



# Welcome!

## Additions to Reserve Training

Mashteuiash, QC





**Your Name**

**Your First Nation**

**Your Role**

**Your level of understanding of the Additions to Reserve process 0-4**



**0**

**None**



**1**

**Basic  
Knowledge**



**2**

**General  
Understanding**



**3**

**Good  
Understanding**



**4**

**Advanced**



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This presentation is a review of the National Aboriginal Lands Managers Association's (NALMA) Additions to Reserve (ATR) Toolkit Training. Please refer to the "Additions to Reserve/Reserve Creation Toolkit" chapters for more detail.

The training and toolkit is provided for education and information purposes only. It is not intended to provide legal advice.



# Legislation

## **Additions of Lands to Reserves and Reserve Creation Act (ALRRCA)**

- Important shift from Policy to Law

## **Framework Agreement on First Nation Land Management Act**

- Faster integration for Land Code First Nations

## **The First Nations Commercial and Industrial Development Act**

- Useful for (some) major commercial projects





# NATS

**The National Additions to Reserve Tracking System (NATS)** is a new database for recording ATR proposals submitted to Indigenous Services Canada (ISC). Key features include:



**Secure online submission and tracking of ATR proposals.**



**Assessment and review by ISC Regional Office (RO).**



**Issuance of support or refusal letters using templates.**



**Email exchange and tracking between the RO and other involved parties.**



**Collaboration on joint work plans online.**



**Tracking of proposal reviews, assessments, and minister approvals.**



# National Additions to Reserve Tracking System



- Easily upload and store project documents
- Register your application
- View a structured outline of information required
- Track status of submitted documents
- Choose from predefined options (using drop-down menus)
- Receive guidance and prompts at each step
- Monitor and track project budget (optional)



- Delegate roles and responsibilities
- Establish and manage calendars and timelines
- Efficiently manage your time
- Generate contact lists and conduct analysis of the affected parties
- Craft a communications strategy
- Conduct research
- Provide insights into exceptional circumstances and delays
- Serve as a location for information collection and preliminary drafts
- Create relationships with important affected parties
- Drive the ATR process
- Offer detailed budget tracking



# ATR Policy Redesign Update

## Interim Administrative Update

First Nations and Indigenous organizations across the country have put forth various change proposals:

- NALMA produced 52 recommendations.
- FNLMAQL submitted a report based on the 2023 engagement sessions.

In June 2024, a Technical Advisory Committee (TAC) was established.

This committee includes representatives from First Nation organizations and government bodies, working together to co-develop policy options related to First Nation engagement.

Currently, the TAC is reviewing nine interim changes to the ATR Policy Directive, as proposed by the Lands Advisory Board (LAB) in May 2024.

## 9 Interim Changes

In August 2024, the Minister of CIRNAC approved 2 immediate interim changes:

- **removing the justification framework**
- **eliminating the category requirements** for ATR proposals.

The other 7 approved interim changes relate to:

- **environmental site assessment requirements**
- the ATR **application process**
- **dispute resolution provisions**
- **improvements to proposed reserve lands**
- **three month waiting periods**
- **municipal service agreement provisions**
- **requirements for Joint Reserves.**

**\*There is currently no established timeline for the finalization of the new policy.**



# Quebec Specifics

The Quebec Government has a unique approach to handling Additions to Reserve/Reserve Creation, guided by a policy established in 1982. This provincial policy specifically applies to ATR or Reserve Creation on Provincial Crown Lands and differs significantly from the federal approach.

Quebec transfers only the “usufruct” in the land (the ability to use and enjoy the “fruits of the land”). Bare title is retained by Quebec, and the land is returned to the province as such time as the FN cedes it to Canada. Subsurface rights and water rights never transfer from Quebec Public Lands.

The policy is founded on 3 main requirements:

1. The ATR must be contiguous to the reserve
2. A demographic evolution forecast must be conducted (to provide a forecast of the population to set against how much land is required)
3. The ATR must be for residential/community purposes. Economic purposes are not considered.





# Legislation

## Act Respecting the Lands in the Domain of the State

### §3. — Lands reserved for Indians

51. The Government may reserve and allot, for the benefit of the various Indian bands of Québec, the usufruct of lands designated for that purpose by the Minister.

1987, c. 23, s. 51.

52. The usufruct of the lands designated by the Minister shall be transferred gratuitously, on the conditions determined by the Government, to the Government of Canada to be administered by it in trust for the said Indian bands.

