR, and it is necessary to base land acquisition on the land's capacity to meet those needs.

- If the land is for additional housing, identify its proximity to existing service infrastructure, other neighbourhoods, schools and amenities. Ensure that the land is environmentally suitable for residential purposes.
- If the land is intended for special activities, size and access need to be considered, and environmental suitability must be confirmed.

- If the land is for commercial or industrial development, access to the operation and the availability of utilities to service it must be confirmed. A pre-reserve designation is required for commercial/industrial operations. Please refer to Chapter 3 of this toolkit, “Before Undertaking an ATR”.
- Note that, whereas the land you select for ATR may be suitable for its intended use, improvements and adjustments that cost money may be necessary. For example, environmental contamination may need to be remediated, or hook-ups to infrastructure may be required. Know what these are, and how they can be fit into budgets and timelines.

Land Specifics – Offer, Title, Description



The land proposed for ATR must undergo a title search, and a property description must be provided.

Land Description

Provincial survey plans provide legal descriptions of surveyed lands. Those plans can be obtained through provincial lands registries, regional survey districts, and municipal lands registries. Provincial survey plans include private and provincial Crown lands. Note that the vast majority of Canada has been surveyed in one way or another.

The formal land description must describe the boundaries of the land in accordance with the ISC and NRCan Interdepartmental Agreement. The proposal must specify whether the land is one parcel or several, and if the latter, how many parcels are involved. If there are several

parcels, they may or may not be contiguous. If not, a “mosaic” of reserve land results. (Note: such a mosaic can create challenges, particularly in urban areas.)

Boundary problems may be significant and resolving them can delay the ATR. A Canada Lands Surveyor can identify and resolve boundary problems. Early involvement of the surveyor allows time to thoroughly research historical information that might affect the addition’s boundaries (e.g., water bodies, old roads, etc.). The surveyor can provide maps, plans, sketches, etc., to support the ATR process.

The required documentation includes:

- the offer to purchase (where available),
- the title search,
- a general description identifying the property’s location and its proximity to the local government,
- if mineral rights are to be included, identification of the rights holders.

ATR Phase 1 – Land Specifics Draft Pre-Acquisition Form

This sample form may be used when considering the purchase of a parcel of land. This form helps capture important details that will be of assistance in the ATR process.

Pre-Acquisition Documents

Vendor:

Address:

Phone:

Certificate of Title (including encumbrances):

Regional Municipality:

Assessments:

Property Taxes: \$

Existing improvements included:

Solicitor:

Site Inspection Report

Soil/Environmental Comments:

Buildings:

Utilities:

Other:

Leasing Information:

Negotiation Details:

Proposed Closing Date:

Lands Acquisition Team Member:

Date:

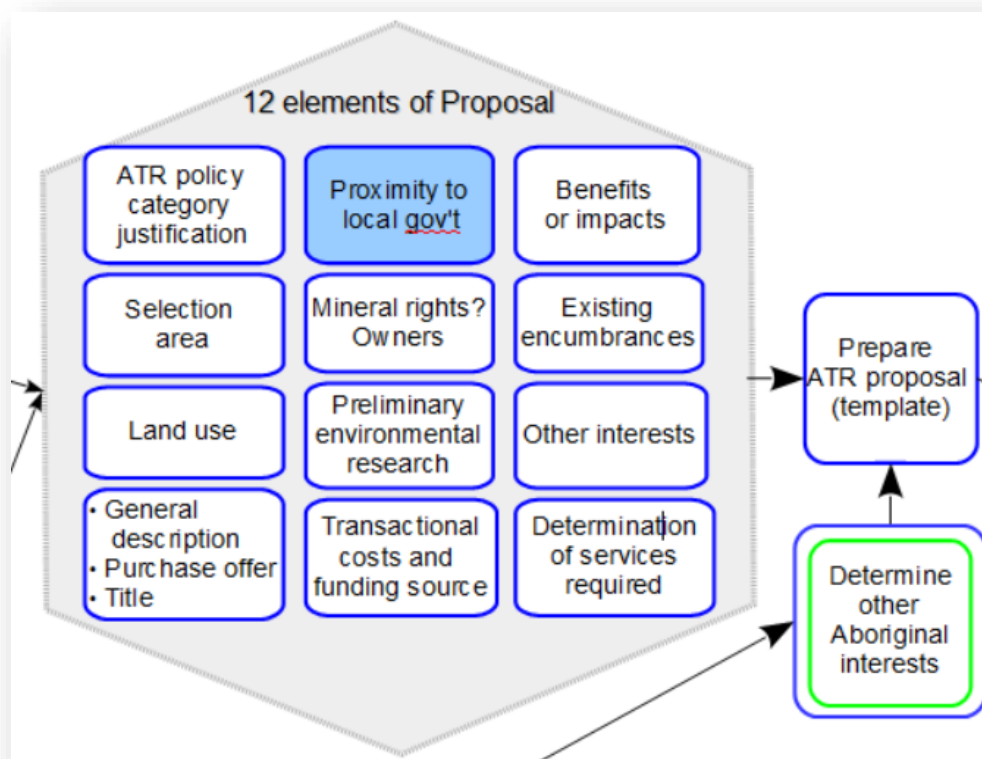
Some things to think about...

- Are any aerial or ground photographs available?
- Are any legal descriptions available, or has a basic description been drafted?
- Has a site investigation (walk-around) been done (and monitored)?
- Have any title searches been done?
- Has an off-line (unregistered interests) search been completed?
- Is there legal access to the property?
- Is there water, either surface or ground?
- Are there any unsurveyed trails indicating public use?
- Have you searched Google Earth to get a bird's eye view of the area?
- Is there evidence of buildings or previous construction?
- Have hydro poles, parking lots, old foundations, etc., been identified?
- Any evidence of oil wells or pipelines?
- Have federal or provincial websites been searched for mapping or other information?
- Is there forestry potential?
- What is the history/prior use of the land?
- Has the current use of the land been identified?
- Have non-aboriginal uses been identified?
- Can the land support plan development?
- Is the land in an area prone to natural disasters (e.g., flooding)?

A Suggestion

An aerial view can be very informative and can be accessed using Google Earth. You may qualify for a Google Earth Pro Grant enabling you to view land from above. To get more information, use this link:
<https://services.google.com/fb/forms/earthproapplicationenca/>

Proximity to Local Government



The use of municipal services must be considered in light of two factors: the proximity of the selected land to the nearest local municipal government and the intended use of that land.

Services such as fire protection and water provision will be more difficult to access the further ATR land is from a local government. If the land is too far away, the First Nation may have to undertake the provision of these services itself, which will necessitate capital and financial planning.

Another key consideration in dealing with local governments is determining whether compatibility of land use, usually through by-law harmonization, is necessary. The areas of harmonization can include:

- land use or zoning standards;
- building and safety standards;
- public utilities;
- animal control;
- health and safety;

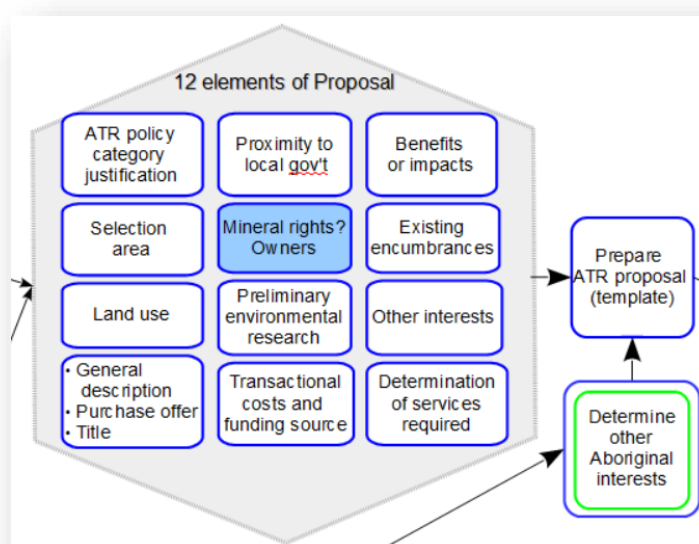
- f. traffic regulation; and
- g. property maintenance.

Best Practice

Develop a friendship agreement or protocol with the local government well in advance. This agreement can serve as an “umbrella” agreement for all subsequent discussions and negotiations.

Develop a working partnership as equals where both parties are suppliers and customers.

Mineral Rights



If you think there may be valuable minerals, or oil and gas, in your ATR lands, you might want to engage a consulting geologist and specialized legal counsel. The geologist can confirm whether these resources exist, to what extent, and their potential for any extraction you may wish to undertake. Your lawyer can advise whether mineral rights are included in the parcel and, if so, how to acquire these rights, should it be necessary for your First Nation to do so. In practice, securing subsurface rights is recommended, but not required. In the Province of Quebec, subsurface rights are usually retained by the province. Check with the ISC Regional Office to fully inform yourself on this matter.

If mineral rights are to be included, the registered owners must be identified. At this stage, identification of the rights is only being noted; resolution of any issues will be addressed in

Phase 3 of the process. If mineral rights are not part of the ATR, provision will have to be made for access to the site by the mineral rights holder. With respect to oil and gas resources, contact Indian Oil and Gas Canada (IOGC) for expertise and advice. Their website is: www.pgic-iogc.gc.ca/

This organization will:

- identify and evaluate oil and gas resource potential on Indian reserve lands;
- if the First Nation directs it, encourage companies to explore for, drill and produce these resources through leasing activity;
- ensure equitable production, fair prices, and proper collection of royalties on behalf of FNs; and,
- secure compliance with and administer the regulatory framework in a fair manner.

Research Resources for Mines and Minerals

Determining the owners of mineral rights may not be straightforward, especially if the rights were established long ago. Listed below are three sources that may be helpful:

1. The Department's Minerals Inventory, 1991, may still be a good source to consult for lands being added to a reserve created prior to 1991. The maps provided in the Inventory comprise a larger area than the reserve boundary, and they give an idea of what might be found near the reserve. The Inventory was distributed to all First Nations and to the Department's regional offices right after the Inventory was completed. If this Inventory is no longer available, ISC HQ still keeps the data, and it can be made available to any FN that requests it.

Note that this Inventory is not a comprehensive source of data, and only applies as noted above in bold.

2. There are two sites that may be helpful at National Resources Canada (NRCan):
<https://www.nrcan.gc.ca/maps-tools-and-publications/maps/earth-sciences-maps/10789>

Geological Map of Canada: GEOSCAN <https://www.nrcan.gc.ca/earth-sciences/resources/publications>

3. Provincial ministries websites, and their regional district offices, e.g., BC Ministry of Energy and Mines, BC Geological Survey:
<https://www2.gov.bc.ca/gov/content/industry/mineral-exploration-mining/british-columbia-geological-survey/publications/geosciencemaps?keyword=geoscience>

Exception

Generally, Quebec and the Maritime provinces retain mineral rights. However, each ATR in these provinces must be assessed on its own merits. There may be cases in which acquisition of sub-surface rights can proceed.

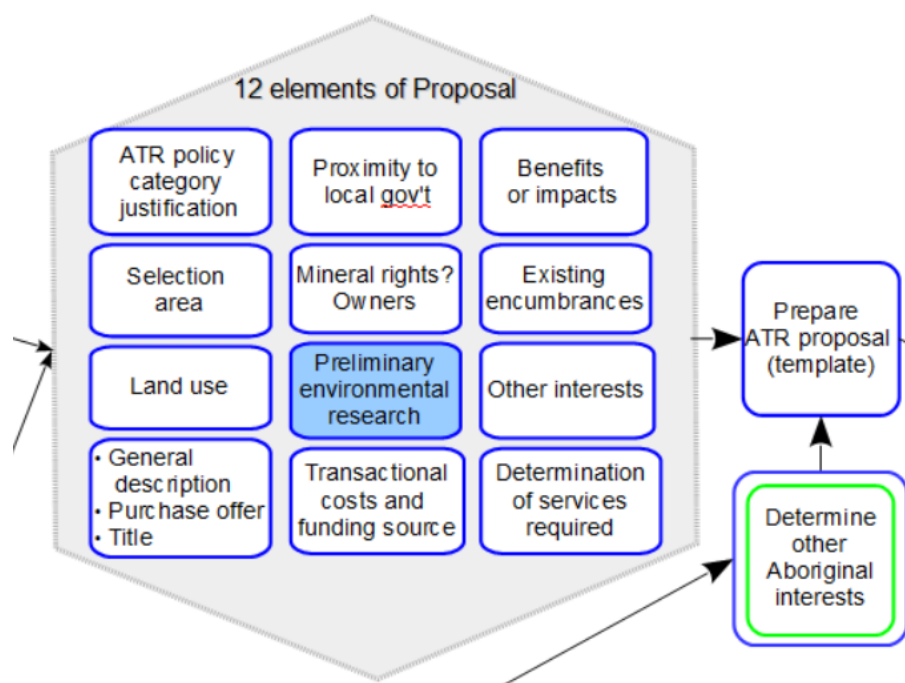
Oil and Gas

With respect to oil and gas issues, it may be necessary to obtain the expertise of a qualified geologist and legal counsel with expertise in this area.

Some things to think about...

- Will mineral rights be a part of the package?
- Has mineral potential been researched?
- Has oil and gas potential been researched?
- Do geological maps exist for the area in question?
- Who controls the mineral rights (e.g., province, feds, private/free-holders, IOGC, subject to Alberta's Natural Resources Transfer Agreement)?
- Have the owners of any mineral rights been identified?

Preliminary Environmental Research



Environmental History

Knowing the environmental condition of your ATR land is critically important. There may be environmental complications that can slow or even scuttle the ATR process, so reviewing the lands on your own then retaining professionals to assess it is a must. Ensure that you are aware of past uses of the land and do an on-the-ground review: walk the land extensively, take photos, and consult the owner regarding use and condition.

The next step is to consult locally to get further knowledge of the land's history: check with the local population, review library records, and do a search of the titles office. How your First Nation intends to use the land will determine the sort of environmental assessment necessary and the level of remediation required. For instance, land intended for residential use must be assessed and cleaned to a higher standard than a parcel intended for industrial use. **AT THIS STAGE, IDENTIFICATION OF THE ISSUES ARE ONLY BEING NOTED**; resolution of these issues will be addressed in Phase 3 of the process. In any event, an Environmental Site Assessment (ESA) will be required during Phase 3 of the ATR process. The ESA can be conducted earlier, but you must assess whether it is advisable to do so. If the ESA will review complex environmental conditions, it is likely to take more time, (thereby delaying your ATR /RC submission) and is best left to Phase 3. Also note that, if you are purchasing land and are uncertain about its environmental condition, an ESA prior to purchase is highly recommended. Unidentified hazards could become your liability and could make the land unusable.

To save costs and increase efficiency, you may wish to proceed with an Enhanced Phase 1 ESA. This approach involves the inclusion of Phase 2 work in the Phase 1 investigation. For instance, if during your walkabout you see staining on the site, the Phase 1 can be “enhanced” by adding sampling to the investigation, work that is usually done in Phase 2. By doing that work now, you avoid the costs and delays involved in re-mobilization.

Environmental Site Assessment (ESA) is an analysis of a property proposed for ATR to determine the level of soil contamination, if any, resulting from past and present use. It also reviews on- and off-site activities that may have the potential to affect the property’s environmental quality, especially as it relates to the health and safety of occupants/residents. Remediation, if required, can range from minor to complex, high-cost projects.

Good Environmental Practices

Assessment of the environmental condition of the proposed reserve land is necessary to ensure the health and safety of First Nation members who will reside on and/or use this land.

When water boundaries are involved...

...things always get more complicated! For example, an island purchased by a First Nation that is situated in the St. Lawrence Seaway is likely to involve water navigation issues; or land on a lake which has been acquired for industrial purposes could involve adverse discharge into the water. It is important to be aware of such complications, because they can determine courses of action you must take, and may even decide whether your proposal should proceed.

The Department of Fisheries and Oceans, the Department of Transportation, and provincial ministries, will almost certainly become involved if there are any water boundaries to the parcel of land you propose for ATR.

Some things to think about...

- Has a physical site visit been undertaken?
- Have any interviews been done with previous owners?
- Has a local historian been interviewed?
- Is there any previous environmental study available?
- Has an environmental consultant been identified or engaged?
- Are there any FN environmental standards involved?
- Have you checked with regional municipalities regarding contamination?
- Is there evidence of forest pests?
- Is soil and ground-water sampling required in support of the planned project?
- Are there any habitat issues (where a project is planned)?
- Is the Ministry of Natural Resources involved?
- Have environmental issues been identified?
- Is future use of the land compatible with past use?
- Is there a previously unidentified burial ground?

On the following pages, two sample forms are provided that may be useful in your investigations into the environmental condition of your ATR land.

Vendor Environmental Checklist

Best Practice

Have the vendor of the land complete an environmental checklist. Of course, the buyer should not rely on this checklist exclusively, but it may provide useful information to the FN and its own environmental consultation.

Draft Environmental Checklist

To the best of your knowledge are you aware of any of the following substances ever being present on the property within the past 40 years?

YES NO

☐ ☐ Urea formaldehyde (also called UFFI) – commonly used as insulation material in the past.

☐ ☐ Asbestos: Commonly used as pipe insulation

☐ ☐ PCBs: present in most fluorescent light ballasts that are more than 5 years old

☐ ☐ Noxious weeds: e.g., Leafy Spurge, Scentless Chamomile, Nodding Thistle, etc.

☐ ☐ Noxious pests

To the best of your knowledge, are you aware of any of the following facilities or activities on your property?

YES NO

☐ ☐ Disposal sites or garbage pits – may contain old machinery, vehicles, pesticide containers, used batteries, etc.

☐ ☐ Fencepost treatment areas (commonly called bluestone pits or tanks)

☐ ☐ Spills: this includes any chemical, fuel, used oil, other types of lubricants, or any other substance which could impair the quality of the environment

☐ ☐ Underground storage tanks, such as fuel tanks, septic tanks, cisterns

☐ ☐ Water sources (abandoned or functional) shallow or deep wells

Approximately how many years have you owned your property: _____

Previous vendor's name: _____

Vendor's signature: _____

Date: _____ Vendor's Telephone: () -

Environmental Investigation Letter

Best Practice

Have the lawyer or real estate agent write a letter of inquiry regarding environmental issues to the neighbouring municipality regarding the parcel proposed for the ATR. Here is a sample of such a letter.

Date:

City Manager – City of _____, Province of _____

Land Parcel Description:

My client is seeking your assistance in determining if the above noted site or any adjacent properties have ever been the subject of any environmental problems.

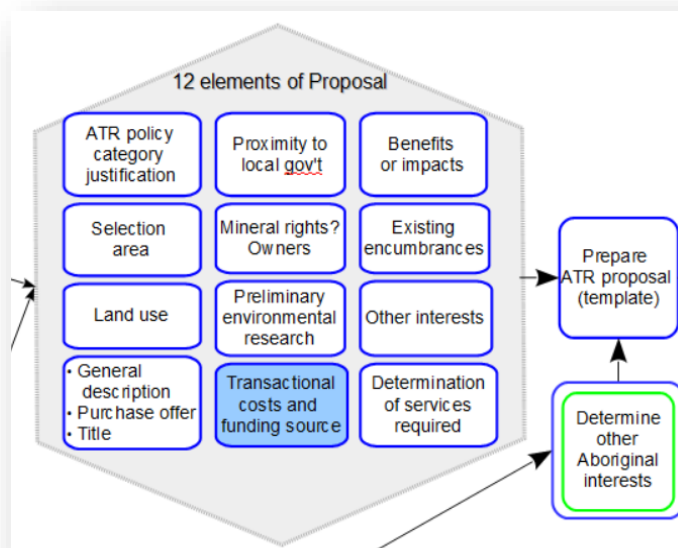
We would be interested in obtaining any information in regard to the following:

- Contamination or possible contamination (i.e., chemical/petroleum spills).
- PCBs.
- Location and status of any fuel tanks.
- Garbage related problems and/or landfills.
- Any sewage related problems, etc.

A written response by fax or mail within 30 days would be greatly appreciated. I would like to thank you for your anticipated cooperation in this matter. If you have any questions or require further information, please call me at: _____

Yours truly,

Budget for Anticipated Costs



At this stage, the task is to identify the costs that will be incurred as part of the ATR. Actual expenditure of the funds will await Phase 3. Funding for an ATR may be provided under a Claim Settlement Agreement. When an ATR is not pursuant to a funded claim settlement, the First Nation is usually responsible for costs and so must identify funding sources. This identification must be included in the submission to ISC.

It should be noted that ISC is not obligated to fund ATR costs, but neither is it prevented from providing such funding.

In preparing a budget for the ATR proposal, both short- and long-term costs must be anticipated. These might include, but are not limited to:

- cost of the land and associated transactional costs, such as the title search, land transfer, and legal expenses (note that the cost of the land can be a major factor, especially in urban areas),
- surveys,
- ESA or ESA updates (since ESAs stale-date after five years)
- remediation, if required,
- Engagement with local governments,
- infrastructure needs, such as schools, roads, and health facilities.
- ATR administration,
- legal counsel,

- tax loss compensation (which can be a one-time payment or payments over several years),
- third-party interests (note that resolution of third-party interests may result in costs to satisfy conditions stipulated by those interests, e.g., a buy-out or some other form of compensation).

All financial implications, both short-term and long-term, must be addressed.

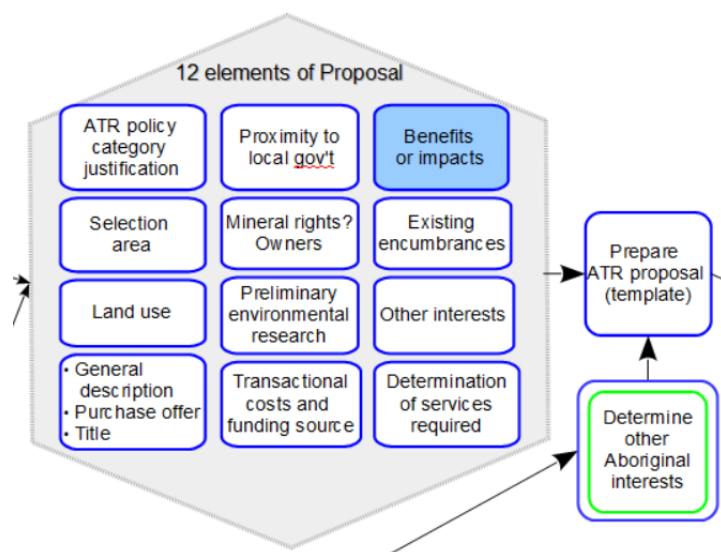
Some things to think about...

- Have you kept in mind that spending at this stage should be kept to a minimum?
- Has a budget for the project been established?
- Has a source of funds for the land purchase been identified?
- Is funding sufficient?
- Has funding for legal counsel been secured or identified?
- Has a justification been provided to ISC to support your funding request?
- What is the timeline for disbursement of band funds?
- Have funding milestones been established?
- Have necessary Band Council approvals been obtained?
- Has the FN Finance Officer been fully informed/consulted?
- What improvements to the land are required for its proposed use?
- If improvements are required, will a business plan need to be developed?
- If there is a project planned for the land, what capital budget is required?
- Has a financial feasibility study been completed by ISC, if needed?
- Does your proposal require/include a detailed cost analysis?

Money Matters

Most steps in the ATR Process have financial implications. Consider: What is this going to cost? Who is going to pay for it? Who stands to gain something, like the use of the land? Who stands to lose something, like a municipality whose tax revenues are discontinued? When will the money be needed? Will the community see long- term financial benefits from this initiative?

Determining Impacts and Benefits of ATR



A well-thought-out Impacts and Benefits Assessment will be a major factor in securing departmental support for your proposal. This assessment is particularly important when submitting a Community Addition (Category 2) proposal. **The benefits, which should include how the ATR proposal can benefit your First Nation as well as the surrounding areas, is not measured solely in financial terms; social advantages are also assessed.** In preparing your Impacts and Benefits Assessment, address these criteria that ISC will use in their assessment:

- fulfillment of legal obligations or agreements of Canada,
- implementation of reserve creation proposals related to Specific Claims Tribunal decisions,
- potential economic benefits of the reserve creation to residents of the surrounding area,
- costs related to the provision of services to the First Nation and the local government (where the First Nation is the service provider)
- revenue adjustments resulting from a change in tax status,
- financial implications for Canada,
- existing land use plans of First Nation, provincial, territorial, regional or local government,
- impact or benefit to regional infrastructure management,
- impact or benefit to regional traffic or transit management plans,

- j) impact of reserve creation on protected or environmentally sensitive areas (such as national parks, Agricultural Land Reserves, or greenbelt lands), and
- k) impact of reserve creation on culturally sensitive areas (such as First Nations burial, archaeological or ceremonial sites).

No one item will determine whether the proposal can proceed. Rather, the combined/cumulative result of all the items must demonstrate that the positives outweigh the negatives. Further, the proposal must show that the existing reserve lands are either not suitable or insufficient for the intended purpose, and that there is indeed a community need for this additional land. Similarly, if the proposal is for economic development, the tax advantages must not be the sole benefit identified. The broader value that the community will experience, as may be measured against the criteria noted above, must outweigh any potential tax advantage resulting from the ATR.

In documenting the impacts and benefits of your proposal, address each criterion listed above to show how this ATR will have a positive impact on your community. Where possible, also identify the advantages to be experienced by neighbouring communities. The strength of your Impact/Benefit Analysis will be an important factor in achieving departmental support for your proposal.

Best Practice

Keeping in mind that tax advantage alone is insufficient to gain support for an ATR, it is a good idea to consult the ISC regional representative on what other elements of your ATR can constitute a benefit.

Did you know that...

In Manitoba, 21 First Nations have access to the Treaty Land Entitlement Committee (TLEC) of Manitoba Inc. to help with their ATR initiatives? In the past 20 years, more than 500 parcels have been added to reserves, constituting over 850,000 acres of land. The First Nations have addressed over 1000 third-party interests. With an objective of another 150,000 acres per year, the TLEC ATR specialists use sophisticated database technology to help meet their targets. Despite their successes, they still face challenges to get more ATRs completed more quickly. They can be contacted at 1-204-943-TLEC.