Such usufruct shall be inalienable and the lands subject to it shall return to the Government, from and after the date when the Indians to whom they have been assigned by the Government of Canada relinquish them by a deed of assignment.

Mining rights and petroleum rights are not included in the allotment, notwithstanding the absence of any mention to that effect.



## > BEFORE WE START

Every request for an ATR must include a Justification Report, which consists of two key components:

- Demographic Evolution Forecast for the next 25 years
- Community Development Plan outlining the proposed development on the ATR lands.
  - NOTE: Both the Forecast and the Plan can be prepared by the same agency. If you're unfamiliar with these agents, the Province can provide guidance.

Additionally, an Environmental Site Assessment (ESA) of the ATR lands must be carried out. While this is not an immediate requirement for Quebec, it is crucial to complete it promptly to ensure that any environmentally concerning lands are properly addressed.





## > BEFORE WE START

Once the documentation is submitted the province does internal consultation with its line ministries. Discussions are then arranged between the relevant ministries, First Nations, federal government, and any other involved parties

Note that the two ministries most relevant to the ATR process are:

- **Ministère des Ressources naturelles et des Forêts:** responsible for the disposition of Public Lands
- **Secrétariat aux relations avec les Premières Nations et les Inuits:** Lead on First Nation issues in the Province





## > BEFORE WE START

Following discussions, documentation is exchanged to confirm the terms of the agreements reached. This exchange includes:

- Band Council Resolution (BCR) - An official request for ATR
- Confirmation by the Government of Quebec to the boundary of the lands noted in the BCR
- Communication from the federal department requesting transfer from Quebec of the “usufruct” of the ATR lands.
- Quebec’s offer to transfer the ATR lands to the federal government, with these conditions:
  - A survey must be conducted prior to the transfer.
  - Archaeological potential study is required (an archaeological inventory will also be conducted if the potential study recommends it). Any discovered artefacts will not be included in the transfer and will be subject to a specific agreement among the First Nation, the Government of Quebec, and the Government of Canada.
  - Sub-surface and water resources do not accompany the lands.
  - The province accepts no responsibility for any existing environmental complications or liabilities that may exist on the land.
  - File-specific conditions that exist (e.g., main roads) will not be part of the transfer.



# Chapter 1: Toolkit Overview

## Toolkit Assumptions

The Toolkit is designed for your First Nation's needs, assuming you may be a new project manager with little to no experience or training in ATR. It acknowledges that you might feel anxious about upcoming ATR processes. Developed through consultations with experienced individuals, the Toolkit aims to assist you in navigating this journey.



### Remember:

- ATR/RC processes can vary significantly.
- Urban reserve proposals tend to be more complex.
- Best practices are provided in the Toolkit.
- Each ATR/RC will have its unique character.
- Not all material may apply; choose what is relevant.





# Chapter 2: Basic Concepts

There are a few basic concepts you should be familiar with before starting an ATR. They'll help you better understand the process—who's involved (and why), how the phase structure works, and how factors like property taxes can affect your ATR.





# Authority for Granting an ATR/RC

- Additions to Reserve are not addressed in the Indian Act.
- Authority to set lands apart as reserve rests with the Governor in Council and the Minister of CIRNAC.
- Previously, lands were added to reserve through the Royal Prerogative, with the Governor in Council issuing an Order in Council based on the Minister of CIRNAC's recommendation.
- With the passage of ALRRCA (2019), the Minister of CIRNAC now has the authority to set lands apart as reserve through Ministerial Order (MO).
  - This change helps streamline the ATR process.