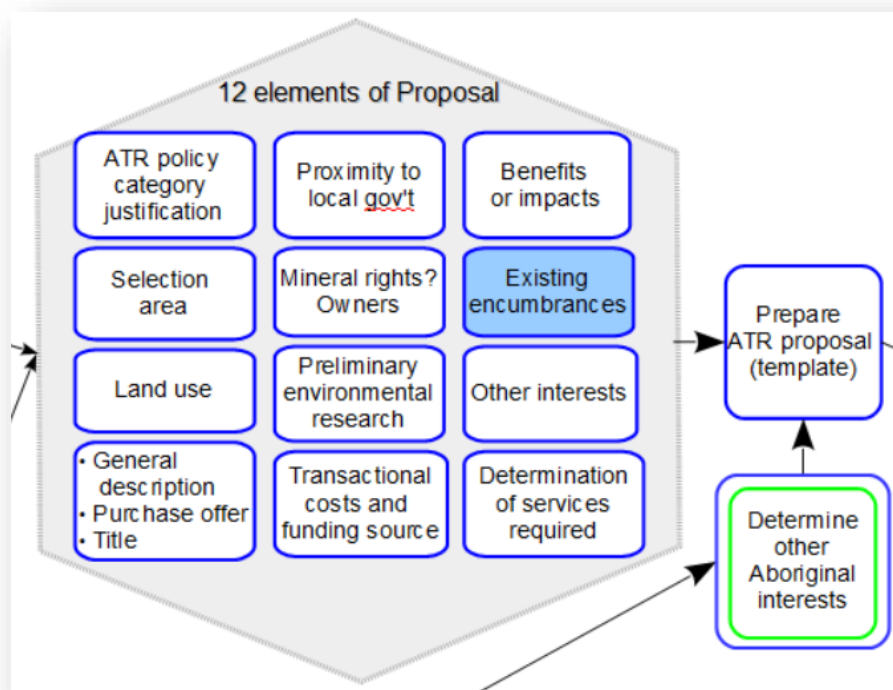
Some things to think about...

- Have all impacts and benefits to the FN been documented?
- Has the FN cultural use been documented?
- Have all impacts and benefits to the surrounding communities been documented?
- Has a SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis been undertaken?

Cowichan ATRs

Although the Cowichan Tribes are the single largest First Nation in British Columbia, they have a relatively small per capita land base. While expanding their land through Treaty negotiations, they addressed immediate needs by acquiring two parcels of land which they proposed for ATR outside the negotiations process. These ATRs took between two and five years.

Existing Encumbrances



The First Nation must include in its reserve creation proposal the results of investigations identifying existing encumbrances or charges (third-party interests or rights, both registered and unregistered, such as leases, licenses, permits, easements, rights of way, etc.). This information can generally be identified through a title search, a provincial or territorial canvass, or a site visit. Be sure to provide any supporting documentation.

Canada **must** receive good title to the proposed land, and DOJ alone determines whether title is such that Canada can accept a transfer of the land. Therefore, following issuance of the Letter of Support, all title issues must be resolved. This resolution is achieved by extinguishing, minimizing, or replacing existing encumbrances or charges to the satisfaction of Justice Canada.

In certain circumstances, land may be added to reserve subject to an encumbrance or charge. If you would like to proceed on this basis, consult with the ISC regional office.

A Note on Good/Clear Title

IMPORTANT: The Department of Justice has to be satisfied with title before land can be acquired for addition to reserve.

Specifically, subsection 8(1) of the *Regulations to the Federal Real Property and Federal Immovables Act* (FRPFIA) provides that an acquisition must not be completed until good title satisfactory to the Minister of Justice is obtained through that Minister.

Good Title has not been defined by any case law, but it is commonly understood as title that would not expose a purchaser to litigation or hazard or otherwise affect peaceful possession or market value.

Clear Title is defined in *Black's Law Dictionary* (9th ed.) as, "A title free from any encumbrances, burdens, or other limitations."

In other words, "Good Title" means title that won't adversely affect the purchaser, while "Clear Title" means title that is free of anything that would devalue the land by legally restricting or burdening it.

The typical government agreement of purchase and sale defines good title as one that includes clear title (e.g., the vendor will transfer good title in and to the property, free and clear of all restrictions, reservations, encroachments, easements, tenancies and encumbrances).

By this wording, the Department of Justice's review of good title expands to include ensuring that the vendor has clear title to the property, or that it is subject only to the encumbrances that the Minister of ISC has agreed to accept.

The requirement for the Minister of Justice, through delegated authorities, to certify good title requires a comprehensive title search and legal opinion. The title search includes off-title searches which involves writing to various utilities and agencies to confirm that there are no issues with the property. The off-title searches can take several months to complete and can generate issues that require further research and negotiation.

Such title work used to be a standard part of all real estate purchases, but it has largely been replaced in recent years by the use of title insurance, which is less expensive and less time-consuming. Governments, however, do not use title insurance, as the Crown is self-insuring. Therefore, title insurance does not meet the requirements of the *FRPFIA*. More importantly, title insurance does not provide a useful remedy in the case of reserve creation, since financial compensation will not generally solve the problems that can arise from a title issue once land has been set apart as reserve.

Accordingly, if a proper title search and opinion is obtained at the time land intended for ATR is originally acquired, it should reduce the amount of due diligence that must be undertaken by the Department of Justice, and any title issue can potentially be addressed proactively at a time when the original vendor is still in the picture. The result may be a more efficient processing of an ATR application.

To secure good/clear title:

It is best to hire a lawyer to conduct a title search at the time of acquisition!

Don't rely simply on title insurance – you will know much more about the property you are acquiring with the detail provided in the search, which will assist with the identification of interests you may have to address as part of the ATR process.

This is also likely to speed-up the ATR process. Provide a copy of your title search to the ISC regional office, who can provide it to DOJ. DOJ won't have to spend months hiring its own agent who then has to conduct the search.

A Note on Registration

There are problems that arise when First Nations attempt to hold title to land in their own name. Under provincial Land Titles Acts, there can be restrictions to the effect that only corporations, individuals and the Crown can be recognized as owners of real estate. For example, in Ontario, Section 67 of the Land Title Act states:

Subject to section 64, no person, other than a corporation, may be shown as the registered owner of land or a charge unless the person is described by,

- a) if the person has a single name, but no surname or first given name, the person's single name; or
- b) if the person does not have a single name, the person's surname and first given name in full, followed by another given name, if any, in full. 2017, c. 20, Sched. 9, s. 7.

Case law to date has interpreted "persons" as being natural persons and as not including First Nations in the context of the legal ability to hold land. It is possible that the law may change at some point. Judicial challenge has resulted in broader interpretations of "persons" in other contexts.

This is a sensitive issue with many Indigenous communities who resist the notion that they do not have full legal capacity.

In some cases, First Nations have been able to register land in their own name. This is because, using Ontario again as an example, the electronic registration system does not verify the name of the transferee prior to registration. However, once the error comes to light, the only way to deal with the property, according to departmental authorities, is to obtain a court order establishing what legal entity should hold title to the property. The property is then vested in

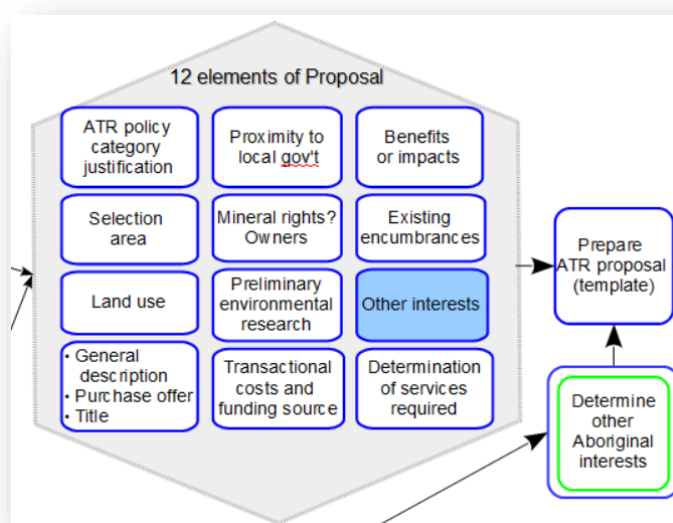
that legal entity pursuant to a vesting order. Because of the lack of capacity to hold the land, the First Nation similarly has no capacity to transfer the land to the federal Crown for addition to reserve.

The addition to reserve process will be complicated and delayed if land is acquired in the name of any entity apart from a person or corporation. Accordingly, another method of holding title to land acquired for addition to reserve must be used, such as through a trust, corporation, or limited partnership.

SO:

Ensure you know the registration requirements of your provincial Land Titles Office to avoid problems that could interfere with and delay your ATR process.

Other Interests – Third Party Interests/Rights



The presence of third-party interests (TPI)/rights can be determined in a variety of ways. A simple walk-through of the property, for instance, can immediately disclose the existence of an interest. Utility lines, pathways, gates, vacant cabins, and billboards will all be detectable at a site visit. But seeing the interest does not necessarily tell you who holds it. That will take further research. An interest can exist even though you do not see it, which is why a visit to the site is insufficient. This leads to another, more reliable way of knowing about third-party interests on the property: a title search. Hiring a good lawyer to do a thorough title search of the land is the best way to discover the existence of interests, both seen and unseen, and who holds them. Remember, a good title search will not only identify what interests you will address as part of the ATR process; it also has the capacity to save time by avoiding the need for DOJ to do its own title search, which can take months.

Interests - Registered or Not?

Third party interests or rights may or may not be registered. Where the interest/right pre-dates the registration process, registration may have never occurred. But whether it is registered or unregistered, the interest/right must be addressed. Agreements and documentation must be provided showing how these rights are to be addressed. But remember, because you are still in Phase 1, you only need to be identifying the interest/right, not resolving it. Resolution will come in Phase 3.

Utilities

Utilities such as hydro lines, telephone lines, and gas pipelines are authorized on reserve either by an *Indian Act* permit or easement. If the interest is granted by permit, it is probable that the utility lines are for distribution of services to structures on that land. However, if the utility lines are for transmission, i.e., they just cross the land to service another area, then the interest is granted either by an easement or a permit. Note that an easement is a higher form of interest than a permit – where possible, a permit should be issued.

Other FN Members

If there are FN members who either own a portion of the land or have rights associated with the land, the FN must deal with these issues and resolve them before reserve land can be created.

Special Interests

Land can be assigned a special status that may necessitate resolution in the ATR process. For instance, in British Columbia, some lands are designated “agricultural reserve” to ensure sufficient lands for agricultural purposes in the province. Lands in any province can be designated as green belts or conservation areas. If the FN proposes such lands for ATR, but intends to use them for purposes contrary to their designated status, the potential for opposition and conflict arises.

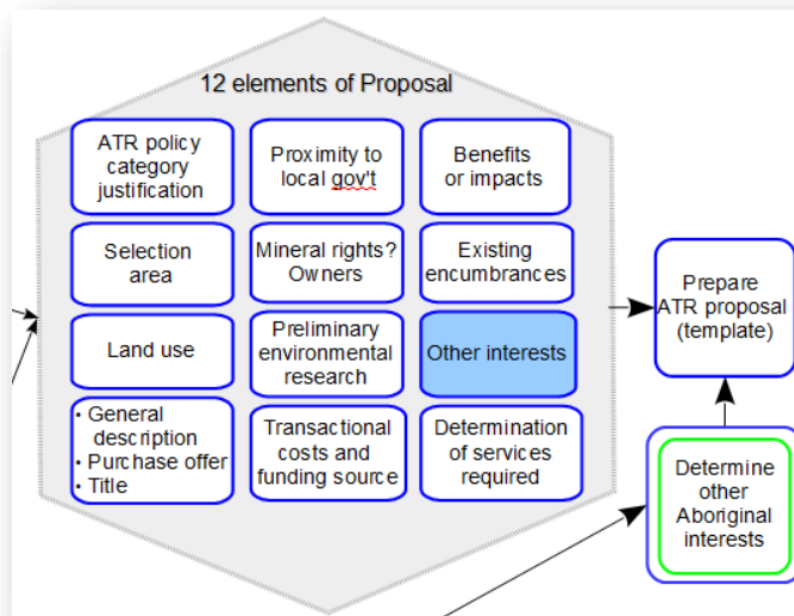
As stated earlier, “walking the land” can be helpful in determining whether interests exist, including special interests. In one case, a First Nation found that people in the area had been using the land proposed for ATR as an overflow parking lot in order to access a nearby beach; sorting out the access rights delayed the ATR for over a year. However, the site visit identified the issue and ensured there were no surprises.

Some things to think about...

- Are there any utility interests?
- Are there any railway or other transportation interests identified?
- Are there any leasehold interests?

- Are there any telecom interests?
- Are there any permits or easements?
- Are there any right-of-way agreements/issues?
- Are there any water issues (e.g., drains, wells)?
- Are there any water bodies involved?
- Is there access through the land?
- Are there any air space considerations?
- Are there any forestry considerations?
- Have sub-surface rights been identified or clarified?
- Do any of the First Nation members have any interests on the land?
- Do any other FNs or Aboriginal groups have interests on the land?

Other Interests – Provincial Governments, Federal Departments



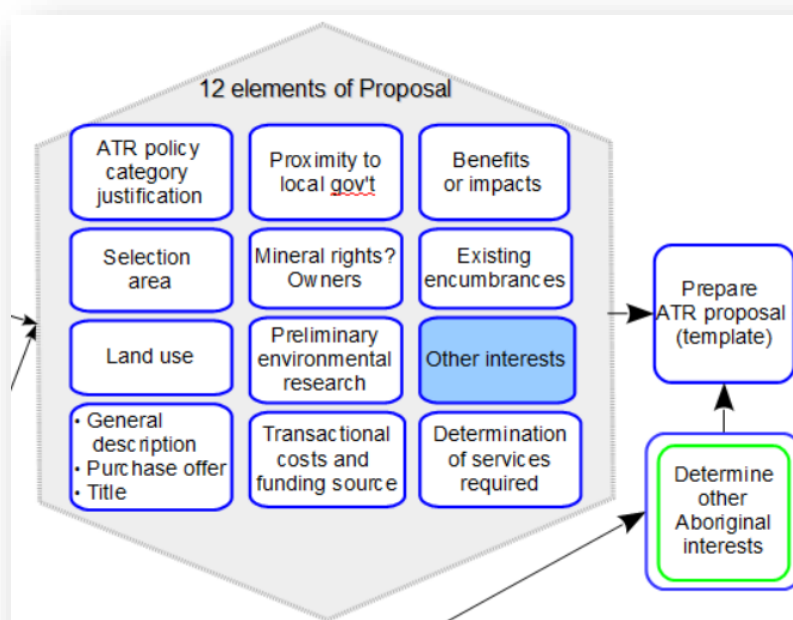
The FN should begin enquiries with the province and any relevant federal departments early in the process to learn if there are interests or encumbrances that might affect the ATR. At this stage, because you are still in Phase 1, such contact is only part of the research to gather information and to provide a heads-up that an ATR proposal is being considered. All pertinent information resulting from this contact must be documented in the proposal.

NOTE

The province and the municipality have NO VETO over the ATR proposal. However, their reasonable concerns must be addressed.

Some things to think about...

- Has provincial contract been established?
- Are there any provincial policies to be aware of?
- If there is water, is it under Federal or Provincial jurisdiction?
- Have you researched federal and provincial water legislation?
- Have there been any topographical changes (e.g., drought, erosion)?

Other Interests – Aboriginal and Treaty Rights

It is necessary to determine whether any Aboriginal or Treaty rights may be affected by an ATR. First Nations, Métis, or Inuit peoples may have overlapping rights or interests in the property, or these groups may assert such rights or interests. Should there be any potential objections, it is important to identify these early in the process to allow as much time as possible to reach a resolution. Note that a claim of adverse impact on Aboriginal and Treaty rights cannot be a general assertion. It must involve specifics of how long the land was used, what it was used for, what rights are affected, etc. Where it is concluded that adverse impact exists, accommodation

must be made. For an ATR, accommodation could include working out an arrangement with the affected party, severing some land from the proposal, or even stopping the ATR altogether.

Best Practice

While ISC is responsible for these consultations and any accommodation, First Nations are best positioned to manage the information flow and relationship management among neighbouring Indigenous groups. Tribal/Treaty Councils and territorial organizations can assist with this important communication.

The First Nation may want to begin its own discussions with other groups who may have overlapping interests or rights. In this case, keep ISC informed of these discussions so that all groups are kept in the loop. Also, note that ISC values communication between the First Nation and the party asserting a claim of adverse impact. The departments would rather see the issues ironed-out between those who know the relationship best.

Information is provided below on a web-based tool that can assist you in identifying other Aboriginal rights and interest.

Aboriginal and Treaty Rights Information System (ATRIS)

The Aboriginal and Treaty Rights Information System (ATRIS) is a web-based information system intended to map out the location of Aboriginal communities and display information pertaining to their potential or established Aboriginal or Treaty rights. Users can search this information.

ATRIS provides users with information on treaties or agreements and claims processes and links it to a geographic location or an Aboriginal group on a map, increasing the accessibility of up-to-date, site-specific information on the rights of Aboriginal groups.

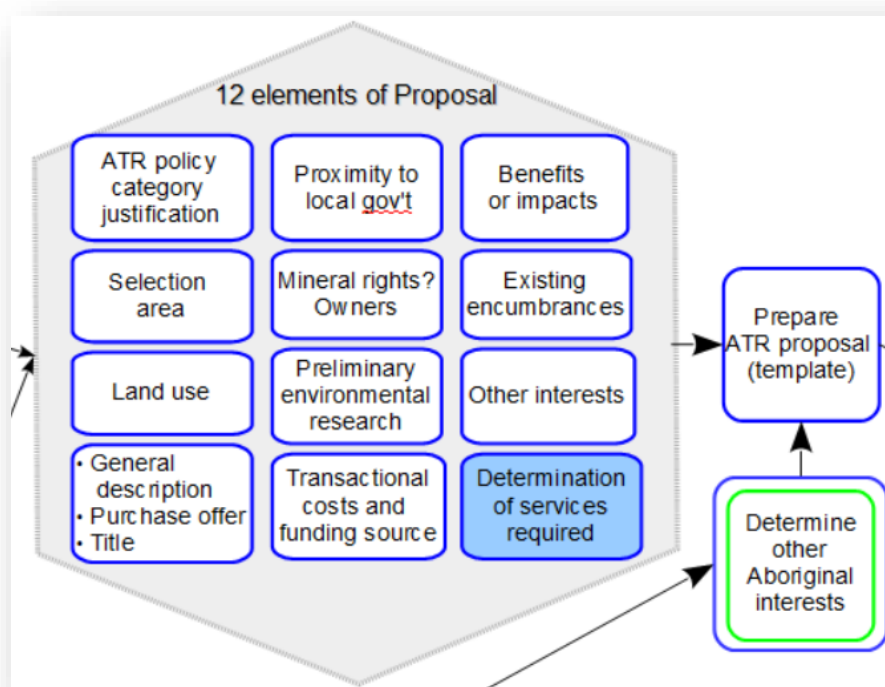
ATRIS provides access to information that will help governments, industry and other interested parties to determine which Aboriginal groups they may need to consult about their proposed activities across Canada. Canada has a legal duty to consult First Nations, Métis and Inuit groups and, where appropriate, accommodate when the Crown contemplates conduct that may adversely affect their established or potential Aboriginal or Treaty rights.

The development of a repository of information on established or potential Aboriginal and Treaty rights was a key commitment under the Government of Canada's 2007 Action Plan on Aboriginal Consultation and Accommodation.

ATRIS is a dynamic and evolving system. As further information on Aboriginal rights in Canada becomes available through consultations with Aboriginal communities, court decisions or other means, ATRIS will be updated to reflect and enhance public access to this important data. Indigenous and Northern Affairs Canada invites users to participate in the development of this system by sharing their feedback using the feedback form available within ATRIS.

Go to this link to see if there are any upcoming webinars that provide an overview of ATRIS and its key functions to public users: http://sidait-atris.aadnc-aandc.gc.ca/atris_online/home-accueil.aspx

Service Requirements



Obtain a copy of the local government's Official Community Plan (OCP) at the start of your ATR process. The OCP will indicate how the municipality is using, or planning to use, the land in the area of your ATR. This use is important to know, especially for servicing you may require. The OCP will provide information on the availability of fire protection, policing, road maintenance, water provision, and other municipal services that may or may not be accessible to the land you have selected for ATR. This information will inform whether you should acquire the subject parcel at all, or it may allow you to plan for servicing either from the municipality or your own resources.

A review of the OCP will let you know whether your intended use of the ATR land harmonizes or conflicts with the municipality's land use. If your proposed use runs contrary to the use outlined in the OCP, you can expect opposition to your ATR from official groups and/or private

lobby groups. On the other hand, if you can find opportunities to harmonize the use, and indicate advantages that may accrue to the municipality once the land is added, opposition will turn to support. In any event, both your short- and long-term plans for the land should be considered vis-à-vis the OCP. It is important to consider your plans and those of the municipality on an equal footing: municipal objection on the grounds of conflicting land use could well be considered a legitimate objection that needs to be addressed by the First Nation. Consulting the OCP and municipal staff will help you better assess how to make your ATR work.

Best Practice

Since First Nations communities and non-First Nations communities often live side by side, a “good neighbour” approach is strongly recommended. Look for areas of mutual interest and benefit and talk solutions where disagreement exists.

ATR proposals often share boundaries with other jurisdictions, and they can create adjustments to those jurisdictions’ boundaries. An early and healthy dialogue with the public, affected individuals, and interest groups, led by the First Nation, can reduce uncertainty, encourage awareness of the First Nation’s intent, and create the conditions in which solutions are reached.

Consultations with the local government and involved parties will foster good will. And while it is true **that the local government does NOT have a veto over an ATR**, their reasonable concerns must be addressed to allow the ATR to move forward.

Some things to think about...

- Have municipal contacts been identified?
- How will initial contact with municipalities be conducted?
- Have meetings been scheduled?
- What role will the Chief play?
- Has an ongoing relationship with the municipality been established?
- Has a relationship been built with the municipal administrators?
- Is there a need to educate the municipality about the FN’s interests?
- Have difficult issues been anticipated?
- Does the neighbouring municipality have plans for the land?
- Does community research show support for the ATR?

Draft Notice to Municipality

As part of the information gathering for the proposal, the First Nation may want to solicit input from the local municipality as early as practical. Here is a sample letter:

Date:

City Manager – City of _____, Province of _____

Re: XXXXX First Nation – Land Selection and proposed ART of

Land Description:

The XXXXX First Nation (has acquired/intends to acquire) the above noted land for the purpose of adding them to reserve.

Please provide in writing information regarding any interest your municipality may have in these lands, or any concerns you may have with the addition of these lands to reserve status.

I thank you for your cooperation in this matter.

If you have any questions or require further information, please call me at (xxx) xxx-xxxx.

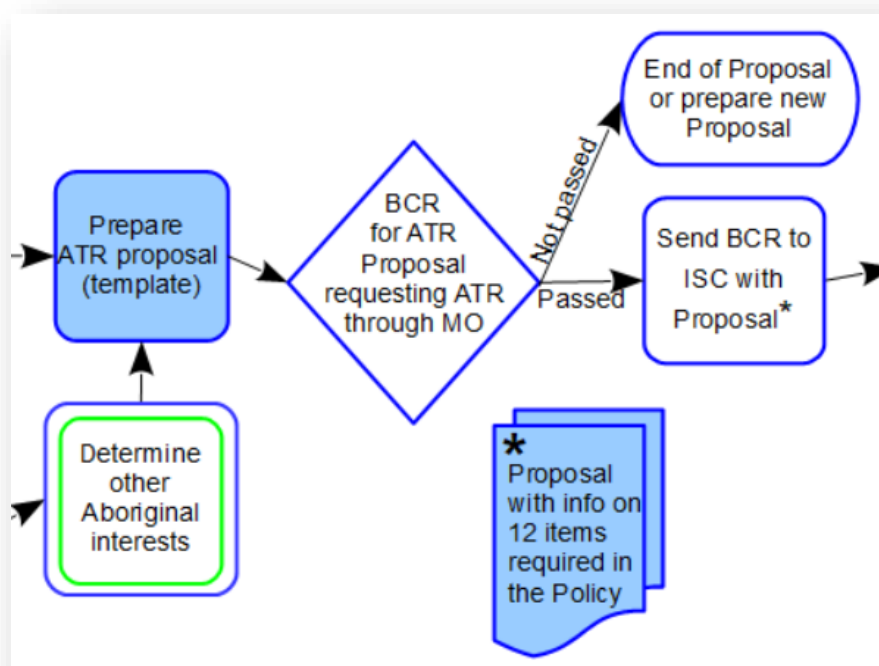
Your truly,

ATR Manager

Best Practice

Throughout this process, keep detailed records of your contact with the municipality and any related parties, including phone calls, emails and text messages.

Preparing the BCR Documents



Initial Documents - NATS

IMPORTANT: As of 2023, all ATR submissions must be made through the National Addition to Reserve Tracking System (NATS). NALMA offers training in NATS and can also provide you with a training manual.

NATS makes it possible to:

- Manage an ATR submission in a secure and protected online system as per the Policy on Government Security.
- Submit ATR proposals.
- Track the status of proposals online via the portal.
- Review and assess the proposals by the ISC Regional Office (RO).

- Issue a Letter of Support or a Letter of Refusal using templates by the RO.
- Exchange, track and save emails between RO and other stakeholders.
- Create and work on joint work plans online (between the FN and the RO).
- Track ATR proposal reviews, assessments from HQ as well as a minister approval.

The System is structured in 11 steps:

- Step 1 – General
- Step 2 – Contact Information
- Step 3 – Reserve Creation Policy
- Step 4 – Special Circumstances
- Step 5 – Project Overview
- Step 6 – Property Information
- Step 7 – Land Use, Impacts and Benefits
- Step 8 – Environmental Information
- Step 9 – Financial Implications
- Step 10 – Consultation
- Step 11 – Supporting Documents

NATS assists with preparing a complete submission by walking the user through a series of questions. It also identifies issues that must be completed, thereby providing a guide through the four phases of the ATR process.

For more information on how to use NATS, you may:

- Take NALMA's training,
- Consult the NATS Training Manual, and
- Consult with your ISC regional officer.

Once all the elements of the proposal have been identified, a complete proposal must be compiled, and it must be uploaded with the BCR into NATS. Some of the information contained in this proposal will be required during discussions at the Band Council meeting when the BCR is expected to be brought to a vote and passed by Chief and Council. A list of documents is provided on the next page. Discuss it with the ISC Regional Officer.

Putting these materials together in a well-thought-out package is an important step. Think of it as building a case for your ATR.

Keep in mind that, during Phase 2, this package will be reviewed by a number of people at ISC and the DOJ. These officials may not know you or your community, so the only factor they will rely on in assessing your proposal is how well the proposal is structured. Furthermore, if the proposal is not prepared with care and attention to detail, there is a very good chance that you will be asked to do more work on the submission. This causes you not only more work, but more time as well. The ATR process is long enough without the unnecessary addition of weeks or months that an incomplete submission can cause. Gather and organize your supporting material to the best of your ability and make the first impression a compelling, positive one.

In preparing this documentation, the name and number of the existing reserve must be clearly indicated. In the case of a new reserve, include the proposed name and number, keeping in mind that the name should be in accordance with the Geographical Names Board of Canada.

Best Practice

Consult with your ISC regional office regarding the documentation you are uploading into NATS. This will assist in avoiding an incomplete submission, which will save time and frustration.

BCR and Supporting Documents for Uploading into NATS

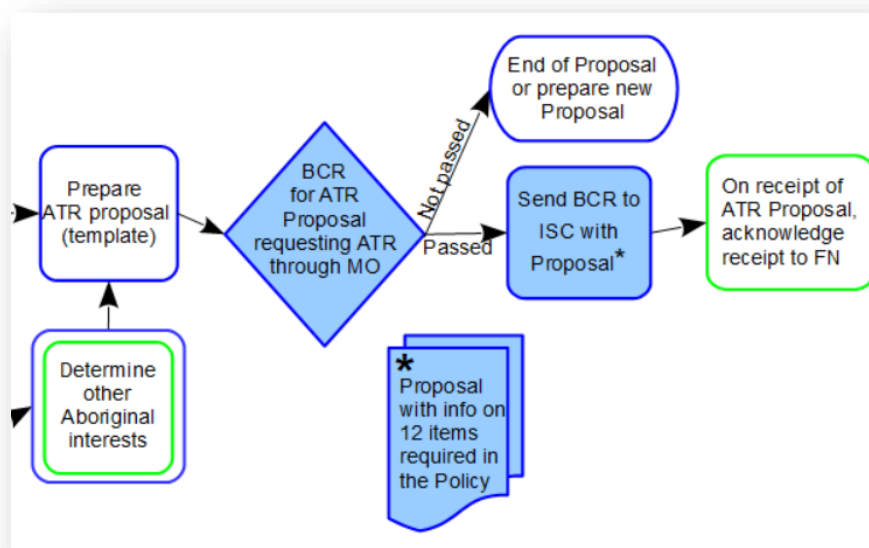
1. Information sheet naming the reserve and its location, with a map or sketch of the location of the ATR in proximity to the reserve
2. Policy category and justification
 - If Legal Obligation: agreements with applicable specifics
 - If Community Addition proposal: justification showing the demographic need
 - If Tribunal Decision: use the case number
3. Current and proposed land use
4. Offer(s) of purchase, if applicable
 - Legal title/deed showing name of registered owner(s)
5. Proximity of proposed land to local government
6. If mineral rights to be included, name of registered owner(s) shown on deed
7. Environmental information (history of use, current and intended use)
8. Transaction costs (and potential funding sources)
9. Impacts and benefits of proposed land use

10. List of existing encumbrances (identified by title search, canvass, site visit)
11. Any known interests (prov., terr., Aboriginal, other)
12. Any services required

Some things to think about...

- Does ISC have templates you can use?
- Does the BCR wording comply with ISC and DOJ requirements?
- Has the draft BCR content been reviewed internally and by ISC?
- Has the BCR been scheduled for a Council meeting, and Council support secured?
- Have known issues been addressed by the BCR or by supporting documentation?
- Has the BCR been passed?
- Has a complete supporting package with cover letter been prepared for ISC?
- Have the BCR and other documents been sent to ISC?
- Are you familiar with NATS and the process for uploading the documents into the system?

Pass BCR for ATR Proposal



A Band Council Resolution (BCR) is required for all ATR Proposals.

The BCR is the means by which a formal proposal is made to either add land to an existing reserve or create a new reserve. In either case, the name and number of the current reserve

must be identified in the BCR. The motion must be approved by a quorum of the Council. In order to be passed, the BCR must contain the signatures of a quorum of Council members. Prepare two copies of the BCR: one for the FN and one for ISC.

One original of the BCR is uploaded into NATS, along with all supporting documentation. Note that these documents must be submitted to the ISC Regional office in which the majority of the FN's land is located, regardless of the selection area.

Once the submission is finalized in NATS, Phase 1 of the process is complete and the ISC Regional office takes lead responsibility for advancing the ATR proposal. Your proposal has now entered Phase 2 of the ATR process.

The Need for Supporting Documentation

Your supporting documentation must be included to finalize your submission. Be sure to review your package to ensure that where an appendix or attachment is referred to, your package includes those appendices or attachments.

Band Council Resolution - Sample Wording

Before you draft your BCR, you should talk with your regional ISC representative to determine if there is specific wording or information the region requires.

In addition, a draft of your BCR should be checked by your lawyer and your ISC representative ahead of time to ensure that you only have to submit your BCR once, not have it returned for amendments.

Band Council Resolution

[First Nation name]

(Where the land has been acquired in fee simple:)

WHEREAS the XX First Nation has acquired land that it wishes to have added to reserve,

(Where the land is to be transferred from a party to Canada, pursuant to a claim settlement or other form of agreement:)

WHEREAS, pursuant to (name of claim settlement or agreement), land is to be transferred to Canada for the purpose of adding it to (reserve name),

Whereas the parcel of land is (identify location of parcel in relation to existing reserve),

Whereas the parcel of land is required for (state proposed use of land and, if necessary, briefly explain how existing reserve land is inadequate/insufficient),

Whereas this proposal to add the parcel to reserve falls with the XXX policy category outlined in section XXX of the Additions to Reserve policy;

Therefore, be it resolved that the XX First Nation requests that the following parcel of land be afforded reserve status:

Legal description (including size): All that part of...

Parcel Title: Identify who has title to the parcel and include a copy of the deed or transfer of title document

Current Use: Identify current and intended use of land

Additional Information provided in attachments:

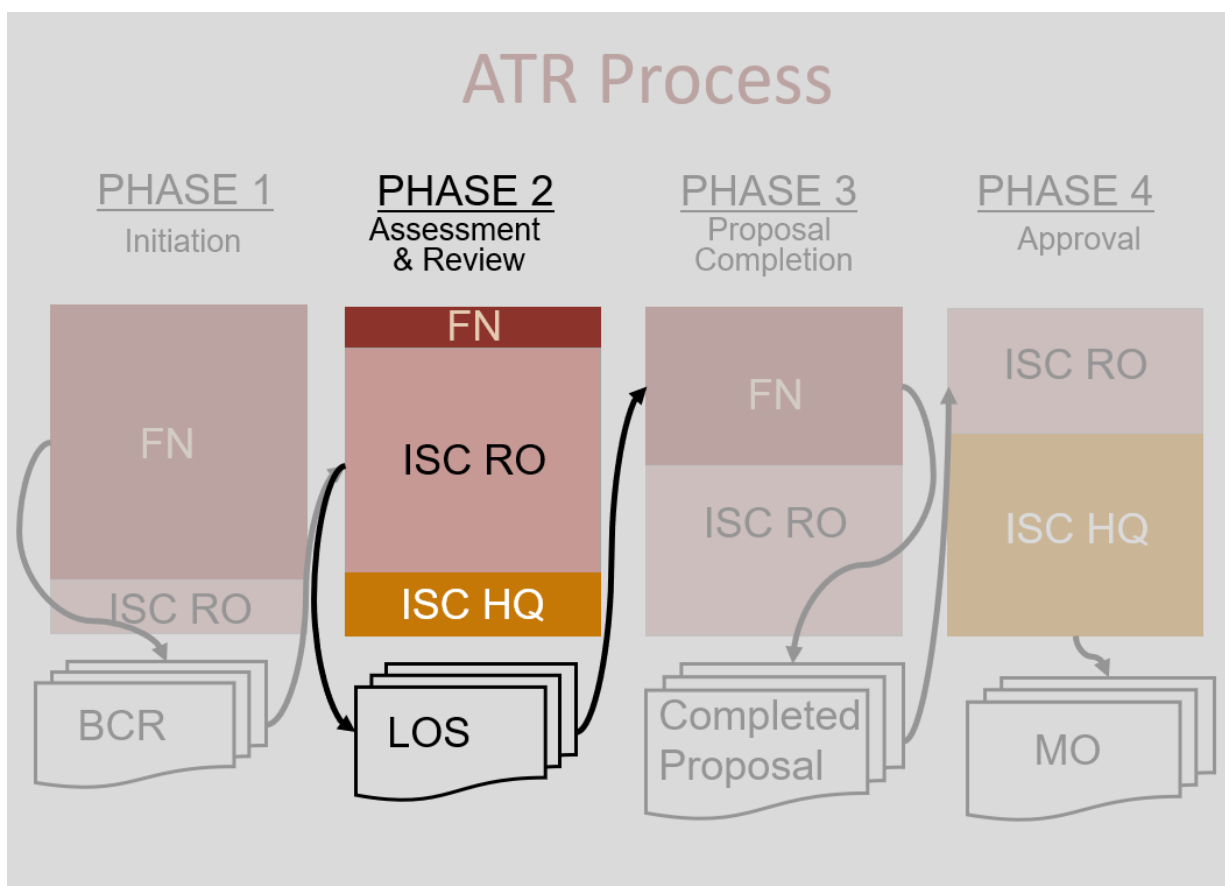
(documents to be attached can include surveys, environmental site assessments, deeds of land, etc.

A BCR needs to include, at minimum:

1. The request for ATR;
2. a land description; and
3. the policy category under which the ATR is to proceed.

Phase 1 of the ATR Process, the Initiation Phase, is now complete!

Chapter 6 – Phase 2 – Assessment and Review

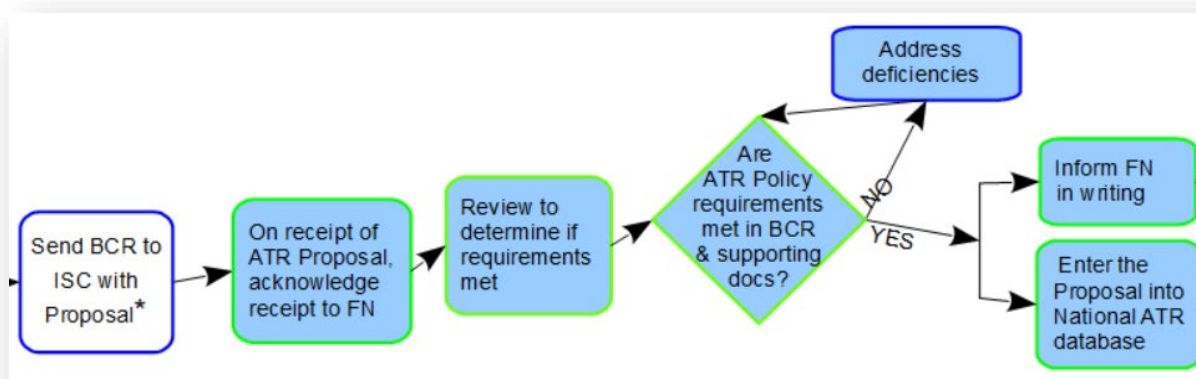


Phase 2 Summary

In the Assessment and Review Phase, the main responsibility lies with the ISC Regional Office to review and assess the ATR Proposal. This process will determine if all the criteria set in Directive 10-2, “Reserve Creation Process”, have been met by the First Nation. There may be some work for the First Nations if additional information is required.

The main deliverable for Phase 2 is the Letter of Support (LOS). It is the responsibility of the ISC Regional Office to advise the RDG on a decision to issue the LOS,

Regional Office ATR Package Review



BCR Proposal to ISC Regional Office

By this point in the process, the BCR has been passed and the ATR proposal has been put together. The receipt of the BCR with its associated Proposal by the ISC Regional Office marks the beginning of Phase 2. A notification of receipt will be sent to the First Nation at this point.

Check ATR Proposal

On receipt of the ATR proposal, the ISC regional officer will review the ATR proposal. This review will include confirmation that all relevant information and supporting documentation has been provided.

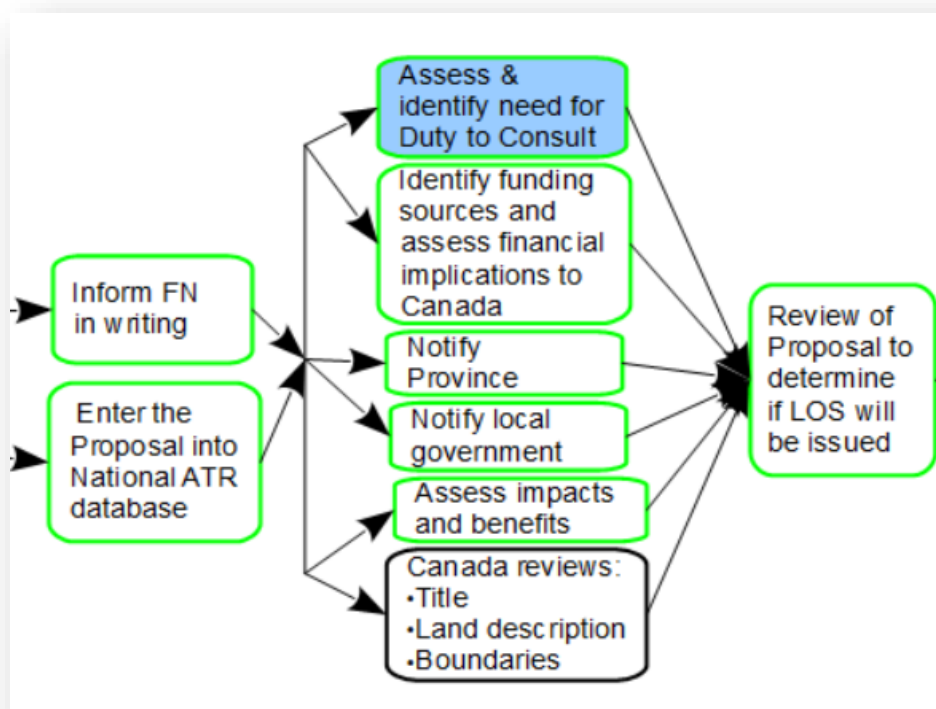
If the submission is missing supporting documentation or is otherwise incomplete, the regional officer will contact the First Nation ATR proposal manager through NATS. Sometimes, all that may be required is an additional piece of information or uploading a missing document into NATS. But in the event that such information cannot be provided, the ATR proposal will likely not advance until the FN supplies what is necessary to complete the submission.

The FN will be notified through NATS to confirm a submission is complete.

ISC Processing

Upon confirmation of a complete submission, ISC takes the lead on Phase 2 of the ATR process. This includes several assessment tasks, beginning with an examination of what issues need to be addressed to advance your proposal. Some of the more common issues requiring resolution are explained below and in the sections that follow.

Proposal Assessment – Duty to Consult



A Common Guiding Principle

The ATR process must respect Treaty and Aboriginal rights. Proponent First Nations are encouraged to engage with First Nations whose Aboriginal and Treaty rights may be adversely affected by an ATR proposal.

As a result of the Supreme Court ruling on the Duty to Consult in the Taku River and Haida cases, other First Nations and Indigenous groups whose Aboriginal and Treaty rights may be adversely affected by an ATR proposal must be consulted and, where necessary, accommodated. Because consultation and accommodation is the responsibility of the Government of Canada, ISC regional officials will identify First Nations, Métis and Inuit in the area of your ATR whose rights may be affected by the proposal. The need to notify these parties will then be indicated in the LOS.

The following link will provide you with the guidelines that ISC follows to fulfill their duty to consult: <https://www.rcaanc-cirnac.gc.ca/eng/1331832510888/1609421255810>

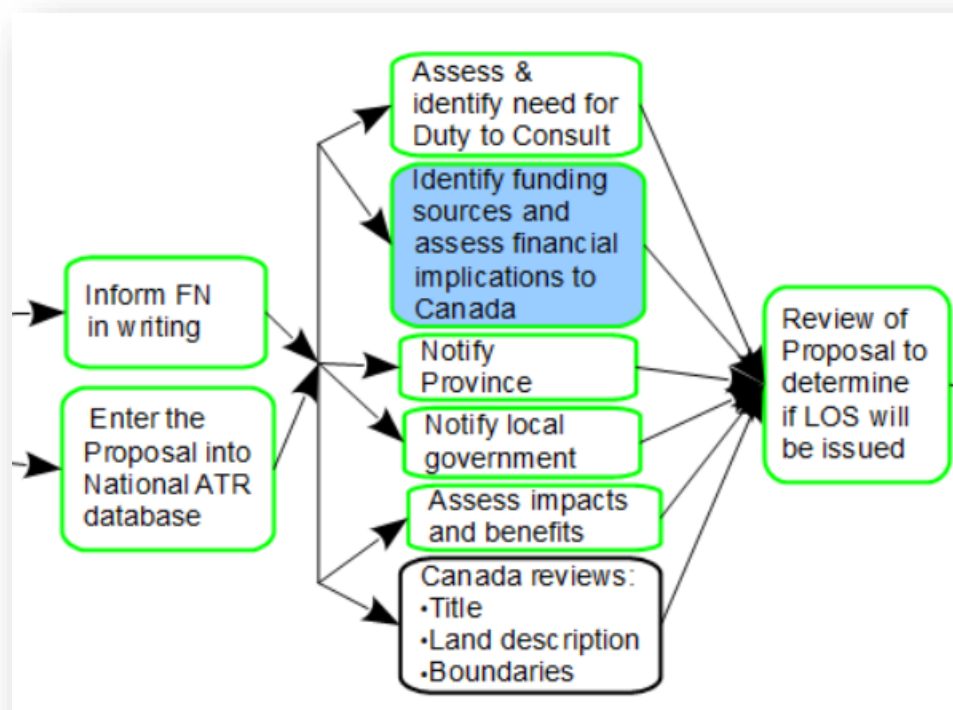
ISC will ask the First Nation if it knows of any other Aboriginal group who may have an interest. There is a web-based information tool, the Aboriginal and Treaty Rights Information System (ATRIS), which is intended to map out the location of Aboriginal communities and display information pertaining to their potential or established Aboriginal or Treaty rights. Further information on ATRIS is provided earlier in this toolkit.

The duty to consult and, where appropriate, accommodate, is grounded in the honour of the Crown. It requires that the Crown engage in a meaningful consultation process with affected Aboriginal groups. Aboriginal groups claiming Aboriginal or Treaty rights and seeking consultation and, where appropriate, accommodation, have a reciprocal duty to participate in reasonable processes and in Crown efforts to consult and accommodate. In order for the Crown to be able to assess the nature of its potential obligations, it needs clear and sufficiently detailed information outlining any Aboriginal group's concerns about the potential impacts of contemplated Crown conduct on present-day practices of claimed rights.

Best Practice

While the Duty to Consult is ISC's responsibility, it would be a good neighbourly practice for the FN to send a letter to affected Aboriginal groups initially. The letter should show "copied to" the ISC Regional Office so that all relevant parties are aware of the proposal. This approach will minimize any possibility of surprise and will also act as a relationship-building measure.

Proposal Assessment – Funding



Funding

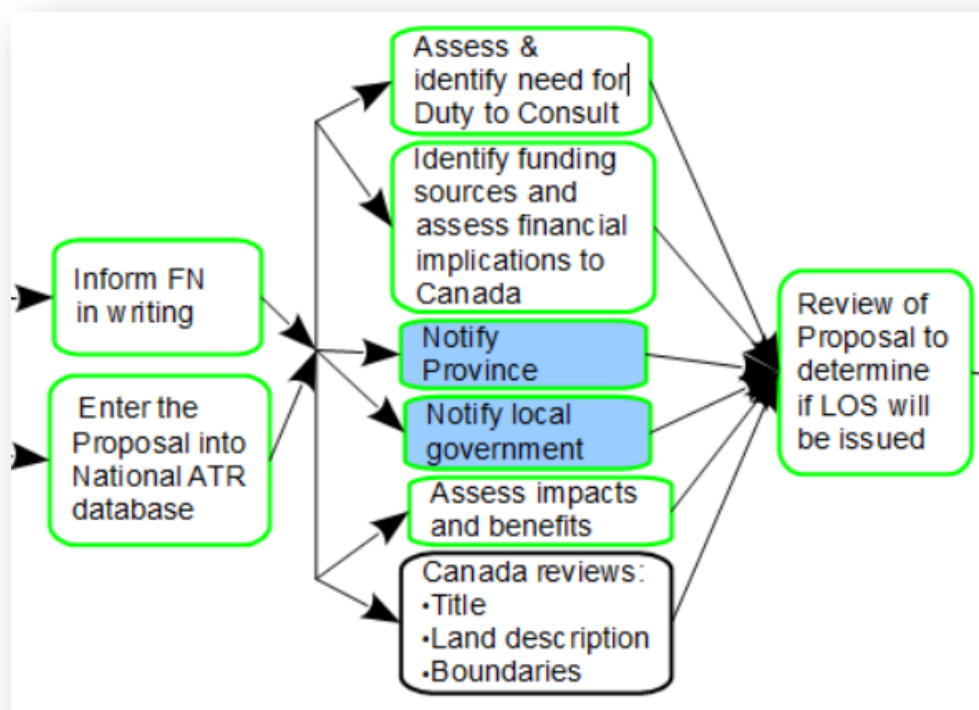
ISC is not obligated to provide funding for an ATR, but neither is it prohibited from providing such funding. In some cases, it may be necessary for you to identify sources of funds to accommodate what the First Nation's budget cannot sustain. If funding is not available from ISC, you and your ISC regional official may be able to engage other federal departments to determine the availability of programming to assist ATR-related issues. For instance, existing or planned health care facilities on land proposed for reserve may be eligible for funding from Health Canada.

Given that the costs of a proposal can reach into First Nation budgets, those of federal departments, and, in some cases, the budgets of other parties, it is necessary to identify all financial implications. These can include:

- Land acquisition and associated transactional costs;
- Surveys;
- Environmental costs (assessments, remediation, mitigation, monitoring);
- Costs resulting from anticipated negotiations with local governments;

- Longer-term expenditure, such as infrastructure costs, housing, roads, water, and other capital costs.

Proposal Assessment – Other Governments



Notifications

While there may be some informal knowledge of an ATR proposal among relevant parties at this stage, ISC must send an official notification to all parties concerned. The written notification must be sent to:

- the municipality, respecting issues such as tax adjustment, zoning, by-law application, provision of and payment for services (e.g., roads, sewer, fire), etc.,
- the provincial government (e.g., ministries that deal with highways, conservation areas, waterways, agriculture, etc.),
- any known parties with a legal interest in the land, which interests include leases, permits, rights-of way, etc.,
- any other federal government department involved.

The written notification, copied to the First Nation, must clearly state the facts of the proposal. It must specify that a written reply is required within three months that indicates either that

there are no issues of concern, or that there are issues that must be addressed. A due date for this response must be specified.

At this stage, notification is only a “heads-up”; resolution of any issues identified will be addressed in Phase 3 of the process.

Municipalities

In some cases, the First Nation may have already notified or begun discussions with the local municipality. If interests or concerns are known to the First Nation at this phase of the process, that information should be included in the ATR proposal package.

Municipal Relations

Municipalities must be advised of an ATR proposal within their jurisdiction and must have the opportunity to express their views on the proposal.

Provinces

Each province has a ministry or office that acts as first point of contact on matters of Indigenous affairs. Although processes differ from province to province, a usual approach is for these ministries to act as coordinators of an ATR proposal. That is, the Indigenous affairs ministry/office will seek the input of those provincial ministries whose jurisdiction is affected by the proposal. Any information or action items resulting from this consultation will then be communicated to the First Nation. This approach streamlines the provincial consultation process.

If you are unsure of your provincial contact, talk to your regional ISC representative for advice.

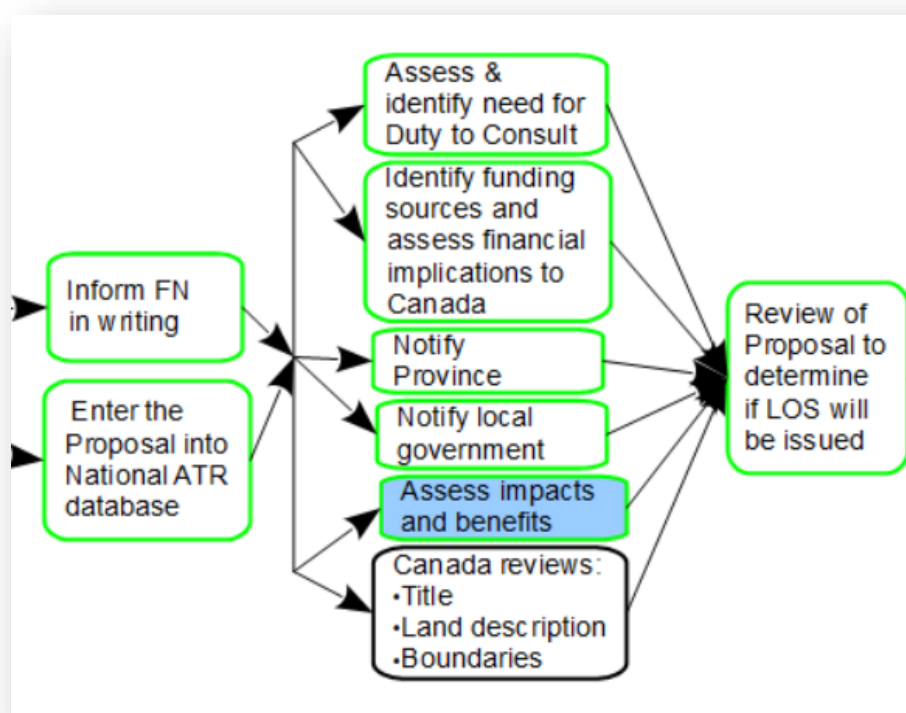
Third Parties

Any party with a legal interest in the property proposed for ATR must be notified of the proposal. This notification is essential, given that the instruments authorizing these interests will have to be changed to Indian Act or Land Code instruments once the lands become reserve, or the interests will have to be removed. It is possible that a party holding a legal interest could delay or even prevent an ATR if it is not satisfied with alternatives proposed by the FN. Notification of the ATR proposal sets the stage for productive negotiations to address these interests.

Other Federal Departments

An ATR could affect the operations of federal departments besides ISC. For example, a proposal that has the potential to affect water bodies would necessitate notification to the Department of Fisheries and Oceans. A proposal involving hospitals or health clinics could involve Health Canada, and a proposal that could impact the navigation of water bodies may require consultation with Transport Canada. Scoping the potential role of other federal departments in your ATR will help to advance the proposal and may even disclose funding programs your FN may be eligible to access. Your ISC regional officer will be helpful in determining what other federal departments may need to be notified.

Proposal Assessment – Impacts and Benefits



Impacts and Benefits Analysis

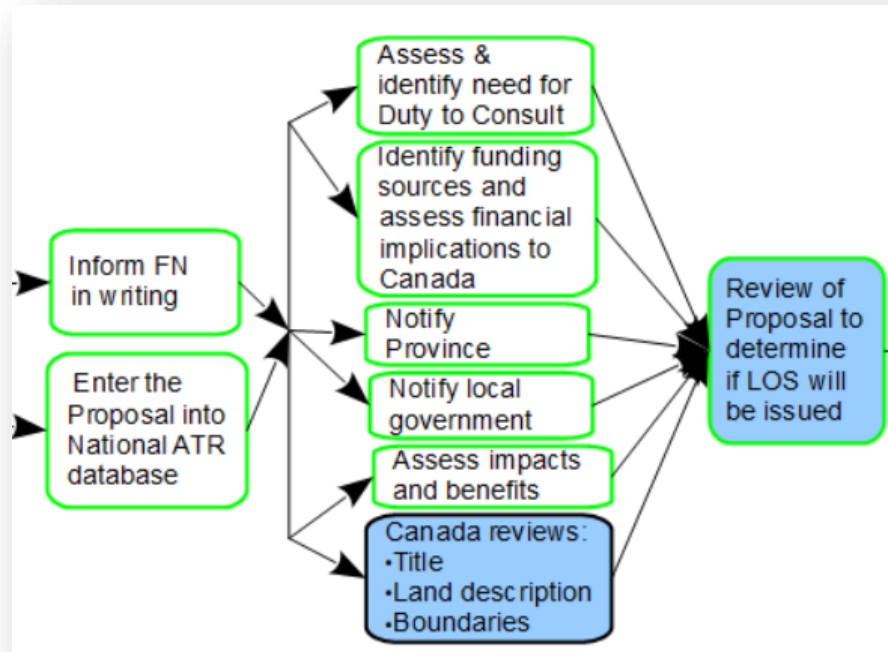
As noted earlier, one of the twelve elements of the proposal is documenting the impacts and benefits of the ATR, not only for the First Nation but the neighbouring communities as well. This evaluation will be reviewed against criteria that assess financial, social, and cultural benefits the ATR will produce for the First Nation. This analysis is an important factor in ISC's decision whether to issue the LOS.

In the case of a Community Addition, ISC will also assess whether the impacts and benefits identified could be realized without an ATR. It is important for the First Nation to demonstrate

how these benefits are dependent on new reserve land. However, if the proposal stems from a Legal Obligation, Agreement or Tribunal decision, such a demonstration is unnecessary.

In other words, the overall value of the ATR Proposal must be made clear. If the positives are apparent and there are no substantial negatives, the proposal can likely go forward.

Proposal Assessment Completed



Title Review

At this point the DOJ will become involved to review the title of the land proposed for ATR. The purpose of the review is twofold:

- 1) to confirm the validity of the title, and
- 2) to determine the existence of any encumbrances and identify them.

IMPORTANT

If your FN is acquiring property for ATR, ensure that a good agent is secured to conduct the title search of the land. This is necessary to inform the FN of any title conditions that could affect ownership and ATR, but it also enables an expedited review of the proposal: DOJ can use your title search to review title, which will avoid the need for them to add months to the process by contracting their own search. But it is imperative that the title search you provide them is good quality. Get a good title searcher and include the title search in the ATR package you send to the ISC Region!

The Crown must be certain that title to the land will be acceptable for transfer to Canada and addition to reserve.

Review Committee

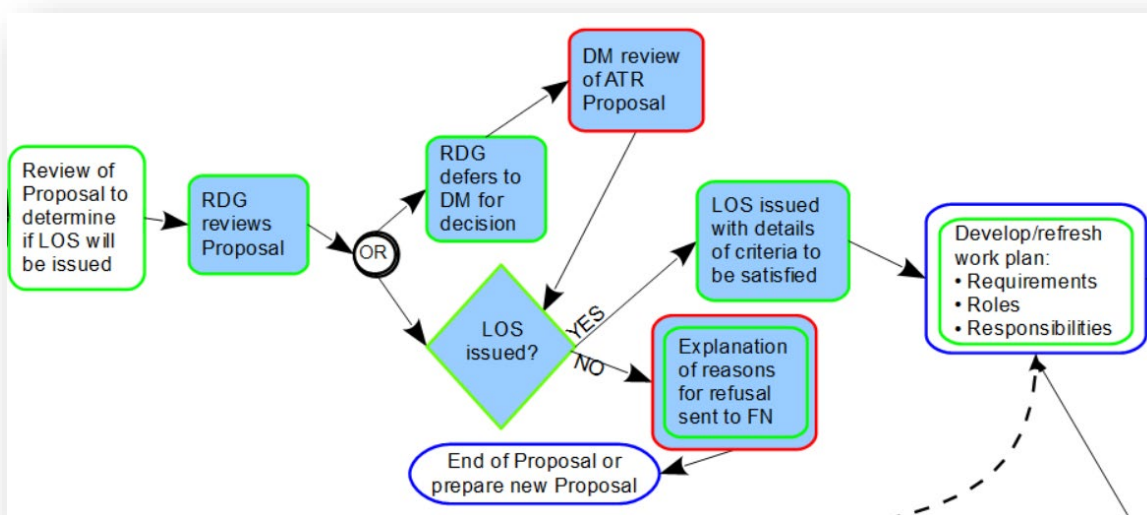
Once the ISC Region has all the information it needs, has completed its assessment of that information, and title has been reviewed, Phase 2 concludes with an assessment by a review committee composed of relevant ISC regional staff. This committee's advice will be used in the recommendation whether to issue a LOS.



ISC Regional Office general responsibilities include:

- *Delivery of national and regional programs and services (7 regions)*
- *Emergency planning and crisis management*

Issuance of the LOS



The LOS is issued by the RDG for categories 1 and 3 proposals (Legal Obligations and Tribunal Decisions respectively).

In the case of a Category 2 proposal (Community Addition), the ATR Policy notes that the Deputy Minister issues the LOS with advice and recommendations provided by the RDG. In practice, however, the RDG issues the LOS.

A LOS includes those issues that must be addressed before a proposal may be submitted for final approval. These issues will form part of the workplan between the ISC Region and ISC, and they must be addressed in Phase 3. Typically, the sort of issues to be addressed include conduct of an Environmental Site Assessment (ESA), conduct of a survey, resolution of title issues, and negotiation of third-party interests. The FN, ISC and other parties will be involved in advancing these items. If the proposal cannot be supported and no LOS will be issued, ISC will provide a written explanation to the First Nation.

Once the LOS is issued, it is sent to the First Nation.

What Has Happened to the ATR Proposal?

Be aware that, because complexity and lengthiness are common features of a proposal, keeping it on track can be a challenge for both the FN and the ISC Region. There are many steps to be followed, and there is no set timeframe within which ATRs are completed. Careful management is required to follow those steps and establish timelines for their completion.

There are a number of factors that can delay an ATR, including some that may be outside your control. For example, holidays, staff turn-over, and elections all affect a proposal's progress. The officer handling your submission may also be contending with a significant file load.

Another delay may result from the ISC Region's requirement to consult with other departments, especially DOJ. The ISC Region's priorities may not align with those of other departments who have to manage their own substantial workloads, which is bound to affect timeliness.

You are the driver of your ATR process. Even when responsibility lies with others, stay on top of what is happening and what needs to be delivered:

- set-up an internal team with duties assigned
- set a schedule of regular meetings with involved parties
- know the role of every party and the deliverables of each
- know when items are due and contact those responsible if the due date is passed
- keep the workplan up to date with target timelines identified
- be prepared for unanticipated issues to become new items on the workplan
- pick up the phone when questions arise
- send emails to keep a record of commitments

You will be greatly assisted if you are trained in and utilize **Project Management** tools. The ATR process has moving parts within moving parts, all of which is addressed over a number of years, and will be managed much more effectively with the rigour that project management provides. It is highly advisable for land management staff to apply project management techniques to the ATR process.

The project is long and complex . . .

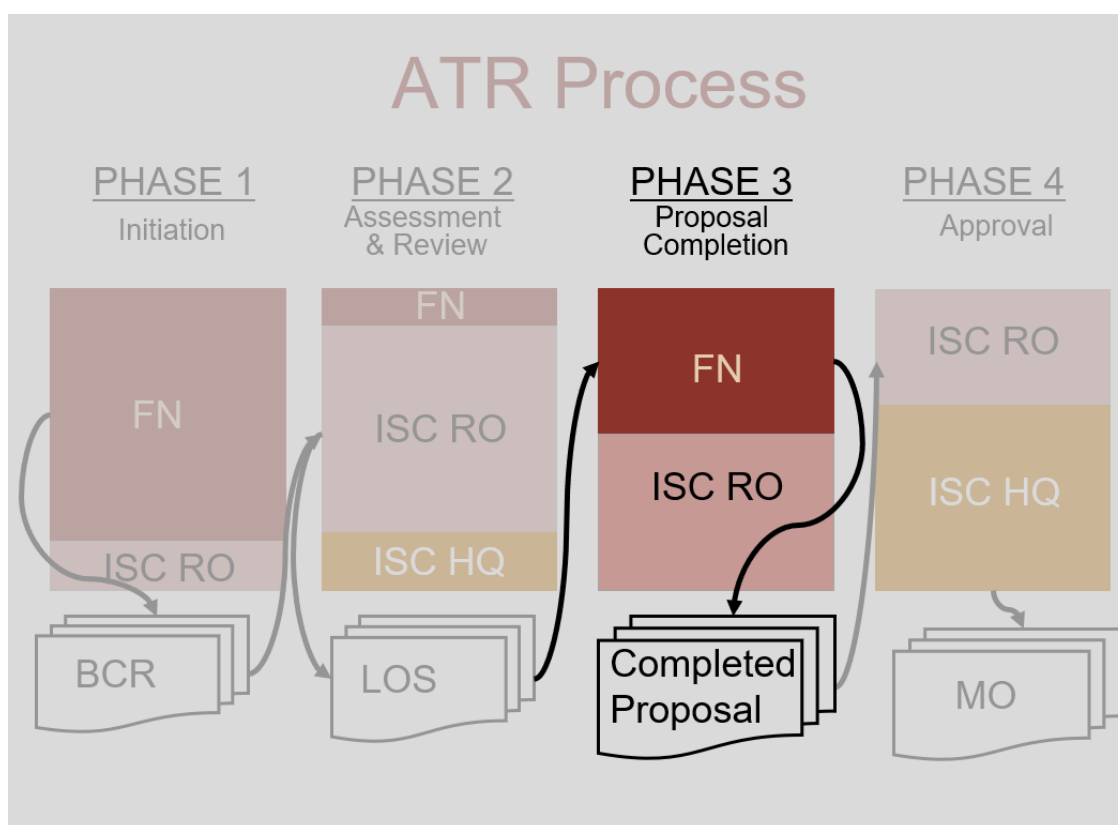
YOU are the driver. The more dedicated you are, the more involved parties will be responsive and follow your lead. Don't be discouraged by changes in timelines – this will happen, but your oversight will keep things on track.

Receipt of the LOS is a key milestone in an ATR proposal. This letter represents ISC's willingness to proceed with the full review of an ATR.

With the issuance of the LOS, Phase 2 of the ATR Process, the Assessment and Review Phase, is now complete!

Chapter 7 – Phase 3 – Proposal Completion

Congratulations on the LOS. The resolution begins now!



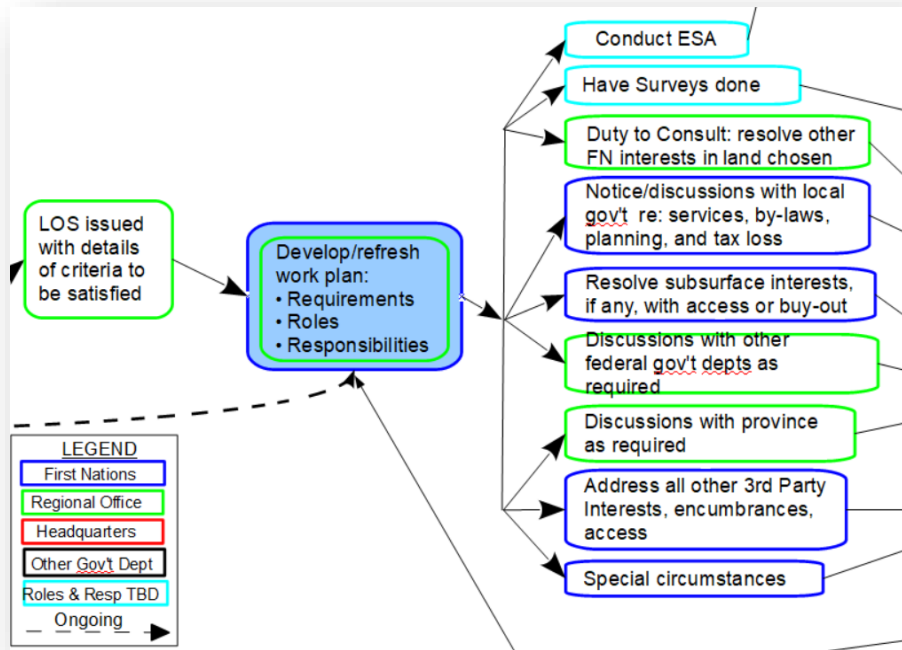
Phase 3 Summary

Now that the LOS has been issued, the intensive work required to advance the ATR Proposal begins. Phase 3, the Proposal Completion, involves work from both the First Nation and the ISC Regional Office staff, and any other parties that may be involved. By the end of this phase, all pertinent information about the land must be documented, all negotiations completed, and all criteria identified in the LOS addressed and met.

It is important to manage expectations regarding the time it will take to complete this phase, as delays will inevitably arise. Timeliness is affected by challenges in completing research, managing difficult negotiations, winter conditions that delay or complicate surveys and

environmental studies, and the likely staff changes that each party to the proposal will experience.

Joint Work Plan



ISC will set up a meeting with the First Nation to develop a joint work plan. This plan is a cooperative effort that will set out the tasks, associated roles and responsibilities, and target timelines for completion of activities. Any financial commitments should be confirmed as part of the workplan process. The workplan will include the activities you identified in Phase 1 as requiring resolution. Note: It is highly likely that issues besides those you identified will crop up, so be prepared to add activities to the workplan throughout the process.

Generally, the workplan should address the following:

- 1) All the known activities necessary to bring the project to completion, and a prioritization of those tasks.
- 2) Who will be responsible for each activity. The responsibilities of professional support agents, especially legal counsel, should also be outlined.
- 3) The funding source for all activities must be identified. However, if the proposal is being completed as part of a TLE, the survey and ESA Phase 1 will be funded by Canada; ESA Phase 2 funding is the responsibility of the FN. In the case of claim settlements and other agreements, there may be provision for funding of certain costs of ATR. Funding for any proposal that does not involve a settlement or agreement must be determined as part of this work plan.

- 4) A timeline for completion of each activity must be developed, factoring in time for research, negotiations, weather considerations, etc. Where possible, the timeline should be aligned with the fiscal planning cycle. The service standards of all parties to the workplan should inform workplan development. If the FN has not developed service standards, it should do so and use them as terms of reference in the planning process.

Keeping Everyone Informed

Communications regarding your FN's ATR must be planned and managed. Scope the targets of these communications as part of your planning process. These targets should always include FN members, but there are other parties to consider as well: municipalities, provincial officials, federal officials, third-parties, surrounding communities, other FNs, etc.

Consider the key questions that will shape your message:

- Why is this proposal necessary?
- Who will be affected?
- Does this proposal relate to claim negotiations? If so, how?
- What are the benefits to the First Nation community? Employment? Enhanced quality of life? Housing opportunity?
- How does the proposal relate to cultural considerations?

Also consider who will deliver these messages for the FN: Chief and Council? Band manager? Negotiator?

Here are several critical points to keep in mind:

- The information must be consistent throughout.
- The message should clearly articulate opportunities and avoid negativity or defensiveness.
- A strong fact scenario must be presented that minimizes the chance of rumour or mis-informational messaging getting a purchase.

Also consider how the FN's message will be broadcast: common resources are FN websites, social media, newsletters, newspapers, and local television.

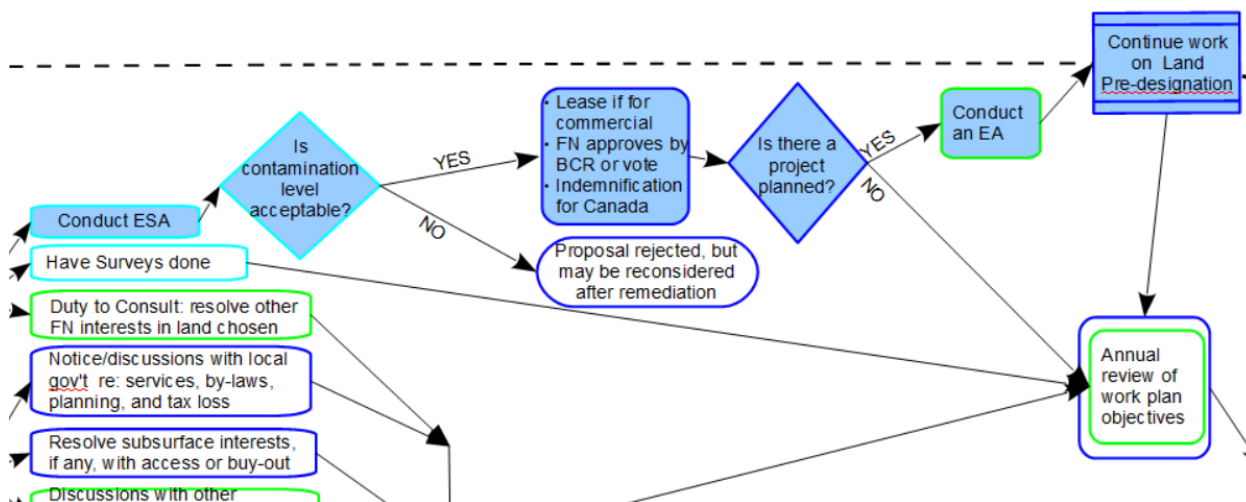
The presentation may need to be geared to a specific audience and appropriate to the distinct forms of media, but the bottom-line message and the facts must always be the same.

Some things to think about...

- Have all activities been defined and listed in the joint work plan?
- For each activity, has the lead person been designated?

- Have costs associated with each activity been identified?
- Has the source/responsibility for funding each activity been identified?
- Has a timeline been set for the activities?
- Have service standards been established for the timeline?
- Has a date been set for the next meeting, and a schedule of meetings set?
- Have communications responsibilities been properly assigned?
- Has a FN spokesperson been identified/appointed?
- Is that person briefed regularly, and knowledgeable of all the key reasons the ATR should proceed?
- Have all the parties relevant to a communications plan been identified?
- Have communications been developed according to the need for internal presentations (i.e., to members) and external presentations?
- Has Council been regularly briefed?
- Has appropriate notice been given to the public?

Environmental Issues



Environmental Site Assessment (ESA)

Land proposed for addition to reserve must meet appropriate environmental standards so that the FN and the Crown are protected. For this reason, an Environmental Site Assessment (ESA) for the property is almost always required. The ESA must be prepared in accordance with federal standards. It is advisable to discuss with your ISC regional contact the standards used and the ESA process generally.

The ESA is a significant undertaking which can be costly and lengthy. While small parcels with no potentially adverse environmental activity may be assessed more quickly, larger parcels, and those involving activity that could produce adverse environmental effects, will take more time. But the value of an ESA is indisputable. If a property poses a threat to the health and safety of members, carries a contaminant that makes it unsuitable for the intended use, or otherwise affects a FN and its plans for the land, an ESA will discover it. Money and time spent now will avoid complications, costs and delays in the future, and may even prevent a situation in which the ATR can no longer proceed.

The responsibility for undertaking and paying for the ESA must be decided during the work plan meeting with ISC.

Because an ESA can be delayed for a number of reasons, including weather conditions, availability of agents, staff turnover, etc., allowing for a year to complete the assessment is advisable. It's also important to keep in mind that, if the ESA discloses contamination or the possibility of contamination, a Phase 2 ESA (discussed below) will have to be undertaken. This will add time and money to the project.

Can contaminated land be included in an ATR proposal?

It depends on the intended use – if the land is going to be used for residential purposes, then it must meet the more rigorous residential standards. If the land is going to be used for industrial/ commercial purposes, the land must be assessed to commercial/industrial standards, which are less rigorous.

Environmental Site Assessment (ESA) is an analysis of a property proposed for ATR to determine the level of soil contamination, if any, resulting from past and present uses., It also studies on- and off-site activities that may have the potential to affect the property's environmental quality and the health and safety of occupants/residents.

Keep in mind that environmental remediation, if required, can be costly. If your plans could be affected by environmental issues, undertaking an ESA early in the process will let you know the land's suitability for your purposes and the effect on your budget.

Components of an Environmental Assessment

ESA (Phase 1)

- 1) A records review (title search & assessment rolls, document search, records review, aerial photos/drawings/maps, property use record use, company records, geographical and geotechnical reports, soil maps, topographic maps, land use documents, public health records, utility company records).
- 2) Interviews with parties knowledgeable of, operating on, or otherwise using the site.
- 3) Site visits.
- 4) An evaluation and report of information and issues.

Stale-dating of ESA

The ESA report is valid for five years, usually, though activity undertaken on the land within that 5 years could change the environmental condition and necessitate an update. **It is important to avoid any such activity to ensure the ATR does not experience delays.** The ESA stale-dates after 5 years, in which case an environmental agent will have to conduct a site visit

to determine if there have been any changes to the land's environmental condition. If so, either an updated or a new ESA will have to be conducted.

ESA Phase 2

If any adverse environmental effects are discovered in the Phase 1 ESA, such as contamination, evidence of buried items that could lead to contamination (e.g., oil or gas tanks), or abandoned items or structures, a Phase 2 ESA will likely be necessary. This assessment could involve more intrusive measures to determine environmental issues, such as sampling of the soil. The report could indicate either that the land is fine as it is, or it will indicate what contamination exists and could, in rarer cases, recommend a Phase 3 ESA. For more details on ESA requirements, please refer to the ISC Land Management Manual, Chapter 12.

Enhanced/Hybrid ESA

Consider whether an “enhanced” ESA, also known as a “hybrid” ESA, is in your FN's interest. This approach combines Phase 1 and some Phase 2 work so that the FN's agent only has to mobilize once, which reduces costs and provides the results of the investigation sooner. Note that the Phase 2 work involved in this approach does not involve the detailed level of delineation that a full Phase 2 would produce. It does not usually involve deep sampling that requires heavy equipment (e.g., a driller). However, if there is evidence of more involved contamination (e.g., soil stains, soil stockpiles, areas with stressed vegetation, etc.), the enhanced/hybrid approach could be conducted more comprehensively - and include the use of such heavy equipment - to get a fuller Phase 2 investigation.

Remote communities who have higher mobilization costs and reduced access to equipment may especially benefit from the enhanced/hybrid approach.

If you have suspicions or evidence that there may be contamination on the ATR lands, an enhanced/hybrid ESA may be best for timeliness and budget. However, because combining the phases will involve more cost than a Phase 1 ESA on its own, you may not wish to use this approach if the ATR lands are unlikely to have any contamination.

In some cases, contaminated land can be added to reserve. The level of risk, the strategies for risk management, and the liabilities involved must all be considered.

If necessary, consult with your ISC regional office to determine whether there are alternatives to full remediation of a contaminated site. Can risk-management be used instead?

Also, if necessary, consult with your ISC regional office to determine if contaminated lands can be added to reserve with a plan to remediate post-reserve status.

Timing of the ESA Vis-à-vis the Survey

When to conduct an ESA often bumps up against timing for the survey. Determining which to do first must be done on a case-by-case basis, and should take into account considerations like the following:

- the ESA might uncover serious contamination, which could deter the FN from continuing with the ATR. If the survey was done prior to such a determination, the survey's time and cost would be wasted.
- on the other hand, if the survey is done after the ESA, encumbrances may be discovered that could also scuttle the ATR, in which case the ESA's time and money would be wasted.

This dilemma underscores the need to “walk the land” during the Initiation phase and to do as much preliminary research as possible to know potential obstacles to an ATR. This Phase 1 research is also important because it will have been included in the ATR proposal, and its findings will therefore be noted in the LOS as issues requiring resolution.

This issue also highlights the importance of determining if your FN wants the land whether or not it becomes reserve. Obstacles to ATR do not necessarily mean obstacles to fee simple ownership. If your FN wants the land no matter what, timing of the ESA and survey is less consequential.

Who Pays for the ESA?

The cost of the ESA and any remediation (clean-up) costs is the responsibility of the First Nation. However, in some cases, and under very special circumstances, ISC might assist with a portion of the costs. Where an ATR is pursuant to some form of Agreement, the Agreement may specify who is responsible for the cost of the ESA.

Who Carries Out the ESA?

The ESA is arranged by Public Works and Government Services Canada (PWGSC) in some regions. In others, it is arranged by the ISC Region Environmental Unit.

In some cases, the First Nation itself may hire an environmental consultant. In this case, the First Nation must agree with ISC that the chosen consultant is able to assess to federal standards for ATR. Because environmental issues and the cost of remediation can be a sensitive and expensive matter, it is important that **the Chief and Council support and accept the results of the ESA before proceeding**. A BCR must be passed approving the ESA report. This BCR must be uploaded into NATS as part of the ATR submission.

Timely Environmental Practices

An Environmental Assessment of the ATR site identifies the environmental condition of the land and allows the FN to determine whether the land can be used for the intended purpose.

The assessment covers who owned the land and how it was used, and any contamination that may have been detected. If necessary, sampling is undertaken.

The assessment also looks for the presence of animal or plant species at risk and recommends mitigation measures if necessary. Such recommendations could require the involvement of other federal departments, such as Environment Canada, Health Canada, and Fisheries and Oceans Canada.

Notes on the Impact Assessment Act (IAA) 2019 (Replace Canadian Environmental Assessment Act 2012)

What is an Impact Assessment (IA)?

It is a planning and decision-making tool used to assess:

- positive and negative environmental, economic, health, and social effects of proposed projects,
- impacts to Indigenous groups and rights of Indigenous peoples.

The *Impact Assessment Act* outlines a process for assessing the impacts of major projects and projects carried out on federal lands or outside of Canada.

The Impact Assessment Agency of Canada is responsible for conducting impact assessments under the *Impact Assessment Act*.

What is the purpose of the IAA?

- To foster sustainability, ensure respect of Government's commitments with respect to the rights of Indigenous peoples.
- To include environmental, social, health and economic factors within the scope of assessments.
- To establish a fair, predictable and efficient impact assessment process that enhances Canada's competitiveness and promotes innovation.
- To consider positive and adverse effects.
- To include early inclusive and meaningful public engagement.
- To promote nation-to-nation, Inuit-Crown, and government-to-government partnerships with Indigenous peoples.
- To ensure decisions are based on science, Indigenous knowledge, and other sources of evidence.
- To assess cumulative effects within a region.

Overview of the IAA:

- Lays out the impact assessment process and timelines.
- Identifies factors that must be considered during the impact assessment and decision-making.
- Provides tools to support cooperation and coordination with other jurisdictions.
- Enables the Agency to support participant engagement through funding programs.
- Requires transparency through information made publicly available on the Registry.
- Provides tools and authorities to ensure compliance.

Does the IAA apply to First Nations?

Yes, it does. It applies to projects that may have an impact on Aboriginal peoples, their health and socio-economic conditions, the use of their lands and resources, their historical structures, and their cultures.

Some projects may be sponsored by First Nations members (perhaps member-owned businesses). Others may be sponsored by non-members (such as external oil companies).

Process:

- Agency engages on Initial Project Description and prepares [Summary of Issues](#)
- Proponent submits [Detailed Project Description](#) with response to Summary of Issues
- Agency determines if impact assessment is required – posts [Notice of Determination](#)
- If impact assessment required, Agency develops draft [Tailored Impact Statement Guidelines](#) and draft plans

- Agency issues final [Tailored Impact Statement Guidelines](#) and plans to the proponent — posts [Notice of Commencement](#)

What does the legislation deal with?

An Impact Assessment:

- identifies potential adverse environmental effects;
- proposes measures to mitigate adverse effects;
- predicts whether there will be significant adverse effects, after mitigation measures are implemented; and
- includes a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of the mitigation measures.

At the end of an IA, the Minister of the Environment determines whether the project is likely to cause significant adverse environmental effects, taking into account mitigation measures that were identified during the IA.

For more information on the IAA, visit the Impact Assessment Agency's website at:

<https://www.canada.ca/en/impact-assessment-agency.html>

Notes on the Canadian Environmental Protection Act (CEPA) 1999

What is the purpose of the CEPA?

The primary purpose of the CEPA is to “contribute to sustainable development through pollution prevention”. The full title of the act is “An Act respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development.”

What does the legislation deal with?

It includes pollution prevention, control of toxic substances, genetically modified living organisms, waste, environmental emergencies, government obligations, and environmental management on Federal and Aboriginal lands.

How does the Act help prevent pollution?

The Act requires that no new substance such as chemicals may be introduced for sale in Canada before the government has determined if the product is toxic. If it is toxic, the government can impose conditions on the handling and use of the substance or even prohibit its importation or manufacture in Canada.

How does the Act help control pollution and waste?

The Act has many provisions dealing with controlling pollution including protection of the marine environment from land-based sources of pollution; disposal at sea; use of fuels; vehicle, engine, and equipment emissions; the control of hazardous waste and its movement.

Does the CEPA apply to First Nations?

YES! The federal government has the authority to manage “Aboriginal lands” under the Act. The Assembly of First Nations is in consultation with the federal government with regard to the administration of this Act.

For more information on CEPA visit its website <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/related-documents.html>

ERs are conducted in accordance with the *Impact Assessment Act* and its regulations.

An Environmental Review (ER) is a process used to identify and evaluate all potential environmental impacts that may occur as a result of a planned project on land being proposed for ATR.

Is an Environmental Review Necessary?

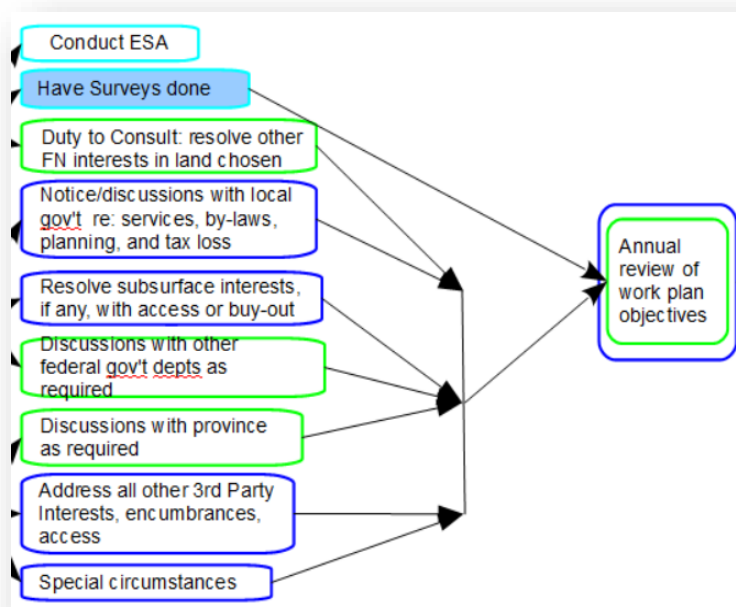
Depending on the intended use of the land, it may be necessary to conduct an Environmental Review (ER) to determine if the ATR land is suitable for the proposed use, and to determine if the use will have a serious negative impact on the land. If a project is planned, an ER will be required. The review may require certain precautions or preparations before the project can go ahead. In the worst case, the assessment may determine that the land cannot be used as planned (e.g., the discovery of a grown-over dump could make a housing project impossible). In this case, the proposal cannot go forward until a new parcel of land has been identified and the ER concludes no obstacles to the intended use. Consult with ISC to determine if an ER is necessary for your ATR.

Some things to think about...

- Has an environmental consultant been identified or engaged?
- Are there any outstanding Ministry of Environment orders?
- Are there provincial environmental standards that need to be considered?
- Has federal and provincial environmental legislation been identified?
- Are there any FN environmental standards involved?
- Has contact with an ISC Environmental Officer been established?
- Is the future use of the land compatible with its past use?
- Has an ESA been completed?
- If an ESA has already been conducted, is it still current (less than 5 years old)?
- If the environmental study is more than 5 years old, has the need for an update been considered?
- Have any old wells or water resources been identified and mapped?
- Might there be gas lines underground?
- Is a remediation report and action plan required?
- Is there proper funding for the environmental issues that need to be addressed?
- Has the FN had first refusal for the remedial contract work?
- Has any remediation been completed and documented?
- Are any environmental contingency plans in place or required?
- Can any environmental contamination be risk-managed rather than completely remediated?

- Can contaminated land be added to reserve with a plan to remediate it following ATR?
- Is there a project planned for the land? If so, has an Impact Assessment under the IAA been conducted?
- Has the BCR accepting the ESA/EA been produced?

The Survey



All lands proposed for reserve status require a survey. The survey is a major undertaking in terms of both time and cost. The size and location of the land parcel will affect the cost and the time necessary to conduct the survey, and weather conditions will also play a role in timing.

The time a survey takes depends on issues like the availability of a surveyor, scheduling challenges that may be encountered, the availability of funding, and weather conditions. Generally speaking, a year is a good target for planning purposes. Another factor to keep in mind is that winter can make surveying difficult or impossible and can affect costs. But in some cases, like surveying muskeg, surveys *need* to happen in the winter.

The responsibility for undertaking and paying for the Survey should be decided either prior to or during the Work Plan meeting with ISC. In most cases, it is the First Nation who will pay for the survey. ISC will, in limited circumstances, approve undertaking the survey, but this can lead to challenges as well (e.g., departmental funds are not available until a future fiscal year, so delays are experienced). Adjust your planning according to circumstances like these. When a survey is to be undertaken, the regional office of ISC must notify the Legal Surveys Division, Client Liaison Unit of NRCan. This division will be involved in managing the survey and/or

reviewing survey products. Sometimes, if time constraints require it, the FN may retain its own agent to conduct a survey. If so, the FN must ensure that the surveyor is qualified to survey to the standards required by ISC, i.e., the agent must be a Canada Land Surveyor (CLS). A CLS has the training and expertise to interpret and prepare legal descriptions of the property. This professional also understands how legal opinions, statutes, and court cases have affected survey methods, and is aware of the manner in which surveys might have been conducted differently at different periods.

If the ATR is pursuant to a Settlement Agreement, there may be provision in the agreement for Canada to pay for and manage the survey. The Surveyor General Branch of Natural Resources Canada will be engaged in this case as well.

Once the survey is complete, the First Nation will have to approve the preliminary version of the survey plan, known as the provisional survey. In some First Nations, this approval may require a BCR.

Surveying requirements have been agreed to in an interdepartmental agreement between ISC and NRCan. For more information regarding this agreement, access the following link:

<http://satc.nrcan.gc.ca/standards-normes/b1-2-v4-eng.php>

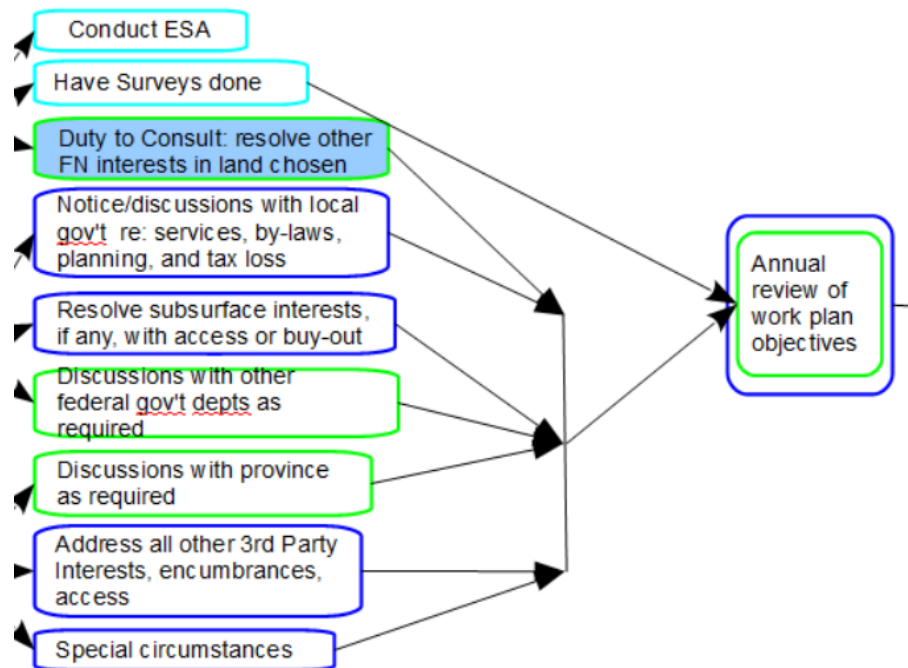
As a further resource, consider whether your FN would be assisted by accessing NALMA's **Survey Program** (NOTE: FNLM bands are not eligible for this program). The Survey Program provides direct assistance and funding to First Nations for the purpose of completing reserve land survey requirements. Each year, the survey unit coordinates many survey projects and contracts out survey work on behalf of First Nations across Canada. If you would like to know more about this program, contact NALMA!

Some things to think about...

- Are there any existing surveys that could be used for the ATR?
- Are any municipal or provincial surveys available?
- Does the land need to be (re)surveyed?
- Is a Canada Land Survey required?
- Is a Provincial Land Survey required?
- Has the effect of the seasons on timing been taken into account?
- Has funding for the survey been identified?
- Has timing of the funding been determined?
- If Canada is funding the survey, will its budget cycle affect timing??

- If you are retaining a private surveyor, does the surveyor's qualifications meet the standards required by ISC?
- Is a BCR required to approve surveys?
- Has permission been granted for surveyor's access across existing reserve land?
- Has anyone on this reserve land been notified that a surveyor will require access?

Duty to Consult



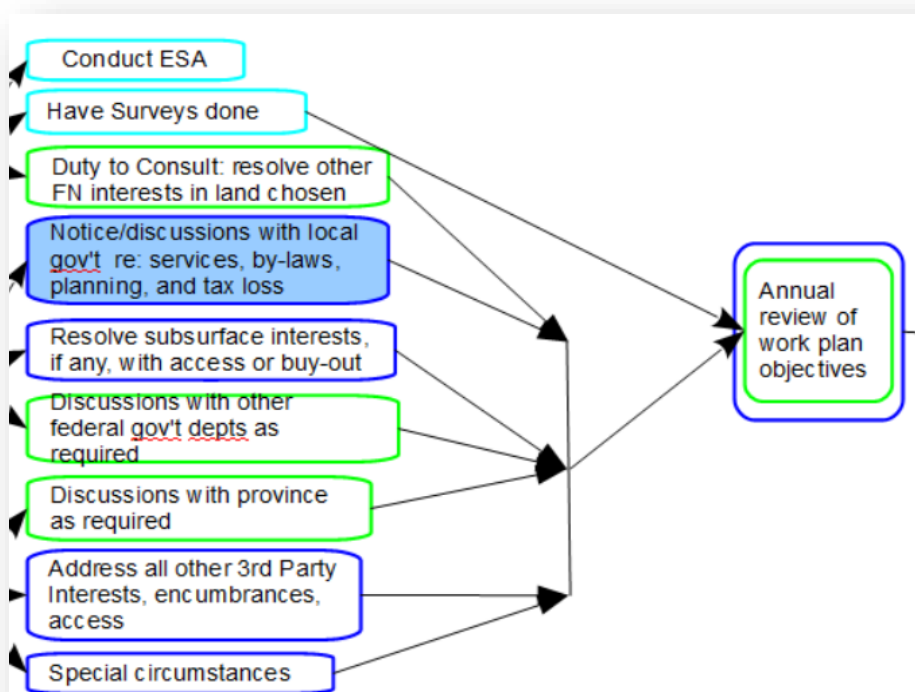
Other First Nations, Métis, or Inuit peoples may have established or potential rights to the ATR land. As a result of the Supreme Court ruling on the Duty to Consult in the Taku and Haida cases, any Aboriginal group with an interest in the land proposed for ATR must be notified of the proposed ATR. Should the notification result in a claim of adverse impact on the First Nation's Aboriginal and Treaty rights, consultation by ISC with the affected First Nation will proceed. If adverse impact is confirmed, accommodation of the First Nation's interest is required.

It is the responsibility of ISC to initiate these consultations. Before the ATR can proceed, ISC/CIRNAC must have determined that the Crown has met its Duty to Consult obligations, i.e., it has determined whether the action of the Crown in granting reserve status to the subject land has an impact on the Aboriginal or Treaty Rights of other FNs or Indigenous groups. If so, the Crown must accommodate the rights of those FNs or groups, which could include not proceeding with the ATR.

Some things to think about...

- Has Canada determined whether other FN's' Aboriginal or Treaty rights could be adversely impacted by your ATR?
- If so, have you had meetings with these FN's to discuss and resolve the effects of the impact?
- Have all issues been dealt with satisfactorily?

Local Government



ISC sends a notification letter to the municipality informing it of the intended ATR. A response is requested within 90 days. Following this notification, it is the FN's responsibility to deal with any municipal interests. If no response is received within 90 days, it is a good practice for the FN to send out a follow-up letter indicating that, because no response has been sent, the FN understands the municipality has no objections to the proposal. When CIRNAC is reviewing the proposal in Phase 4, and there is no evidence of follow-up to the notification letter, the department will almost certainly require that certainty regarding the municipality be secured.

In some cases where there is a long turn-around time before the ATR proceeds to the next phase, the reply from the municipality may become stale-dated.

Depending on its use, land may require a variety of services. Meeting with the municipality to determine what services can be provided, and at what cost, is a good practice. Since reserve

land is not subject to real property taxation by a municipality, First Nations can negotiate contracts for required services. Such services can be provided for a fee or by a grant for services in lieu of taxes. Such contracts are referred to as Municipal Services Agreements (MSA). These contracts generally mitigate any loss in taxes to the neighbouring municipality once the land has been granted reserve status. ISC is not a party to agreements between the First Nation and a local government, but the departments can assist in an advisory capacity if required by First Nations.

Whereas signing an MSA may not be a requirement in every ATR situation, it is in the interest of all parties to agree on any required service provision prior to the land becoming reserve.

A comprehensive MSA helps manage risk and reduces the likelihood of conflict. If you choose to proceed without such an agreement, you should be sure that the reserve's needs will be met without a contractual commitment. Where a contract is deemed unnecessary, an alternative approach is development of a Memorandum of Understanding (MOU) that outlines the terms of the provision of services. It is important to note, however, that an MOU is not legally binding on the parties. A sample MOU is provided at the end of this section.

Consider whether your discussions with the municipality should take schooling into account. Will there be schooling needs arising out of the acquisition of this land (which is likely if further housing is part of the intended use)? If so, will the neighbouring schools be able to accommodate this need, or will a school be needed on reserve? If the neighbouring schools are to be used, then a separate agreement must be drawn up.

A Note about the FCM

The Federation of Canadian Municipalities (FCM) has been the national voice of municipal governments since 1901. FCM is dedicated to improving the quality of life in all communities by promoting strong, effective and accountable municipal government.

FCM represents the interests of all member municipalities on policy and program matters within federal jurisdiction. It is a partner in the Land Management Project working closely with First Nations land organizations.

For more information: <http://www.fcm.ca/>

For information on service agreements, refer to the FCM Service Agreement Toolkit at:
https://www.fcm.ca/Documents/tools/CIPP/CIPP_Toolkit_EN.pdf

Tax Considerations

Discussions with the local government must address how tax loss to the municipality will be addressed. Lands transferred from municipal jurisdiction to federal/reserve jurisdiction represent a revenue loss for the municipality, as reserve lands are no longer subject to property tax. The FN is responsible for negotiating a means of assisting the municipality to adjust to this decrease in revenues. A usual approach to this adjustment is a payment, either one-time or over 3-5 years, equal to five times the annual property tax amount (see the box below for other approaches).

The MSA may also assist with tax adjustment, given that the ongoing fees for service provision can off-set losses in property taxes.

Until lands acquired for ATR are transferred to Canada to be made reserve, they remain subject to property taxation. As you plan for the costs of the project, ensure you know the amount of taxation that will accrue while the land is held in fee simple by the FN's agent. This is particularly important given that Canada will not accept lands for ATR purposes unless property taxes have been paid in full.

You may want to consult with the First Nations Taxation Commission (FNTC) for more information on taxation.

Their website is: www.fntc.ca

This organization is formerly known as the Indian Taxation Advisory Board (ITAC).



What is a Fair Tax-adjustment Compensation?

While the ATR Policy does not specifically prescribe an amount of real property tax-adjustment compensation, in some provinces the amount may be built into the claim settlement agreements. For instance, Manitoba pays one lump sum in the amount of 5 times the annual amount of taxes that would have been levied on the parcel of land. In Saskatchewan, the amount is set at 22.5 times the annual tax levy. In other provinces the amount is negotiated, and sometimes lump sum payments are made in decreasing amounts over a span of 5 years to allow the municipality to adjust to the tax change.

An important thought...

Before you get into detailed negotiations with a municipality, it is a good practice for the Chief to sit down informally with the Mayor to give him a personal “heads up” about the proposed ATR. Nobody likes to be surprised, especially politicians. Better the Mayor hear about the ATR from the Chief than read about it in the local newspaper. A friendly talk over lunch is often a good first step between neighbours.

Keep in mind that most municipalities will know little of FN governance, and even less about the ATR process. A discussion between the Chief and Mayor will promote awareness of the FN’s role and how the municipality will be involved. If you have concerns that the local government is not sufficiently involved or is not showing interest in advancing the ATR, you

may want to consult with the Federation of Canadian Municipalities. See the box above for information on how this organization may be able to assist you.

Some First Nations have exchanged briefings with their municipal counterparts to coordinate efforts and establish a mutual understanding of next steps. This approach not only facilitates ATR progress but builds relations that will benefit both parties in all their operations.

“Musical Chairs”

Since most ATRs take a number of years to complete, expect that many of the people involved in your ATR project will change over time.

- Your Chief and Council will most likely change along the way and a new administration may not even be aware of your project.
- On the ISC side, staff in the Regional Office and Headquarters is likely to turn over and new staff will need time to get up to speed.
- Municipal Town Councils are elected every few years, which may result in unfamiliarity with your ATR or may even mean a change in the municipality’s view of your project.

Using the ATR Journal will help you keep track of the players as they come and go!

Draft MOU with Municipality

A Memorandum of Understanding (MOU) with the neighbouring municipality can be less complicated to negotiate than a Municipal Services Agreement and may be sufficient for establishing a basis for the provision of municipal services. Again, it is important to understand that an MOU is not legally binding. But if circumstances warrant, an MOU can serve your purposes while involving less time and cost to put in place. Here is a sample MOU.

Memorandum Of Understanding

Between

Municipality of _____ and XXXXX First Nation

WHEREAS the Chief and Council of XXXXX First Nation and the Mayor and Council of the City of _____ believe that it would be useful to enter into an Agreement for the purpose of dealing with certain matters of mutual interest and/or concern regarding the XXXXX First Nation's reserve lands and land acquired by the First Nation that have been proposed for addition to reserve/reserve creation;

THEREFORE the parties signatory to this memorandum agree as follows:

The parties acknowledge and agree that the Chief and Council of the XXXXX First Nation and the Mayor and Council of the Municipality of _____ are responsible for:

regulating the occupation and use of lands within their jurisdictions,

protecting the residents and those occupying lands from hazards which may impact on the use of adjoining lands in the jurisdiction of either party to the Agreement.

The XXXXX First Nation's Chief and Council and the Municipality of _____ Mayor and Council agree to develop a process where each party can obtain the input of the other on matters of mutual interest and/or concern.

The parties acknowledge that among those areas of mutual interest and/or concern are:

fire protection

location of boundaries and fence lines

roadways and use thereof, etc.

the handling of any other services, such as garbage collection, etc.

Both parties agree to have a standing committee to deal with such issues and to appoint qualified representatives to the committee.

This agreement is dated _____

Chief - XXXXX First Nation Mayor – Municipality of _____

Some things to think about...

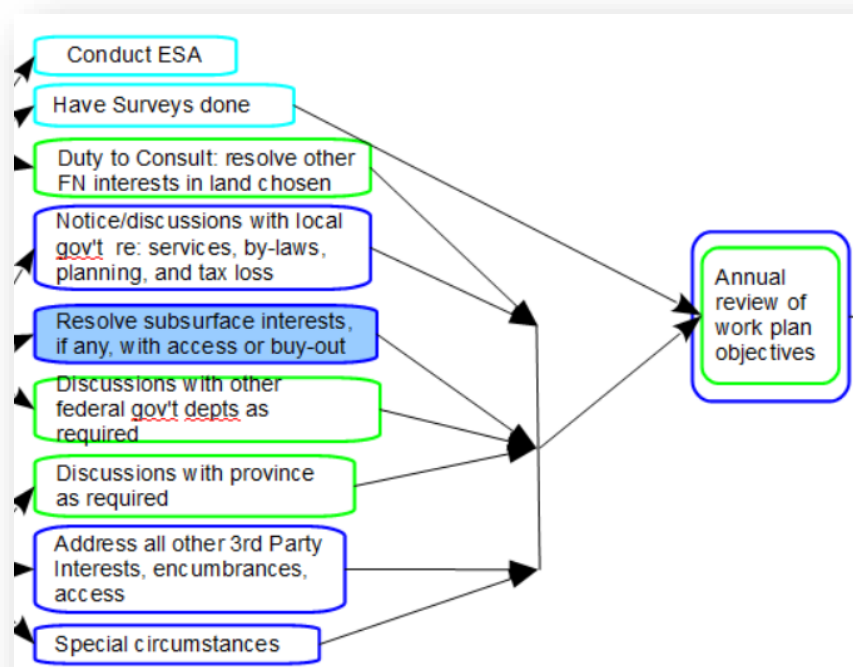
- Has a role for the Chief in municipal engagement been considered?
- Have you met with City Council about the ATR, or attended public meetings at which the project is on the agenda?
- Who should go to these meetings?
- Is any opposition expected from any members of the town council? If so, have responses been developed?
- Is there a need to further educate the municipality about the FN's interests?
- Do you know the amount of property taxation to which the property is subject, and planned for it in your costing?
- Are there any tax arrears owing?
- Has revenue loss to the municipality been investigated? Has a proposal to assist with municipal adjustment to that loss been developed?
- Has a tax agreement been negotiated?
- Do you require services, and if so, has a list of required services from the municipality been finalized?
- Have service agreements been investigated?
- Are there any roadway or utility issues?
- Has road maintenance been considered?
- Will a school board agreement need to be considered?
- If the municipality is not replying to letters, do you have a plan? Have you consulted resources like the FCM? Can ISC assist?
- If negotiations become deadlocked, how will you proceed?
- Has a record been kept of notices you've sent to the municipality?
- Are there any unresolved issues?

Municipal Relations

Once the LOS has been issued, the FN will need to discuss issues of mutual interest and/or concern with the local government. The First Nation proposing the ATR has the primary role in leading discussions and negotiations as the party seeking to extend its jurisdiction into municipal boundaries.

Both parties have a stake in the negotiations: the municipality may lose some tax revenue, but the First Nation may want to buy services that mitigates the tax loss; both parties can plan together and cooperate to ensure harmonization of the by-laws each party enacts.

Mineral Rights



The First Nation will have established earlier in the process if it wants to have the mineral rights included in the land to be added to reserve. Keep in mind that “mineral rights” refers to both mines and minerals, whether precious or base, as well as oil and gas. The FN team will have endeavoured to identify the owners of any existing mineral rights in Phase 1. It is now time to notify these owners and to begin discussions on how the interest will be addressed. The notification should clearly state that a reply is expected within 90 days.

What if you can't find the owner of the mineral rights or the owner is unwilling to communicate with the First Nation? If there is no reply, assistance from ISC should be requested.

Some mineral rights or sub-surface rights are extinguished, after a defined time period, if no exploration or development has been undertaken. In some cases, it may be necessary for the First Nation to sign an Indemnity Agreement with Canada, permitting proper access for mineral exploration and holding Canada harmless from any damages and liabilities that might arise from mineral-related problems. If purchasing the mineral rights is part of the plan, get an appraisal with clear terms of reference. You may want to contact Indian Oil and Gas (a link is provided on the next page). If mineral rights are not part of the ATR, provision must be made for access to the site by the holder of the mineral rights. Any previous use access agreements will have to be reviewed, and indemnification for Canada will be required. If there are no near-term sub-surface issues affecting the ATR, but there is an intent to explore/extract resources, there must be written consent by both parties to address this issue some time after the land becomes reserve.



You should also contact Indian Oil and Gas Canada (IOGC) as soon as you know there are sub-surface rights to be addressed in your ATR. IOGC manages and regulates oil and gas resources on designated First Nation lands across Canada. They are a special operating agency within Indigenous Services Canada. Their dual mandate is to fulfill the Crown's fiduciary and statutory obligations related to the management of oil and gas resources on First Nation lands and to further First Nation initiatives to manage and control their oil and resources.

Their website is: www.pgic-iogc.gc.ca

Some things to think about...

- Has mineral potential been ascertained?
- Has oil and gas potential been ascertained?
- Have you received legal advice on mineral rights?
- Has the type of interest been determined (e.g., permit, lease, claim)?
- Are there encumbrances on mineral titles (e.g., leases)?
- Can the mineral rights be acquired?

- Is there a plan to address access to minerals?
- Will provincial ministries with jurisdiction over sub-surface rights be involved?

A couple of sample letters are provided in the next two pages, one to an existing rights holder, and the other dealing with access.

Mineral Rights – Draft Letter

After checking the appropriate database, or after consulting your provincial contact, it's a good idea to contact the mineral rights holder to advise that the land on which the interest is located is proposed for ATR. Be sure to consult legal counsel regarding how the interest will be managed. Here is a sample letter that notifies a party of the ATR and indicates the possibility of a buy-out or issuance of an instrument allowing access to the resource:

Date:

Dear NAME

Address, City, Province

Re: Mineral Ownership

The XXXXX First Nation has acquired the following land and has proposed it for addition to the (name of reserve): It is our understanding that you are the mineral owner of the following land:

(Land Description)

It is our understanding that you hold an interest in a sub-surface resource that is situated on this land. (refer to any specific information specifying the interest, if available).

While there is no requirement to acquire sub-surface interests located on lands that will be added to reserve, the XXXXX First Nation would prefer to own the mineral titles to all of its reserve lands. To that end, if you are prepared to transfer it, we are prepared to enter into discussions to acquire the interest. If, on the other hand, you prefer to retain your interest, we are also prepared to enter into an agreement that would allow you to continue your access to this resource following addition of the land to reserve.

I would request that you kindly contact me to discuss these matters in further detail. I may be reached at the coordinates below.

Thank you for your consideration of this matter. Your response would be appreciated within 30 days. I look forward to speaking with you further.

Yours truly,

ATR Project Manager

(phone number, email, address)

Mineral Rights – Draft follow-up letter

If you do not get a response to your initial letter, send a follow-up letter to encourage a response. It is always best to demonstrate that you are making reasonable efforts to resolve a matter that could interfere with approval of your ATR. A follow-up letter will be valuable even if you do not secure a response, as it will serve to document the extent of your efforts to reach a resolution. Such efforts will equip ISC, and any other involved departments, with the information necessary to proceed in the absence of cooperation. Note again that your legal counsel should be consulted throughout your efforts to address such an interest.

Date:

Dear NAME

Address, City, Province

Re: Surface Access Agreement Respecting Mineral Interests

This letter is a follow-up to our initial letter to you regarding the above matter, dated _____.

As I advised in my initial correspondence, the XXXXX First Nation has acquired and proposed for addition to its reserve the land described as follows:

(insert legal description)

A review of the mineral titles associated with the land indicates that you own a share of the mineral interest underlying this land. I had inquired about your willingness to transfer this interest to our First Nation. As you have not responded, I understand that you do not wish to proceed with the transfer of your mineral interest. Accordingly, I am enclosing for your execution two copies of a Surface Access Agreement respecting your interest.

The Surface Access Agreement is a standard instrument that has been prepared by the First Nation in consultation with officials of the Department of Justice and the Department of Indigenous and Northern Affairs Canada (ISC), applicable to interests such as yours. The Agreement is straightforward and provides a means by which mineral owners may access their sub-surface interest once the land in which it is situated has been granted reserve status.

I would ask that you undertake the steps necessary to have the enclosed copies of the Agreement signed and returned to me within 14 days of the date of this letter. Upon receipt of the executed Agreements, we will have them executed by First Nation officials and a signed copy will be returned to you for your records.

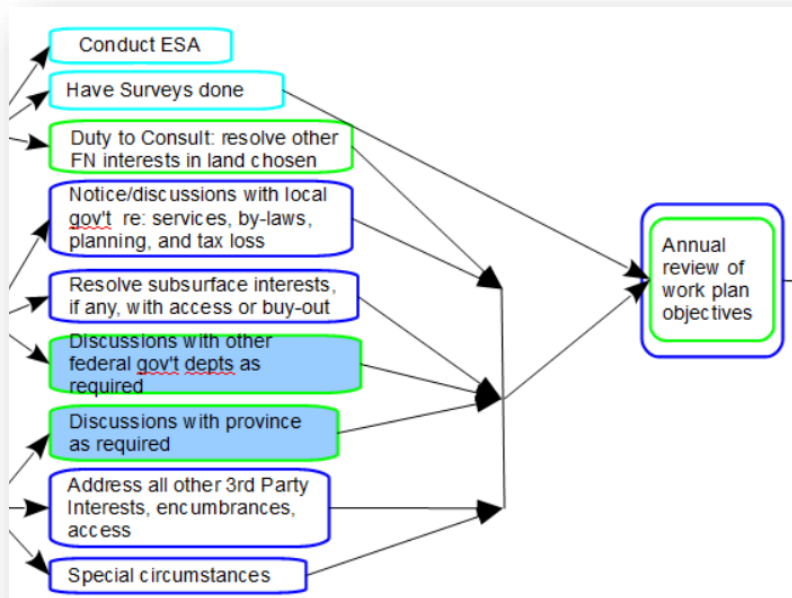
If we do not hear back from you within this timeframe, we will assume that you do not wish to proceed forward with the execution of the Surface Access Agreement and will advise ISC accordingly.

Should you have any further questions regarding the enclosed Agreement, please do not hesitate to contact me at the coordinates below. I look forward to hearing from you within the timeframe noted, and having in place an instrument that will secure your interests and those of the First Nation's.

Yours truly,

ATR Project Manager

Canvass Other Government Departments



In Phase 1, the FN documented any known interests that other governments might have. In Phase 2, it was the responsibility of ISC to contact other government departments and agencies to allow determination of the impact this ATR may have on programmes they deliver. The letter sent by ISC sought a response within three months. If issues were raised, now is the time for the FN and ISC to work toward their resolution.

If the ATR is undertaken pursuant to an Agreement that has already addressed such issues, ISC's letter will act simply as a notice that the ATR is proceeding, and no further action will be necessary.

Provincial Crown Lands...

While provinces do NOT have the right to veto an ATR, they can refuse to sell land. If your FN pursues an ATR that involves provincial Crown land, make sure engagement with provincial authorities starts early and that you are aware of the potential obstacles to getting the land. Because provincial land is for the benefit of the entire province, denying it to others so that only reserve members can use it can be a hard sell. This is particularly true when it comes to park lands. If the lands you seek form part of a provincial park, provincial authorities will need a strong rationale for selling the land. What reasons will you provide to convince them that beautiful and resource-rich park land, accessible to all the province, should be restricted to reserve use only? Can your FN only expand into Crown lands? Are your current lands unsuitable for crucial purposes, such as housing? Be prepared for such discussions!

National Parks...

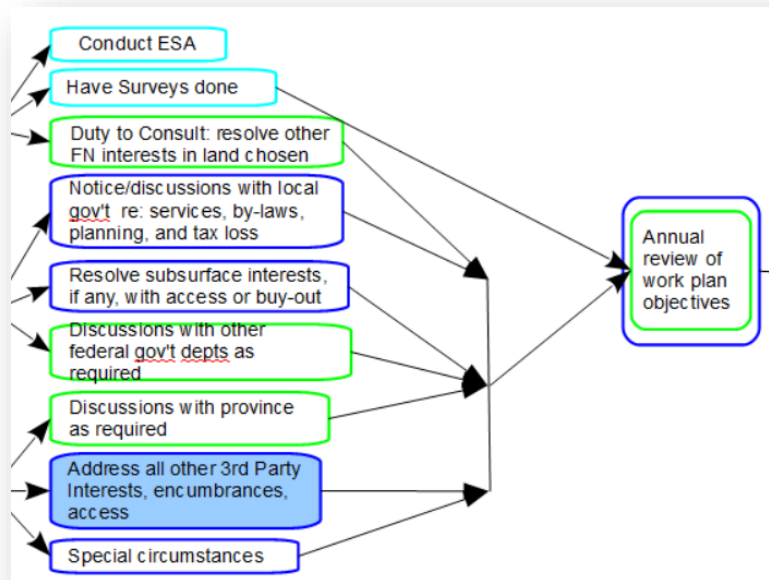
Some federal park lands have been added to reserve. There are now three reserves that have been added to Wood Buffalo National Park in Northern Alberta.

Some things to think about...

- Has ISC sent out notification letters to provinces, municipalities, or affected government departments?
- Are there any unresolved issues arising from this notification?
- How will you address interests/concerns identified by these parties?
- Will your ISC rep be your main point of contact for other federal departments, or are there personnel in these departments that have been identified?
- Have meetings been scheduled?
- Is the Department of Fisheries involved? If so, are you prepared for the challenging discussions arising from water issues?

- Is a Ministry of Natural Resources/Forestry involved?
- Is a Conservation Authority involved?
- Are health services required?
- Is policing required?

Third Party Interests



ISC will review any third-party interests to ensure the First Nation has addressed all reasonable concerns raised by third parties. In the case of utilities such as hydro, water and communications, the issue raised most frequently is proper access to the site. For third parties involved in business relationships with the FN, the major issue is leases or permits with acceptable terms.

Resolving Interests

Third parties will have been contacted, and their issues raised, during Phase 1. Such issues will have been identified in the LOS, and it is the responsibility of the First Nation to resolve them. Do your best to contact these third parties and keep a comprehensive record of your efforts to resolve the issues. Dealing with these parties may not always be easy or even productive. Some may be unresponsive, unhelpful, or opposed to your plans. Unreasonable demands may be made.

No Response?

If no response is received by the due date, a follow-up notification must be sent with a clear request for a response by a new due date. Indicate that if no response is received, it will be understood that there are no issues or concerns regarding the ATR Proposal.

If the issue is such that you cannot proceed without input from the third party, try alternative strategies. Can you contact someone else in the organization who can help? Will correspondence from your lawyer get the necessary attention? Can ISC assist with securing a response?

Challenges with third parties will be mitigated by careful record-keeping. Keep a record of all letters, telephone calls, and meetings (use your ATR Journal for this purpose). Maintaining a paper trail will show the extent of your efforts, your reasonableness, and your professional conduct.

Addition

If you are still at an impasse, Alternative Dispute Resolution may assist. More detail is provided on this topic later in this chapter.

Utilities

If there are utilities authorized to operate on the land, a replacement interest will be required that will take effect once the land is added to reserve. This replacement interests is usually a permit issued under section 28(2) of the *Indian Act*. However, if your FN is not subject to the land management provisions of the *Indian Act*, the instrument issued will be pursuant to a First Nation Land Management or self-government Land Code.

Note that transmission lines are somewhat unique in that they are not required for service to the reserve. Instead, they cross the reserve for service elsewhere. With the coming into force of the *Addition of Lands to Reserve and Reserve Creation Act*, such interests are commonly authorized pursuant to section 7 of that legislation. The statutory instrument required will be dependent on the specific circumstances of the land.

Special Interests

Even if nothing showed up on the title search, there may be other parties who have an “interest” in the ATR land. For example, a conservation authority may have designated the area as sensitive for wildlife or water quality and restricted uses such as commercial development or

housing. Early discussions with the party concerned may result in agreements on acceptable use or may indicate that the land is not worth pursuing.

Buy-Outs

Sometimes a third party has an interest in the land which may pose an obstacle to your ATR. It may be that the best solution is to buy-out the interest but be prepared that a seller may ask an unreasonable price. If so, consider the implications of not proceeding if further negotiations on price fail. Is it worth paying \$50K for a right-of-way if not doing so holds-up or scuttles a development with major revenue potential? On the other hand, your project may allow you to wait for an opportune time to seek a reasonable price. Each case needs to be decided on its merits. The art of negotiation applies!

The criteria listed in the LOS must be completed in Phase 3.

Some things to think about...

- Have all third party issues been identified and documented?
- Have all stakeholders and their profiles been identified?
- Has the province identified third parties as part of their response to being notified of the ATR?
- Has a strategy been developed to deal with third party issues?
- Have you identified parties to be involved in the implementation of the strategy?
- Are there third parties who will require replacement instruments??
- Have third parties been properly notified of your intentions?
- Have any letters or meetings been arranged with third parties?
- Have briefing notes been prepared for Band reps to deal with third party interests?
- Have you developed a proactive timeline to deal with these interests?
- Has a communications plan been prepared?
- Are there any unresolved issues?

Conservation Authority – Draft BCR

Other organizations may have an interest in the land proposed for ATR. For example, a local conservation authority may need ongoing access to the land. The following is an example of a BCR that addresses access by the local conservation authority.

BAND COUNCIL RESOLUTION

AUTHORIZATION OF ACCESS TO

CONSERVATION AND DEVELOPMENT AREA AUTHORITY

WHEREAS the Conservation and Development Area Authority (CAA) and the XXXXX First Nation signed an agreement dated _____ providing the terms for access to the Entitlement Reserve for the CAA, its officers, employees, agents and contractors (herein the CAA) for CAA purposes;

NOW THEREFORE be it resolved as follows:

That we, the Chief and Council of the XXXXX First Nation hereby provide our authorization to the CAA and its agents to enter upon that portion of the Reserve more particularly described as:

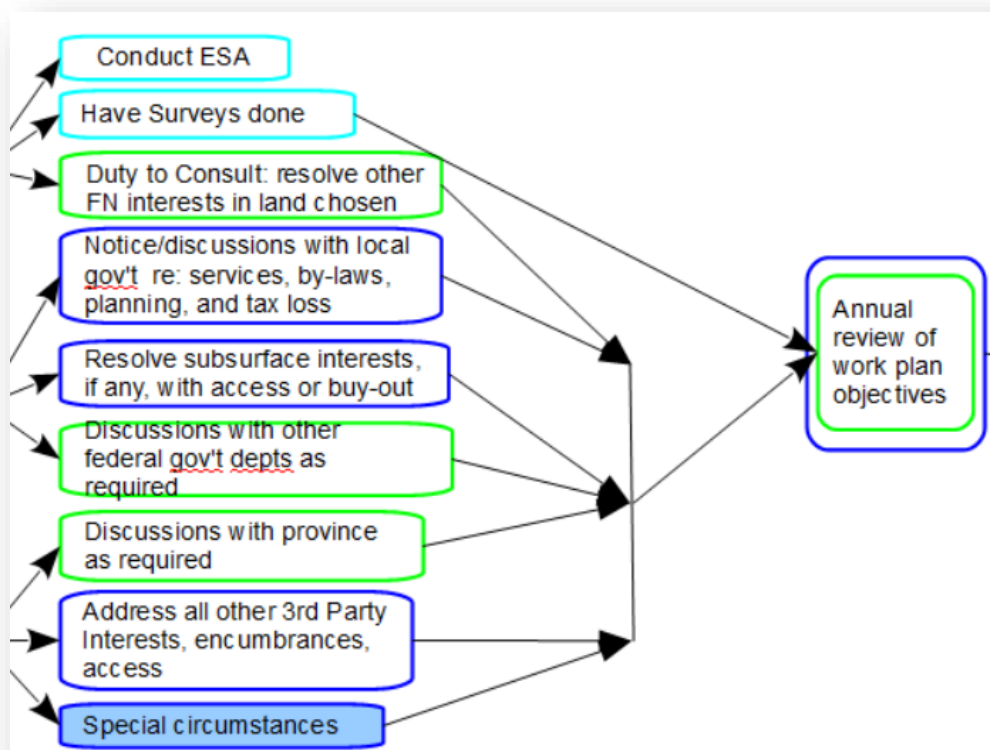
All that portion of the Reserve lying and being within the boundaries of the XXXXX Indian Reserve No. YY as such portion of the Reserve is shown outlined in the sketch plan identified as Appendix “A”, attached hereto;

effective on the date of execution hereof and ending on the ____ day of ____.

This authorization may be renewed at any time required with the written consent of the First Nation. This authority to enter the reserve is provided to the CAA for the purpose of maintaining existing licensed CAA works within the Reserve. The CAA shall pay reasonable compensation for damages to, including without limitation, fixtures, improvements, buildings, chattels, animals, crops, timbers, grain or fences and any detrimental environmental impact resulting from the CAA’s operations under this access authorization.

DATED this ____ day of ____, _____ at the First Nations Reserve in the Province of _____

Special Circumstances



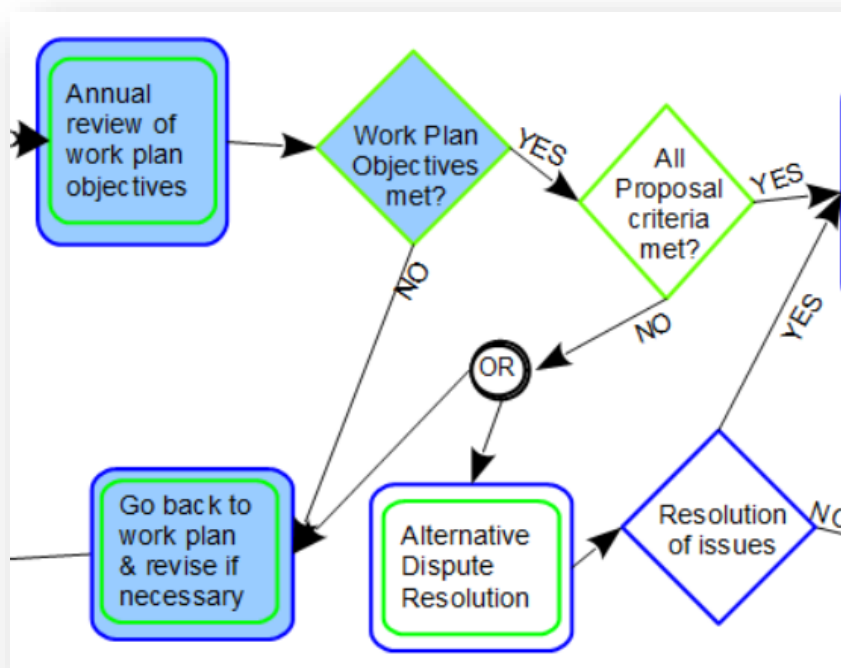
Some ATRs/RCs may proceed on the basis of special circumstances. These are rare circumstances that don't fit well into the policy justifications but must be allowed so that FNs are not compromised by unusual situations that necessitate reserve expansion. In these cases, very specific conditions are outlined to assist with determining whether your FN is eligible to proceed. These situations include:

- 1) Accretion or erosion of land
- 2) Natural disasters, such as flooding, where risk and well-being are critical considerations
- 3) Sub-surface rights
- 4) Acquiring partial subsurface interest or additions to rights
- 5) Small mineral additions
- 6) Correcting a Reserve Creation OIC or MO
- 7) Joint reserves

For full details on special circumstances, refer to Annex B of the Additions to Reserve/Reserve Creation Policy.

If you would like to proceed further to a special circumstances justification, seek advice and direction from your ISC representative.

Annual Work Plan Review



Throughout the process, the First Nation and ISC staff will have researched the various interests in the ATR land. Some of these issues may have taken months and even years to resolve. The resolution of these issues should have proceeded, therefore, in parallel with all the other ATR tasks to ensure timeliness of the process. (Remember, project management will serve your FN well in this regard.).

ISC must convene an annual review with the FN to determine the progress of the ATR Proposal. This progress is measured against the work plan established at the beginning of Phase 3. DO NOT wait for this annual review to meet with the department. It is strongly recommended that you arrange a schedule of meetings throughout each year of the project, involving all parties responsible for advancing the issues. The frequency of these meetings will depend on the nature of the issues requiring resolution. Once a month is usual for a check-in, but as issues accelerate and timelines become more pressing, once a week may be appropriate. The workplan should be updated after each meeting, with clear indications of what remains to be done, who is responsible, and target timelines for completion. Also, be prepared for new issues that are likely to arise throughout the process.

Your regular attention to the workplan will not only make for a more expeditious process but will ensure that issues are resolved to the FN's satisfaction.

Important to note that...

...dealing with unresolved issues as early as possible will expedite resolution. The longer issues remain unresolved in Phase 3, the longer it will take to reach MO approval.

Dealing with Inertia

Don't allow any room for inertia when leading your ATR – valuable time will be lost. Too many FNs have experienced this problem! If a third party doesn't respond, follow-up. If your ISC official does not produce something on time, follow-up. Keep following-up until you get progress. Never allow this statement from yourself or anyone you work with: "We contacted them and we never heard back." That approach will ensure nothing happens.

"THE SQUEAKY WHEEL GETS THE GREASE" applies especially to ATRs/RCs. The Project Manager needs to push for action on a reasonable and steady basis.

If the response isn't coming to you – go after it!

The Curve Lake First Nation's ATR involved contentious issues arising from cottage owners nearby. Additionally, when the First Nation wanted to drill a new community well on the proposed ATR land, one neighbouring municipality insisted on expensive water testing of non- Aboriginal lands nearby.



The opposition was sometimes unreasonable and often emotional. Your FN may experience similar opposition, in which case it's best to be prepared with solid rationale, levelheadedness, and a neighbourly attitude. Work with the parties to make a workplan that takes into account all reasonable issues and outlines solution-based activities. This will heighten the chances of resolution, avoid lengthy delays, and foster good relationships.

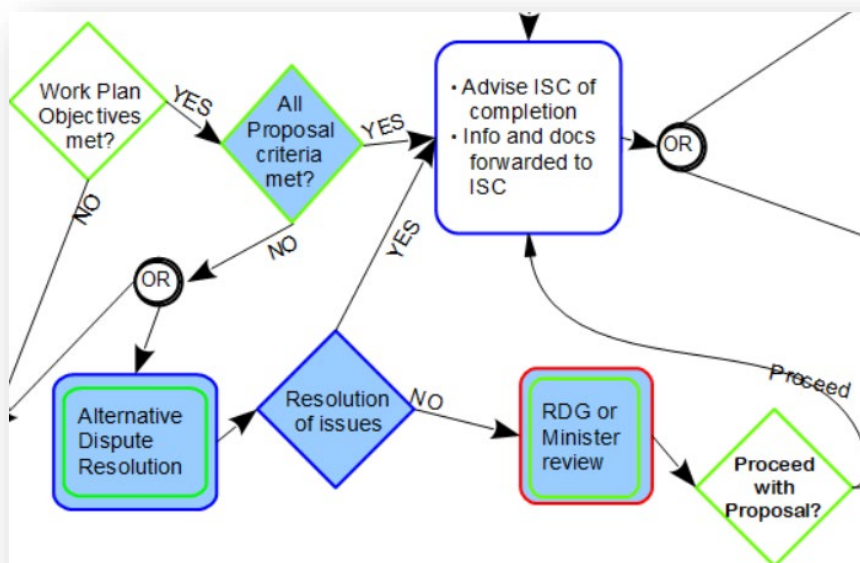
Some things to think about...

- Have all known issues been identified in the workplan??
- Are the stakeholders required for resolution clearly identified?
- Are timelines noted, not just for each activity but for completion of the whole project?
- Has a strategy for dealing with contentious issues been developed?
- Have you sought out technical experts to assist in resolution of contentious issues?
- Do you have a bring forward system so you don't lose track of undertakings?
- Has a schedule of meetings been set?
- Are undertakings noted at each meeting and included on the workplan?
- Is the FN being proactive and following-up on undertakings?

Unavoidable Delays:

Be prepared for disruptions from elections and the staff turnover that results. Whether at the federal, provincial, municipal or FN level, delays will be experienced as campaigns advance and new players get up to speed.

Alternative Dispute Resolution



Proactive Approach

Discussions between First Nations and other parties should be based on good will, good faith, reasonableness, and reasonable timeframes. But impasses can be reached, and all parties involved in an ATR need ways to resolve differences or disputes.

First Nation's Role

A proactive approach is the best practice. As mentioned earlier in this toolkit, early communication that fosters cooperation, avoids disputes, and builds a good working relationship is essential. Further, it is a wise practice to determine early in the process how disputes will be resolved and what kind of timeframe will be established for dispute resolution. Mechanisms need to be considered and agreed to up-front.

The parties will try to resolve disputes on their own, relying on frank, respectful and prompt communication. Where an impasse is reached, however, the use of Alternative Dispute Resolution (ADR) processes is encouraged.

Mechanisms

Dispute resolution mechanisms that will assist with identifying issues and developing solutions might include any or all of the following (note that these mechanisms are listed in the order in which they should be undertaken):

- 1) Conciliation: the parties try to resolve the issues through joint work meetings;

- 2) Facilitation: the parties request assistance from a neutral third party to facilitate the joint work meeting; and
- 3) Mediation: consensus building led by a third-party mediator to work out a solution to the issue. Mediation may or may not be binding, depending on its terms.

Unless otherwise specified, the First Nation is responsible for funding facilitation and mediation.

ISC's Role

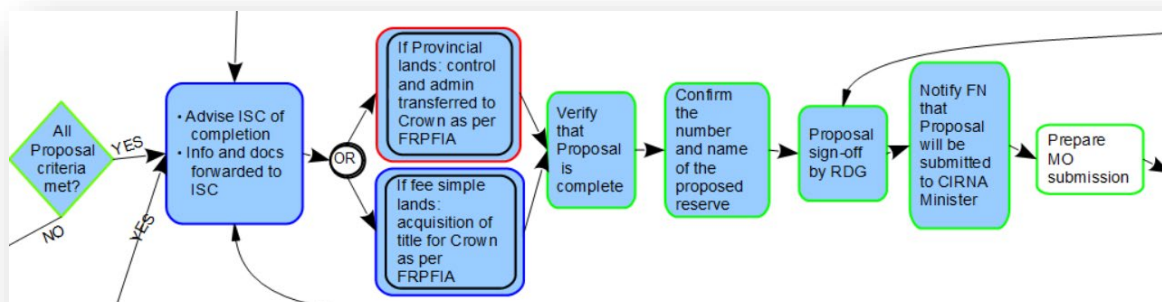
ISC is not usually a party to ATR agreements concluded between First Nations and local governments, provinces, or third parties, and has no authority to impose agreements or arbitrate decisions. However, the departments can be contacted if FNs require assistance with the dispute resolution in which they are engaged. The help provided includes:

- technical assistance,
- facilitated management for the joint work meetings, and
- access to tools and resources that provide information about the dispute resolution process.

In some cases, certain disputes cannot be resolved no matter what resolution efforts have been made. However, ISC may still decide to support the ATR initiative.

Refer to the Policy Directive 10-1, section 15.0 for detailed information on dispute resolution.

Completion



First Nation Final Step

When satisfied that all the criteria for the ATR have been met, the FN must make sure that all the information and documents have been sent to ISC and must notify ISC of this fact. Note that all documents will be submitted through NATS.

Land Transfer

If the land proposed for ATR is provincial or territorial land, it has to be transferred to Canada by provincial/territorial instrument. If the land is held in fee simple, legal counsel completes a land transfer. This step is managed by the ISC Regional Office in consultation with provincial/territorial officials. This transfer is done in accordance with the *Federal Real Property and Federal Immovables Act*.

Member of Parliament Notification

As part of the dissemination of information and as a courtesy gesture, the ISC Minister informs the Member of Parliament (MP) in whose riding the ATR is taking place. This gives the MP a “heads up” regarding the ATR initiative, thereby ensuring knowledge of the change in land tenure by official parties and encouraging goodwill among those affected.

ATRs under the 2001 Policy

Those ATRs that are subject to the 2001 ATR Policy will require an Approval in Principle (AIP) by the RDG or the Deputy Minister/Minister. This situation arises either because the ATR is not being transitioned to the 2016 ATR Policy, or because the ATR is pursuant to an Agreement that refers to the 2001 ATR Policy.

Note

ATR Provisions of a legal agreement override any conflicting provisions of the ATR /RC Policy.

Notifications

Upon receiving the notification from the FN, the ISC Regional Office will:

- verify the Proposal for completeness,
- confirm the name and number of the proposed Reserve, and
- notify the FN that the Proposal will be submitted to the Minister of CIRNAC.

PHASE 3 of the ATR,

Proposal Completion, has now come to an end.

What Has Happened to the ATR Proposal?

Phase 3 will probably consume a great deal of time. There are many factors, some of which are identified in the previous chapter, that can delay the completion of Phase 3. Given that you will likely be managing the project for a few years, things are likely to change over time, including the people you engage to advance the file. Even you may leave the file and transfer your knowledge to your successor. Knowing that conditions could be much different from when you began the project assists with preparing for and adapting to changes.

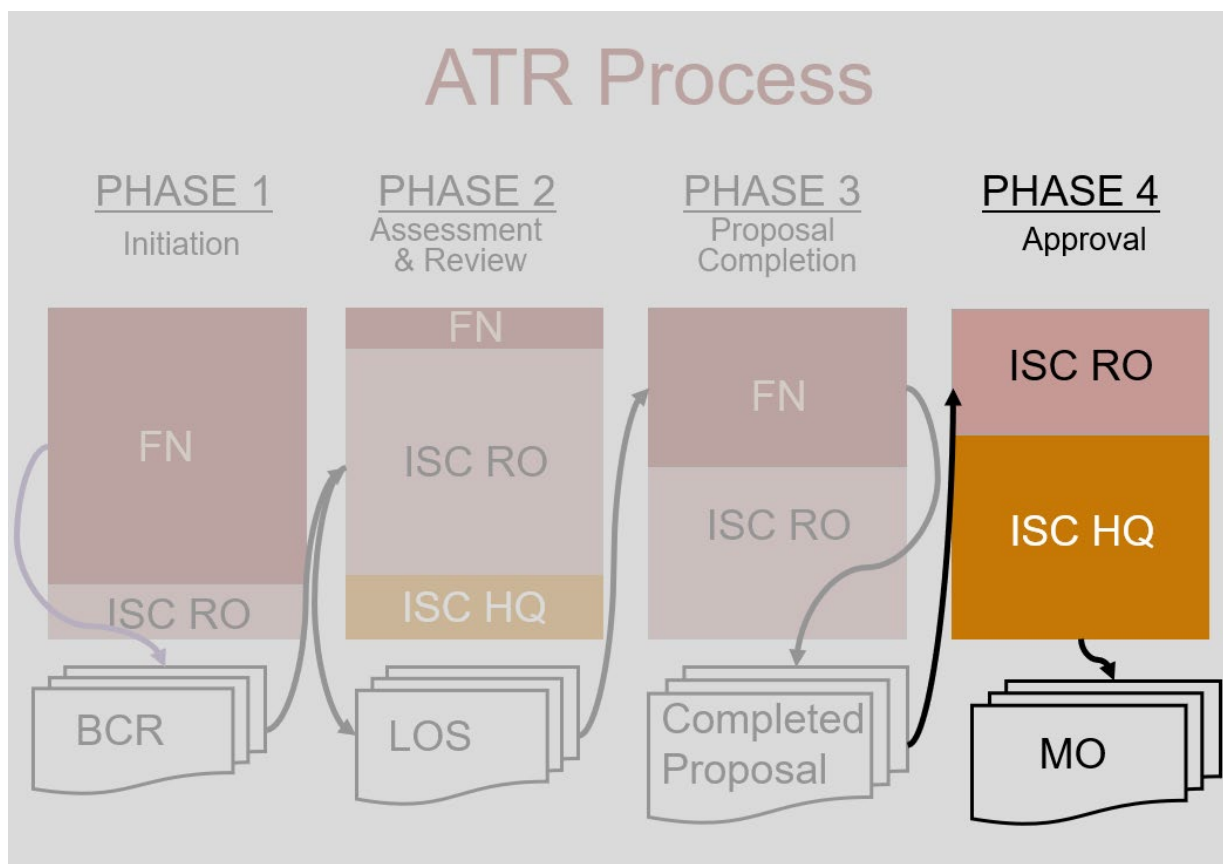
It is also important to understand that a file can slow because of players over whom you and the departments have no control. They may not understand the process well, they may not share your priorities, or their own business can overtake their attention to yours. More significantly, some parties may be resistant to the project, which could take the form of ignoring or delaying issues needed to achieve resolution.

Persistence on your part will be required. Be sure to follow-up on all matters as quickly as possible, and utilize project management that will keep the players, and you, from allowing the project to slip between the cracks.

Make as many follow-up calls as necessary, schedule regular meetings, and keep a record of commitments in the action plan and through emails!



Chapter 8 – Phase 4 - Approval



Phase 4 Summary

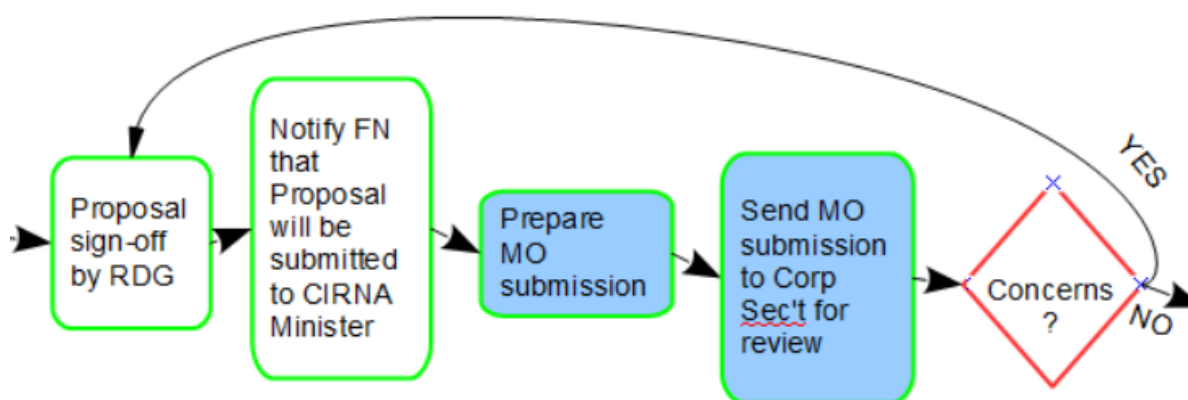
Once the proposal has been completed, it is now ready for the 4th and final phase of the process. In Phase 4, a decision whether to approve the ATR is made. Reserve status will be conferred, in most cases, by way of a Ministerial Order.

NOTE: Information on Phase 4 is provided for the information only of First Nations. The issues in this phase are the exclusive responsibility of ISC; First Nations have no responsibility for this phase of the process.

HOWEVER: be aware that, if something was missed during the previous phases, the Phase 4 review could potentially detect that omission. In such a case, further work to reach resolution

on the issue may be necessary. To avoid a situation like this, ensure you are as comprehensive as possible in the identification and resolution of issues in Phases 1 and 3.

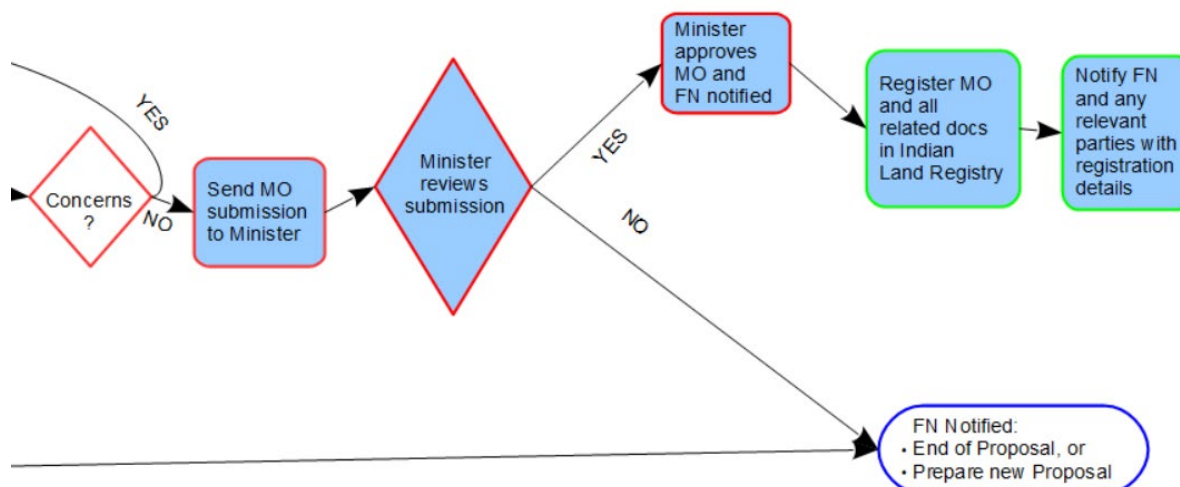
Preparing Submission Package



The work of the First Nation is complete at this point, and the remaining responsibilities rest with ISC, both at the Regional Office (RO) and at Headquarters. Several tasks remain to be completed before the ATR Proposal makes its way to ISC Headquarters for final approval. These tasks include:

- Once ISC RO has verified that all requirements of the ATR policy have been met, ISC will notify the First Nation.
- The ISC Regional Officer prepares the MO submission package, then forwards it to ISC HQ for pre-review as part of the quality control function.
- Once pre-review is concluded, the MO submission package is reviewed and approved regionally by the DOJ and by ISC RO.
- ISC RO then forwards the submission package to ISC HQ to initiate final approvals.
- Following ISC HQ approvals, the MO submission package is sent to CIRNAC and then on to the Minister of CIR for review and approval of the Ministerial Order.

Granting Reserve Status



If there are no questions or concerns from the Corporate Secretariat, the ATR submission package is sent to the Minister for review and signature of the Ministerial Order. (Note that, before the coming into force of the *Addition of Lands to Reserve and Reserve Creation Act*, lands were added to reserve by Order in Council. All ATRs subsequent to that legislation are now authorized by Ministerial Order).

- 1) Note: Prior to ALRRCA and the 2018 amendments to the former FNLMA, reserve status could be granted either through Royal Prerogative by Order in Council or by Ministerial Order if the ATR was a Treaty Land Entitlement legal obligation pursuant to the Claims Settlement Implementation Acts in Alberta, Saskatchewan, or Manitoba. As noted earlier, however, the *Addition of Lands to Reserve and Reserve Creation Act* (ALRRCA) repeals the Alberta and Saskatchewan Claim Settlements Implementation Acts and the additions to reserve portions of the Manitoba Claim Settlements Implementation Act. Those became redundant with the coming into force of ALRRCA, which now provides the benefits of these acts, including approval of ATRs by Ministerial Order, to all First Nations.
- 2) The MO is registered in ISC's Indian Land Registry System and in any other relevant land registries.
- 3) Once notified that the land has been granted Reserve status, the ISC RO must:
 - notify the First Nation and any other relevant parties, and
 - arrange for the registration of all related land title documents and the signed MO in ISC's departmental land registry system.

Where FNs are subject to their own Land Codes, registration of the MO must be pursuant to the Land Code.

Note further that, where the MO issues pursuant to the Framework Agreement on First Nation Land Management (FAFNLMA), it will be registered in the First Nation Land Registry System (FNLRS)

The ATR process is completed as the proposed land has now been granted reserve status!

What Has Happened to the ATR Proposal?

In this final phase, the main responsibility lies with ISC, initially at the Regional Office, then at Headquarters. The First Nation has no control at this stage and must rely on ISC to complete the work. Here again, changes in personnel can delay the proposal, as new staff must be familiarized with the process, and with your proposal. Delays may occur when there is an election cycle.

Stay in contact with the Departments regarding the status of your proposal.

The Complexity of the ATR Process

As you can see, the ATR process is quite complex, and is not simply a land transfer. An ATR must observe the requirements of the *Indian Act* and FNLN/self-government land codes. The Additions to Reserve/Reserve Creation Policy always applies. Federal and provincial legislation is often necessary to consider, and third parties can be challenging to engage. The process can take years to complete.

Furthermore, it is essential that all the ATR documentation is error-free. A deficiency in a survey, a problem with a title document, undiscovered contamination; these are all problems that could compromise certainty that the land is reserve, or usher in problems that the First Nation inherits.

Keep in mind that reserve land is *sui generis*, meaning that it is unique in law. Land that becomes reserve is essentially distinct from what it was before, that is, it holds very little in

common with its previous tenure (whether municipal, provincial, or federal). The land is now federally owned but held in trust for the First Nation; it is no longer subject to municipal/provincial jurisdiction (except in limited ways); it is subject to a body of law that no other jurisdictions observe (e.g., the *Indian Act*, a land code, reserve-specific regulatory statutes). When such a dramatic change in land tenure takes place, there is a lot of work involved, the work is complex, and the need for accuracy is paramount. This takes time.

Consider also that Canada has a fiduciary obligation to ensure that First Nations are not adversely affected by an ATR transaction. This means that a lot of federal scrutiny is applied to permits, leases, and other instruments to ensure they involve nothing improvident. Whereas this helps to protect First Nation interests, it also means time-consuming and complicated legal processes that can draw out the ATR process.

No two ATR submissions are identical, and there isn't a "one size fits all" approach. You will have to adapt both knowledge and experience to each new situation.

A NOTE ON THE FUTURE OF THE ATR POLICY

At the time of updates to this toolkit (2023), CIRNAC has been engaged in a "policy redesign" initiative intended to modernize and streamline the ATR process. This initiative has involved engagement with FNs across the country to determine challenges and opportunities that could inform how the policy should be redesigned. The timeline for a new policy, should one be produced, is not currently known, but it is likely a matter of years before anything is finalized.

Depending on the results of the redesign initiative, the ATR process as outlined in this toolkit could change, perhaps in significant ways. Should that be the case, NALMA intends to revise the toolkit, or produce a new one, based on the new process.

Chapter 9 – Additional Resources

In the sections that follow, you will find a number of additional items that may be of use to you as you manage your ATR.

Government Acts and Publications:

The *Indian Act*, available online at: <http://laws-lois.justice.gc.ca/eng/acts/I-5/>

ISC's Land Management Manual, available online at: <https://nalma.ca/wp-content/uploads/2016/01/Land-Management-Manual.pdf>

- The chapters relevant to this toolkit include:
- Chapter 5 - Designations and Surrenders
- Chapter 10 - Reserve Creations and Additions, including Annexes A, B, and C
- Chapter 12 - Environment

The Additions to Reserve/Reserve Creation Policy 2016, available online at: <https://www.aadnc-aandc.gc.ca/eng/1332267668918/1332267748447>

National Aboriginal Land Managers Association (NALMA) provides training to develop technical expertise on many lands management related activities. The website is: <http://www.nalma.ca>

The First Nation Tax Commission – provides technical assistance to support service agreements and tax loss negotiation processes, including the analysis of net tax loss adjustment, facilitation, tools, and training to support service agreement negotiations. The website is: <http://www.fntc.ca/>

The Tulo Centre of Indigenous Economics, which offers university accredited courses related to implementing First Nation tax powers, negotiating service agreements, developing economic strategies and plans for First Nations lands and communications with local governments and stakeholders. The website is: <http://tulo.ca>

The Federation of Canadian Municipalities, through the Canadian Infrastructure Partnership Program, has developed tools to assist in the process of negotiating service agreements between First Nations and local governments. The website for this program is: <https://fcm.ca/en/programs>

Vision: Saskatchewan First Nations

Our vision is that we will live on the land, as we have always, where our Peoples will be self-determining and economically independent, where we will walk in health and happiness with strength, unity, balance and according to our oral traditions as sovereign Nations, as bestowed by the Creator and as affirmed by the Treaty.

History of Reserves

The *British North America Act (BNA)* of 1867 gave the federal government the authority to govern and manage reserve lands.

Under the British North America (BNA) Act, legislative authority over Indian reserves is placed exclusively with the National Parliament and specifically with Indigenous and Northern Affairs Canada (ISC).

Local administration is placed with local native governments.

There were five ways in which Indian Reserves in Canada were established. They include:

- Treaty
- Purchase by the Crown
- Grants of the French or British Crown
- Agreements with the provinces
- Statutes of the Federal, Provincial or Colonial governments

Sometimes, reserves were created by a combination of two or more of the methods listed above.

The history of reserve creation varies somewhat from region to region. A short summary is provided in the following pages.

Did you know...

The Aboriginal population is growing rapidly and is relatively young. Census 2021 indicates that there are nearly two million (1,807,250) Aboriginal people in Canada, representing 5% of the Canadian population. Of this total, 58% are registered Indians, 35% are Metis, and 4% are Inuit. Between 2016 and 2021, the population grew by 9.4%, significantly higher than the non-Indigenous population growth of 5.3%, but at a slower rate than in years previous. The Aboriginal median age is 31.3, compared to 40.6 for non-Aboriginals.

Atlantic Region

The Atlantic Region is comprised of four provinces, each having a very distinct history regarding the initial establishment of reserves.

Nova Scotia

In 1725 and 1759, the Mi'kmaq in Nova Scotia entered into Peace and Friendship Treaties, but these treaties did not involve the granting or recognition of reserve rights. In 1783, licences of occupation were used to grant lands to 10 Indian groups. Although subjected to encroachments, these were part of the lands set apart by Order in Council in 1920. When Cape Breton became part of Nova Scotia in 1821, lands which had already been set apart were surveyed.

Prince Edward Island

In 1859, the first reserve for the Mi'kmaq of PEI was created along the Morrell River by Grant. A second reserve was created in 1912 when the Court of Chancery issued a vesting order pursuant to Section 47 of the *Indian Act* - a Special Reserve.

New Brunswick

In 1783, the Governor of Nova Scotia issued the first license of occupation in New Brunswick in the Miramichi area. However, these licenses were not recognized by the New Brunswick government, which had been partitioned from Nova Scotia in 1784. The New Brunswick Government granted licenses of occupation for Eel Ground in 1789 and parts of the original grant in 1805. Licenses of occupation for the reserves of the Mi'kmaq and the Malecite were issued around this time while three reserves were established by de facto occupation.

Newfoundland and Labrador

The creation of reserves in Newfoundland and Labrador is a relatively recent occurrence. For instance, the Miawpukek reserve on the Island of Newfoundland was established in 1987 for the Mi'kmaq in that area. There are three reserves in total in the province.

In 2003 and 2006, reserve lands for the Mushuau Innu First Nation and the Sheshatshiu Innu First Nation respectively were set apart in Labrador. These are the only two First Nations in Labrador.

The Inuit of Labrador settled a comprehensive land claim in 2005. Since the Inuit are not subject to the *Indian Act*, reserves were never created for their five communities.

Quebec

In Quebec, formerly Lower Canada, Indian Reserves consisted of lands given by the Jesuit Fathers or lands granted to the Jesuits by the French Crown in trust for the First Nations. Also, lands were granted by private individuals to the First Nations and lands claimed by the Indians as their habitat of which they had never been dispossessed by the Crown. In addition, some 231,000 acres of land had been set apart and appropriated for Indians. All lands or property in Lower Canada appropriated for the use of any tribe or body of Indians became vested in trust for such tribe or body in the Commissioner of Crown Lands for Lower Canada, who was authorized to concede, lease, or charge such lands subject to instruction from the Governor, to whom he was accountable for all moneys received.

At Confederation there were some 20 reserves which had been set apart by the Province of Lower Canada. As well, some reserves were established by grants from private persons and religious orders. Since Confederation, Canada has purchased and set apart a number of reserves in the Province of Quebec. As to these, the title of the Federal Crown is absolute.

At Confederation, the BNA Act gave the Federal Government the right to administer the Indian interest in those lands but the title to those lands remained with the Province. Following settlement of the Star Chrome Company case, the Privy Council confirmed that the title of lands is vested in the Province.

Ontario

In Ontario, formerly Upper Canada, the Government adhered to the spirit of the Royal Proclamation of October 7th, 1763, whereby the purchase in the name of the Crown of Indian title over ungranted lands was authorized and the purchase by private persons prohibited. Treaties were made from time to time with the Indians inhabiting Ontario, by which they surrendered to the Crown whatever right they possessed in the land generally in consideration of the grant for their exclusive benefit of defined areas of land and the payment of small annuities.

At Confederation, the BNA Act gave the Federal Government the right to administer the Indian interest in lands that were surrendered but unsold, but the title to those lands remained with the Province. Following the St. Catherine's Milling Company decision, the Privy Council confirmed that the title of such lands is vested in the Province.

On March 24, 1924, an Agreement was entered into between the Dominion (of Canada) and the Province of Ontario. The agreement provided that the Dominion should administer Indian reserves and that, upon surrender, the land may be sold, leased, or disposed of under the direction of the Dominion and the proceeds derived may be applied for the benefit of the surrendering Band. If a Band to which a reserve has been allotted becomes extinct, or if any portion of a reserve is no longer required for the benefit of the Band, the same is to be administered for the Province of Ontario.

Manitoba

Between 1871 and 1910, First Nations in Manitoba signed numbered treaties with Canada. Based on population, each of these treaties provided for the setting apart by Canada of reserve land for a First Nation. These federal obligations to provide land are referred to as Treaty Land Entitlements (TLE).

In Manitoba, the majority of First Nations received their entire land allocations under their treaties.

However, some First Nations did not. To address this shortfall, Canada, Manitoba and 27 Manitoba First

Nations came to agreements on how to proceed. Between 1994 -1996, seven First Nations signed individual TLE Settlement Agreements. In 1997, an additional 19 First Nations signed the Manitoba TLE Framework Agreement. Two more First Nations have since come under the framework agreement.

Under these agreements, Canada and Manitoba committed to adding up to 1.1 million acres to First Nation reserve lands and paying more than \$74 million in compensation. The majority of the land (1,085,959 acres) is being transferred to First Nations from unoccupied provincial Crown land. The balance is being acquired from private landowners on a willing seller/willing buyer basis.

As well as providing funding to First Nations for the acquisition of lands, TLE settlement agreements provide First Nations with the option of asking the Government of Canada to transfer lands they have acquired into reserve status - thus creating additions to or new reserves.

Saskatchewan

The federal Crown and First Nations signed Numbered Treaties (2, 4, 5, 6, 8 and 10) between 1871 and 1906 in a region that is now Saskatchewan. A key aspect of these Treaties is the allocation of reserve land to First Nations people, based on the First Nation's population at the time of the original survey. However, this did not happen in all cases, which left the federal government with outstanding obligations.

By the 1970s, the amount of available unoccupied Crown land was not sufficient and/or in the right location to settle all outstanding land claims. The Governments of Canada and Saskatchewan and the Chiefs of 25 Entitlement First Nations signed the *Saskatchewan Treaty Land Entitlement Framework Agreement (1992)*. The significance of the Agreement is that it established a framework that addresses these outstanding obligations and ensures First Nations receive the amount of reserve land to which they are entitled. In particular, Saskatchewan agreed to offer Crown land for sale and to contribute financially to settle outstanding TLE claims.

Over the next few years, several more First Nations signed separate but similar agreements. Pursuant to the terms of the agreements, Entitlement First Nations will receive approximately \$539 million over 12 years to buy just over 2 million acres of land to add to their reserves.

Saskatchewan is legally obligated to participate in TLE settlements due to the Natural Resources Transfer Agreement (1930). Pursuant to this agreement, Canada transferred to Saskatchewan all Crown lands, minerals and other natural resources within the Province, subject to a number of conditions. One such condition was that Saskatchewan would provide unoccupied Crown lands to enable Canada to fulfill its obligations under treaties with First Nations. Since sufficient unoccupied Crown lands no longer exist in Saskatchewan to settle outstanding TLE, the Province has agreed to share with Canada the cost of providing money to Entitlement First Nations to purchase private and Crown lands. By Provincial Order in Council No 1036, dated July 29, 1938, all reserves lying outside the Railway Belt and the Peace River Block were transferred to Canada.

Alberta

There are 44 First Nations in Alberta, with 133 reserves, with approximately 730,680 hectares of reserve land. These First Nations reserves were established through a series of treaties, Treaty 6, Treaty 7, and Treaty 8.

Treaty 6 was signed at Carlton and Fort Pitt in 1876, covering central Alberta and Saskatchewan. There are 18 Alberta First Nations included in this treaty.

Treaty 7 was signed at the Blackfoot Crossing in 1877, covering southern Alberta. There are 5 Alberta First Nations included in this treaty.

Treaty 8 was signed at Lesser Slave Lake in 1899, covering portions of northern Alberta, Saskatchewan, British Columbia, and part of the Northwest Territories. There are 23 Alberta First Nations included in this treaty.

Reserves in Alberta cover a total area of 6,566.69 km² and range from 4.41 km² to 1,435 km² in size.

British Columbia

In British Columbia reserves were set apart for the First Nations' benefit by Agreement between Canada and the Province in 1875 (Order in Council dated November 10, 1875, and British Columbia Order in Council dated January 6, 1876.)

Certain differences arose between Canada and the Province respecting Indian lands so a commissioner, A. J. McKenna, was appointed. In 1912 he entered into an agreement with the Premier of the Province, Hon. Sir Richard McBride, and a Commission was appointed with the power to adjust the acreage of Indian reserves in BC. In any place where the Commissioners determined that an insufficient quantity of land was set aside for the use

of Indians in that locality, the Commissioner fixed the quantity that should have been added for the use of such reserves.

The Report of the Royal Commissioner was received on June 30, 1916. The Federal Statute enabled the Governor in Council to give effect to the Royal Commission Report. On July 19, 1924, an Order of His Excellency the Governor General in Council was passed approving the report of the Royal Commission, excepting the suggested cut-offs in the Railway Belt. By Provincial Order in Council No 1036, dated July 29, 1938, all reserves lying outside the Railway Belt and the Peace River Block were transferred to Canada.

Index

A

Aboriginal and Treaty Rights Information System, 73, 88
 Access agreement
 mineral rights, 122, 123
 sample mineral rights letter, 125, 126
 Accretion, 134
Addition of Lands to Reserve and Reserve Creation Act
 (ALRRCA), 5, 13, 19, 131, 145
 ADR. *See* Alternative Dispute Resolution
 Agreement, other non-Canada, 27
 AIP. *See* Approval in Principle
 Alternative Dispute Resolution, 138
 Annual Work Plan Review, 135
 Approval in Principle, 140
 Approval Phase, ATR Phase 4, 143
 Assessment and Review Phase
 ATR Phase 2, 85
 Assessment and Review Phase, ATR Phase 2, 85
 ATR
 Authority for Granting, 5
 ATR Journal, 30, 118, 131
 ATR Phase 1, 29, 30
 Aboriginal rights, other, 72
 ATR Policy Category, 44
 ATR Project Team, 34
 Encumbrances, 66
 Environmental research, 56
 Funding, 61
 Government departments, other, 71
 Impacts and Benefits, 63
 Land Specifics, 32
 legal counsel, 36
 Mineral rights, 54
 Notification to mineral rights owners, 54
 Notification to Third Parties, 69
 Opportunity/Need Identified, 31
 Pass BCR for ATR, 80
 Phase 1, 7
 Services, potential need for, 74
 third-party interests, 69
 ATR Phase 2, 85

Duty to Consult, 87
 Funding, 89
 impacts and benefits, 92
 ISC initial review of ATR proposal, 86
 Letter of Support, 95
 notifications, 90
 Title review, 93
 ATR Phase 3, 99
 Alternative Dispute Resolution, 138
 Annual Work Plan Review, 135
 Completion of proposal, 140
 Duty to Consult, 114
 Environmental Issues, 103
 mineral rights, 122
 municipal interests, 115
 Other First Nations, 114
 Other Government departments, 128
 Survey, 112
 third-party interests, 130
 workplan, 100
 ATR Phase 4, 143
 granted Reserve status, 145
 ATR Policy, 23
 categories, 23
 Community Additions category, 26
 Legal Obligations and Agreements, 24
 Tribunal Decisions category, 27
 ATR Process, 7
 ATR Process Chart, 30
 Summary, 7
 ATR project manager, 34
 ATRIS, 88, *See* Aboriginal and Treaty Rights Information System

B

Band Council Resolution, 80
 Benefits and Impacts, 63, 92
 Boundary issues, 49
 breach of legal obligation, 28
British North America Act, 150
 budgeting, 61
 Buyer beware, 13

buy-out, 132

C

Canadian Environmental Assessment Act, 162
Canadian Environmental Protection Act, 110
 CEPA. *See Canadian Environmental Protection Act*
 Claim settlement agreements, 24
 Clear Title, 67
 CLUP. *See Community Land Use Plan*
 communications
 key messages, 101
 team, 35
 community addition
 justification, 44
 community additions category, 26
 community growth, 26
 Community Land Use Plan, 11
 Completion of Proposal, 140
 Conservation Authorities interest
 sample letter, 133
 conservation authority, 131
 creation of reserves, 6
 culturally significant sites, 26

D

Department of Fisheries and Oceans, 57
 Designation, 161
 Approval Phase, 15
 benefits, 15
 Preparation Phase, 14
 Pre-Reserve, 14
 Referendum Phase, 14
 Documentation
 required, 42
 Due diligence, 13
 Duty to Consult, 87, 114

E

easement, 70
 Economic Development, 26
 elements of the proposal, 42
 Encumbrances, 132
 Environmental Assessment (EA), 161
 Environmental Checklist
 Vendor, 59
 environmental information, 42
 environmental research, 56
 Environmental Review, 110, 111
 Environmental Site Assessment, 56, 103
 components of, 104
 costs, 106

Phase 1, 104
 Phase 2, 105
 responsibility, 107
 Stale-dating, 104
 timing, 106
 Environmental Site Assessment (ESA), 161
 ER. *See Environmental Review*
 erosion, 134
 ESA. *See Environmental Site Assessment*
 Exemption of taxes, 6
 existing encumbrances, 66

F

Federation of Canadian Municipalities, 117
 Financial implications, 11
 First Nations Commercial and Industrial Development
 Act, 20
First Nations Land Management Act, 169
 First Nations Taxation Commission, 118
 flooding, 134
FNLMA. See First Nations Land Management Act
 FNTC. *See First Nations Taxation Commission*
 Framework Agreement, 169
 Framework Agreement on First Nation Land Management
 Act, 20
 Funding, 11, 61
 assessment of sources, 89

G

gas pipelines, 70
 Geographic enhancements, 27
 Good Title, 67
 Google Earth
 Grant, 51
 granted Reserve status, 145

H

Health Canada, 92
 History of Reserve Creation, 150
 hydro lines, 70

I

IAA. *See Impact Assessment Act*
 Illegal Reserve Lands Disposition, 28
Impact Assessment Act, 107
 impacts and benefits, 42, 63, 92
 INAC, 1
Indian Act, 162
 land designations, 13
 Indian Oil and Gas Canada (IOGC), 123

Initiation Phase
 ATR Phase 1, 30
 interests
 registered, 70
 unregistered, 70
 Interests
 FN members, other, 70
 non-registered, 37
 ISC
 role, 5
 ISC Regional Officer, 43
 Issues
 outstanding, 135

J

Joint reserves, 134
 joint work plan, 100

L

land
 description, 48
 exchange, 24
 purchase, 47
 selection, 24, 46, 47
 specifics, 32
 transfer, 140
 Land Designation
 definition, 13
 Land Management Manual, 105
 land use, 42, 47
 Land Use Plan, 11
 Landless First Nations, 25
 legal counsel, 36
 legal obligation
 justification, 44
 Legal Obligations and Agreements, 23, 24
 legal reversion, 25
 letter, 126
 Letter of Support, 95
 local government, 52, 75
 interests, 42
 proximity, 42
 LOS, 95

M

Managing Expectations, 43
 Meeting with ISC
 Annual Work Plan Review, 135
 initial, 38
 regular, 39
 Member of Parliament

notification, 140
 Memorandum of Understanding, 116, 119
 mineral rights, 42, 53, 122
 sample letter, 125, 126
 MSA. *See* Municipal Services Agreements
 MTSA, 162
 municipal interests, 115
 Municipal Services Agreements, 116
 Municipalities
 tax loss, 6

N

NALMA, 1
 Centre of Lands Excellence, xii
 membership, ix, xii
 mission, ix
 objective, x
 professional development, xii
 National Aboriginal Lands Managers Association. *See*
 NALMA
 National Addition to Reserve Tracking System, 77
 NATS, 81, 86, *See* National Addition to Reserve Tracking
 System
 Natural disasters, 134
 non-registered interest, 37
 notification letter, 115
 Notification Letter to mineral rights owners
 sample, 125, 126

O

Official Community Plan, 74
 oil and gas, 53
 Other Government
 Interests, 42
 other interests, 42

P

permit, 70, 131
 Phase 1 - Initiation, 29, 30
 Phase 2 - Assessment and Review, 7, 85
 Phase 3 - Proposal Completion, 8, 99
 Phase 4 - Approval, 8, 143
 pipelines, 70
 Policy
 ATR, 23
 category, 42
 category justification, 44, 45
 Pre-Designation, 14
 investment risks, 14
 Pre-Reserve Designation, 14
 Professional Lands Management Certification, xii

Proposal and Completion Phase
 ATR Phase 3, 99
 Proposal Completion, iii, vi, 140

R

registered interests, 70
 Relocation of Communities, 25
 reserve creation, 6, 150
 return of unsold surrendered lands, 25
 review committee, 94
 Role of ISC, 5

S

Sectoral self-government, 169
 Selection area, 24, 26, 27, 42, 46, 47
 Self-Governments Agreements, 24
 services, 42, 74
 Specific Claims Tribunal, 27
 Sub-surface rights, 123, 134
 surrendered lands, unsold, 25
 survey, 112
 Surveyor requirements, 49

T

tax considerations, 117

tax-adjustment compensation, 118

Taxes

compensation, 6
 Property, 6
 telephone lines, 70
 third-party interests, 69, 130
 TLE. *See* Treaty Land Entitlement
 Transaction costs, 42
 Treaty Land Entitlement, 24
 Tribunal Decisions, 23

U

Unregistered interests, 37, 70
 Urban Reserves, 16
 background, 17
 economic benefits, 17
 servicing agreements, 17
 Utilities, 70, 131

V

Veto, 129

W

water boundaries, 57
 work plan, 100

Appendix A - Terminology

General Terminology

In most areas administered by ISC, you will often find terms that are not encountered in everyday use or terms that are used with a slightly different definition or meaning than in everyday situations. We have listed here some of the more important definitions to help you better understand the terminology used in this toolkit.

Band Council Resolution (BCR): a document which contains a resolution made by a First Nation Council at a duly convened First Nation Council meeting which has been discussed, voted on, and passed by a quorum of council. (Sometimes referred to as a First Nations Council Resolution.)

Canadian Environmental Protection Act: an Act respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development.

Contaminated Site: a contaminated site is defined as a site at which substances occur at concentrations: (1) above background levels and pose or are likely to pose an immediate or long-term hazard to human health or the environment, or (2) exceeding levels specified in policies and regulations.

Designation: a “zoning” of lands to be leased for specific purpose(s) as agreed on by members of the First Nation through a referendum vote.

Environmental Assessment (EA): An EA is a process for identifying project and environmental interactions, predicting environmental effects, identifying mitigation measures, evaluating significance, reporting, and following-up to verify accuracy and effectiveness. An EA is used as a planning tool to help guide decision-making, project design, and implementation.

Environmental Site Assessment (ESA): refers to a process used to determine the environmental condition of lands when land must be assessed in terms of potential contamination as a result of an emission or release of a toxic substance. An ESA Phase 1 is the initial assessment; if there is indication of contamination, a more detailed assessment, an ESA Phase 2, is conducted.

Impact Assessment Act: an Act respecting a federal process for impact assessments and the prevention of significant adverse environmental effects. In August 2019, the *Canadian Environmental Assessment Act* (CEAA), 2012 was replaced with the *Impact Assessment Act* (IAA) 2019. Similar to CEAA 2012, the IAA focuses federal environmental assessment efforts on large or complex developments that have a greater potential to cause significant adverse environmental effects.

Indian Act: legislation enacted by the Parliament of Canada pursuant to subsection 91(24) of the *Constitution Act*, formerly the *British North America Act*.

Land Use Plan: the process of planning a scientific and orderly allocation of land, community resources, facilities, and services with a view to maintaining and improving the physical environment and the economic and social conditions of the community.

Municipal Type Service Agreement: an agreement between the First Nation and another federal department, provincial government, city, town government, private contractor, individual, other First Nations or organization. (i.e., an agreement to share services or facilities).

Appendix B - Acronyms

Acronyms used in Land Management

A

AANDC	Aboriginal Affairs and Northern Development Canada (now ISC/CIRNAC)
ACLS -AATC	Association of Canada Lands Surveyors
ADM	Assistant Deputy Minister
ADR	Alternative Dispute Resolution
AFN	Assembly of First Nations
AFOA	Aboriginal Financial Officers Association (of Canada)
AFSAR	Aboriginal Fund for Species at Risk
AG	Attorney General
AIP	Approval in Principle/Agreement in Principle
ARALA	Atlantic Region Aboriginal Lands Association
ATK	Aboriginal Traditional Knowledge
ATR	Additions to Reserve
AWPPA	<i>Arctic Waters Pollution Prevention Act (R.S.C., 1985, c. A-12)</i>

B

BCALM	British Columbia Aboriginal Land Managers
BCR	Band Council Resolution
BF	Bring Forward
BGMS	Band Governance Management System
BGO	Band Governance Officer
BNA Act	<i>British North America Act, 1867, 30-31 Vict., c. 3 (U.K.)</i>

C

C & C	Chief and Council
CCP	Comprehensive Community Planning
CEAA	<i>Canadian Environmental Assessment Act, 2012/Canadian Environmental Assessment Agency</i>
CEAR	Canadian Environmental Assessment Registry
CEM	Cumulative Effects Management
CEPA	<i>Canadian Environmental Protection Act, 1999</i>
CESCC	Canadian Endangered Species Conservation Council
CESP	Community Environmental Sustainability Plan
CESPA	<i>Canada Endangered Species Protection Act</i>
CFA	Comprehensive Funding Arrangements
CFMP	Capital Facilities and Maintenance Program
CFS	Canadian Forest Service

CH	Critical Habitat
CHRA	<i>Canadian Human Rights Act</i>
CHRC	Canadian Human Rights Commission
CHRT	Canadian Human Rights Tribunal
CIDM	Comprehensive Integrated Document Management
CIER	Centre for Indigenous Environmental Resources
CIP	Canadian Institute of Planners
CIRNAC	Crown-Indigenous Relations and Northern Affairs Canada (previously INAC)
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CLR	Canada Lands Records
CLS	Canada Lands Surveyor
CLSA	<i>Canada Lands Surveys Act (R.S.C., 1985, c. L-6)</i>
CLSR	Canada Lands Surveys Records
CLSS	Canada Lands Survey System
CMHC	Canada Mortgage and Housing Corporation
CNWA	<i>Canadian Navigable Waters Act (R.S.C., 1985, c. N-22)</i>
CO	Certificate of Occupation
COEMRP	Centre of Excellence for Matrimonial Real Property
COSEWIC	Committee on the Status of Endangered Wildlife in Canada
CP	Certificate of Possession
CSA	Canadian Standards Association
CSMP	Contaminated Sites Management Program
CSR	Corporate Social Responsibility
CWS	Canadian Wildlife Service
D	
DEO	Deputy Electoral Officer
DFO	Department of Fisheries and Oceans
DG	Director General
DIAND	Department of Indian Affairs and Northern Development
DM	Deputy Minister
DOJ	Department of Justice
DR	Dispute Resolution
E	
EA	Environmental Assessment/Environmental Audit
EARP	Environmental Assessment and Review Process
ECCC	Environment and Climate Change Canada
EIA	Environmental Impact Assessment
ELV	End-of Life Vehicles
EM	Environment Management
EMA	Environmental Management Agreement
EMAP	Emergency Management Assistance Program
EMF	Environmental Management Framework
EMP	Environmental Management Plan
EMS	Environment Management System

EO	Electoral Officer
EOT	Evidence of Title
EPP	Environmental Protection Plan
ERP	Emergency Response Plan/Environmental Review Process
ESA	Environmental Site Assessment
F	
FA	Framework Agreement or <i>Fisheries Act</i>
FAA	<i>Financial Administration Act</i>
FAFNLM	Framework Agreement on First Nation Land Management
FAQ	Frequently Asked Questions
FCSAP	Federal Contaminated Sites Action Plan
FHRMIRA	<i>Family Homes on Reserve and Matrimonial Interests or Rights Act (S.C. 2013, c. 20)</i>
FMV	Fair Market Value
FN	First Nation
FNFI	First Nations Financial Institutions
FNGA	First Nations Governance Act (did not receive Royal Assent)
FNIF	First Nation Infrastructure Fund
FNLM	First Nation Land Management
FNLMA	<i>First Nations Land Management Act (S.C. 1999, c. 24)</i>
FNLMAQL	First Nation Lands Managers Association for Quebec and Labrador
FNLRS	First Nations Land Registry System
FNTC	First Nations Tax Commission
FPIC	Free Prior Informed Consent
FRPA	<i>Federal Real Property Act</i>
FRPFIA	<i>Federal Real Property and Federal Immovables Act (S.C. 1991, c. 50)</i>
FS	Funding Services
FSC	Forest Stewardship Council
G	
GCEMS	Grants and Contributions Enterprise Management System
GHGs	Greenhouse Gases
GIC	Governor in Council
GIS	Geographic Information System
GMST	Global Mean Surface Temperature
H	
HQ	Headquarters
HSI	Habitat Suitability Index
HSP	Habitat Stewardship Program
I	
IA	<i>Indian Act (R.S.C., 1985, c I-5)</i> or Impact Assessment or Individual Agreement
IAA	<i>Impact Assessment Act (S.C. 2019, c.28, s. 1)</i>
IBA	Impact and Benefit Agreement
ICCE	Indigenous Centre for Cumulative Effects
ICMM	International Council on Mining and Metals
IK	Indigenous Knowledge
ILH	Individual Land Holding

ILR	Indian Lands Registry
ILRS	Indian Lands Registry System
INAC	Indigenous and Northern Affairs Canada (now ISC/CIRNAC)/Indian and Northern Affairs Canada
IOGC	Indian Oil and Gas Canada
IPCA	Indigenous Protected and Conserved Area
IRMA	Initiative for Responsible Mining Assurance
IRR	Indian Referendum Regulations (C.R.C., c. 957)
IRWDR	Indian Reserve Waste Disposal Regulations
ISC	Indigenous Services Canada (previously INAC)
ISO	International Organization for Standardization
ITAB	Indian Taxation Advisory Board
ITHR	Indian Timber Harvesting Regulations
IUCN	International Union for Conservation of Nature
J	
JT	Joint Tenant
L	
LAB	Lands Advisory Board
LED	Lands and Economic Development
LEDSP	Lands and Economic Development Services Program
LMM	Land Management Manual
LMO	Land Management Office(r)
LMTP	Lands Management Training Program
LS	Location Sketch
LT	Location Ticket
LTS	Lands and Trust Services
LUP	Land Use Planning (Community Land Use Planning)
M	
MBCA	<i>Migratory Birds Convention Act (S.C. 1994, c.22)</i>
MBOA	<i>Modernization of Benefits and Obligations Act (S.C. 2000, c. 12)</i>
MOF	Ministry of Forests
MOTH	Ministry of Transportation and Highways
MOU	Memorandum of Understanding
MRP	Matrimonial Real Property
N	
NAC	National Advisory Committee
NACOSAR	National Aboriginal Council on Species at Risk
NAFA	National Aboriginal Forestry Association
NALMA	National Aboriginal Lands Managers Association
NAVA	The National Aboriginal Veterans Association
NDSL	Non-Domestic Substance List (under CEPA)
NE	Notice of Entitlement
NETI	No Evidence of Title Issued
NPA	<i>Navigation Protection Act (Now known as Canadian Navigable Waters Act (R.S.C., 1985, c. N-22))</i>

NPRI	National Pollutant Release Inventory (under CEPA)
NRCan	Natural Resources Canada
NRSP	Natural Resource Stewardship Plan
NTFP	Non-timber Forest Product
O	
OCAP	Ownership, Control, Access, Possession
OALA	Ontario Aboriginal Lands Association
OIC	Orders in Council
P	
PCBs	Polychlorinated Biphenyls
PCL	Parcel
PCO	Privy Council Office
PFR	Provisional Federal Rules
PIN	Personal Identification Number
PLAN	Planning and Land Administrators of Nunavut
PLMCP	Professional Lands Management Certification Program
PWGSC	Public Works and Government Services Canada
Q	
QA	Questions and Answers
R	
RC	Resource Centre (of LAB)
RCAP	Royal Commission on Aboriginal Peoples
RCMP	Royal Canadian Mounted Police
RDG	Regional Director General
RLA	Regional Lands Associations
RLAP	Regional Land Administration Program
RLEMP	Reserve Land and Environment Management Program
RS	Registration Survey
S	
SALT	Saskatchewan Aboriginal Land Technicians
SAR	Species at Risk
SARA	<i>Species At Risk Act (S.C. 2002, c. 29)</i>
SCC	Supreme Court of Canada
SFI	Sustainable Forestry Initiative
SG	Self-Government
SGB	Surveyor General Branch (of NRCan)
SGFNLR	Self-Governing First Nations Land Registry
SLO	Social Licence to Operate
SolGen	Solicitor General Canada
T	
TALSAA	Treaty and Aboriginal Land Stewards Association of Alberta
TB	Treasury Board
TEK	Traditional Ecological Knowledge
TK	Traditional Knowledge
TLE	Treaty Land Entitlement

TLUI	Traditional Land Use Inventory
TOR	Terms of Reference
TSAG	First Nations Technical Services Advisory Group Inc
TSM	Towards Sustainable Mining
TWP	Township
U	
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
USKE	Manitoba USKE
V	
VEC	Valued Ecosystem Component
VOC	Volatile Organic Compounds
W	
WAPPRITA	Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act
WHMIS	Workplace Hazardous Materials Information System
WMP	Waste Management Plan
Y	
YTG	Yukon Territorial Government

Appendix C - FAFNLM

Framework Agreement on First Nation Land Management

The *Framework Agreement on First Nation Land Management* (FAFNLM) is a government-to-government agreement signed by 13 First Nations and Canada on February 12, 1996. The FAFNLM was required to be ratified on behalf of Canada by an act of Parliament and that the act be consistent with the FAFNLM. Parliament enacted the *First Nations Lands Management Act* (FNLMA) in June of 1999.

The FAFNLM is a sectoral self-government initiative. Sectoral self-government in this context means that it recognizes First Nation law-making and management authority only over existing reserve lands, natural resources, and environmental management. It provides First Nations with the option of removing themselves from the 44 land-related provisions under the *Indian Act* and having federal, provincial, and municipal governments acknowledge First Nations' jurisdiction over land, natural resources, and environmental management. To opt out of the *Indian Act* land provisions, a First Nation must become a signatory to the FAFNLM with Canada, conclude an individual agreement with Canada, as well as develop and ratify its own land code.

FAFNLM fundamentally changes accountability of the First Nation government and of the Land Management Office. Land codes require reporting and accountability to First Nation membership rather than Canada. This is sometimes called political accountability.

NALMA courses and toolkits identify the Framework Agreement on First Nation Land Management (FAFNLM) in a variety of ways, depending on the specific topic at hand. We identify the variations between *Indian Act* and FAFNLM land management obligations. We seek only to include knowledge in our courses and toolkits that has already been published by the First Nations Land Management Resource Centre (RC) and Indigenous Services Canada (ISC). We strive to include detailed references and information to guide readers seeking additional information to find the source of the knowledge being shared in our courses and toolkits.

For further information please contact LABRC 1-888-985-5711 or www.labrc.com

Appendix D – Traditional Knowledge

Traditional Knowledge in Land Management

At NALMA we recognize the important role of Traditional Knowledge in managing lands. Across the country, we have often heard from our members that “we don’t manage lands, we manage human activities on our lands”. Today, land management requires a complex understanding and application of Traditional management practices as well as understanding and navigating the legal frameworks the Canadian state has superimposed across our territories. By weaving both of these systems a Nation can effectively manage their lands to the benefit of future generations.

As a national organization, we have hundreds of members from diverse Nations with their own cultural histories and approaches to land management that have been inherited and developed in place across millennia. The traditions and practices that have been inherited and developed by a Nation on the Atlantic Coast may be vastly different from those honed by a Nation in the Prairies or in the Far North. Yet we also know there are shared values related to the land that unite Indigenous Nations across the country. We believe there is space for each of us to learn from one another and seek to create opportunities for this learning through our training.

NALMA courses and toolkits incorporate Traditional Knowledge in various ways, depending on the topic at hand. Traditional Knowledge components are woven throughout a course or toolkit such as NALMA’s Climate Change toolkit where Traditional Knowledge practices and observations have been instrumental for Indigenous Nations understanding and addressing climate change. In other courses and toolkits, we emphasize the importance of utilizing your own Nation’s Traditional Knowledge and approaches, but without providing as many concrete examples; it would be impossible to do justice to the diversity and complexity of approaches across the country.

We know relationships are critical to engaging in Traditional Knowledge and seek only to include knowledge in our courses and toolkits that has already been published by Nations and Knowledge Holders themselves. We strive to include detailed references and information to guide readers seeking additional information to find the source of the knowledge being shared in our courses and toolkits. We recognize and respect there are components of Traditional Knowledge that are considered sacred and do our utmost to avoid inclusion of this knowledge in our publications.

Terminology related to Traditional Knowledge

There are many working definitions for terms such as Traditional Knowledge and Indigenous Knowledge. Given the diversity of Nations and traditions, finding one term that encompasses all the knowledge systems from all Indigenous Nations across Turtle Island is a challenge and has inherent difficulties. In understanding these terms, we draw upon the work of Indigenous scholars from across the country. Our goal here is to provide working definitions guiding our use of these terms in our publications and trainings. This is not as a means of asserting there is one correct definition that applies to all Nations. As a practice at NALMA, we capitalize Traditional Knowledge, Indigenous Knowledge and other related terms to denote the importance of these systems and concepts.

The word knowledge is often pluralized to acknowledge the diversity of knowledge and ways of coming to know within Indigenous Knowledge systems and to honour that there are unique knowledge systems that originate with each Nation across Canada.

We welcome suggestions from our members on these working definitions and recommendations for the inclusion of Indigenous Knowledge in our publications and trainings.

Traditional Knowledge (TK): refers to complex knowledge system(s) that include many elements such as beliefs, values, histories, relationships between nations and other beings, technologies, as well as spiritual practices and beliefs. Key components of TK are that it is handed down from generation to generation and tells of how the world came to be created along with records of genealogy and rights to territorial areas. It also includes the passing on of technologies that enhance survival in a specific area.¹ Two key components of TK are the role of language and the rootedness in the land of a specific place.² Oftentimes, sharing knowledge and learning in TK systems is done through hands-on experience between Elders and youth.

Indigenous Knowledge (IK): IK and TK are often seen as different terms for the same thing and may be interchangeable. IK can also include the ways in which TK is brought into contemporary contexts and includes new observations, teachings, and approaches based on TK but applied to current realities.

Traditional Ecological Knowledge (TEK): refers to what is seen as a subset of TK/IK and as a “lived knowledge” that refers to the knowledge systems, teachings, beliefs, values, practices and learning approaches of Indigenous peoples with regard to the natural world.

1 Castellano, M. (2000). Updating Aboriginal traditions of knowledge. In Sefa Dei, G., and Hall, B. (Ed.), *Indigenous knowledge, global contexts* (pp. 1). Toronto: University of Toronto Press.

2 Simpson, L. (2011). *Dancing on our turtles back: stories of Nishnaabeg re-creation, resurgence, and a new emergence*. Winnipeg: Arbeiter Ring Publishers.