Indigenous Services  
Canada

Services aux  
Autochtones Canada



Crown-Indigenous Relations  
and Northern Affairs Canada

Relations Couronne-Autochtones  
et Affaires du Nord Canada



# A Note on Property Taxes



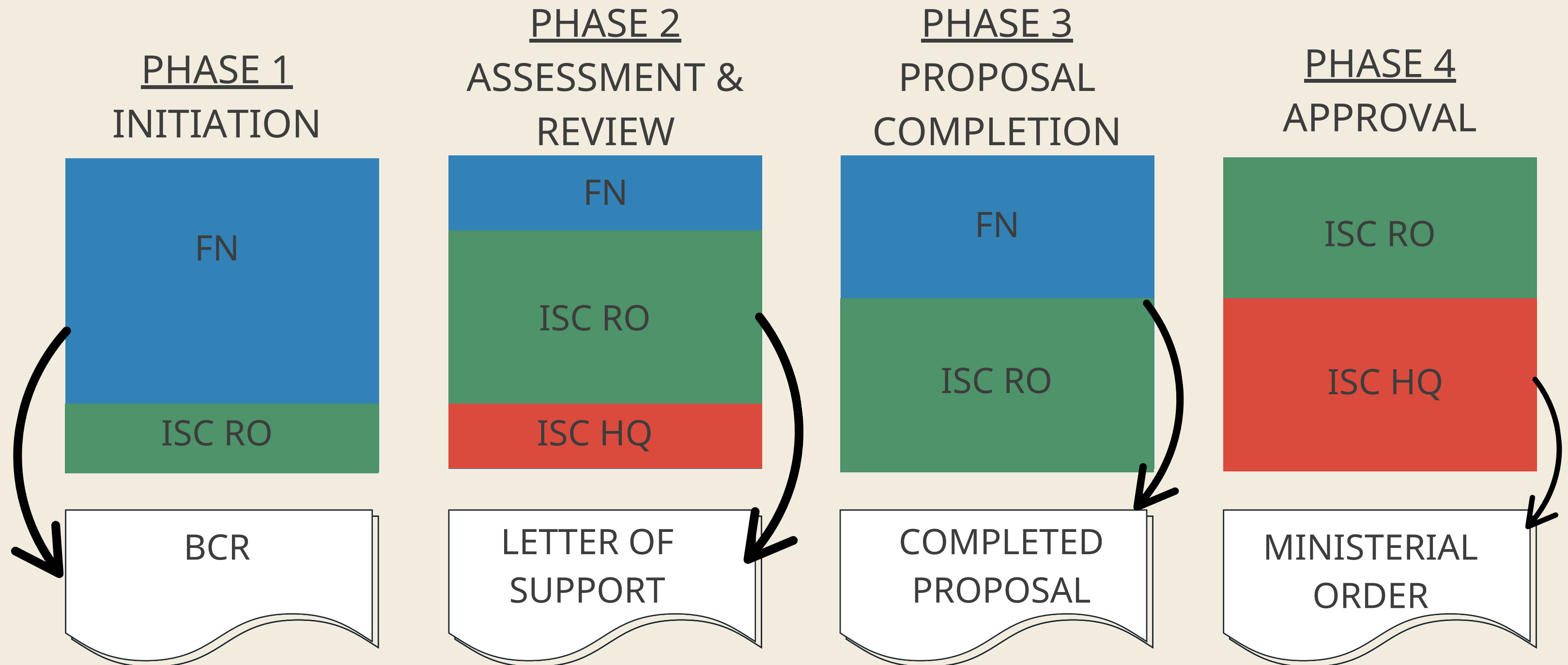
## Property Taxes

- Tax exemption has existed since pre-Confederation
- Reserves are exempt from property taxation
- ATR Policy requires that FNs work out tax adjustment for municipalities – “good neighbor” relations assist these discussions greatly
- The policy does not require ongoing adjustment.

We will discuss tax-adjustments and guidance on navigating municipal interests later on!



# 4 ATR PHASES





# Chapter 3: Before Undertaking an ATR

This chapter explains a few important topics to consider when starting an ATR:

- Preparatory Undertakings
- Pre-Reserve Designations
- Urban Reserves

Each of these areas can introduce added time or complexity to your project if not properly considered. Gaining a basic understanding of them early on will help you plan more effectively and avoid unexpected delays.





# Preparatory Undertakings

## Plans to consider/refer to:

- Land Use Plans
- Comprehensive Community Plan
- Economic Development Strategy
- Land Acquisition Strategy

## Financial considerations:

- Short-term costs: legal fees, surveys, research, environmental assessments.
- Long-term costs: business operations, property maintenance, housing developments.

## Other Considerations:

- Need for adding this parcel of land to reserve.
- Suitability of fee simple ownership for First Nations, avoiding costly environmental work and extended staff expenses related to ATR.





# Words of Advice

- Build your ATR Team
- Have a good Lawyer/legal consultant
- Talk to ISC about:
  - Environmental consultants
  - The role of the Department of Justice





# Buyer Beware

- Risk reward equation
- Legal Review
- Environmental review
- Walk the land
  - Signs of environmental damage?
  - Signs of involvement of third parties?





# Pre-designations

Will the land being added through the ATR process have a specific use, such as commercial or industrial?

If yes, it will need a designation!

Previously, ATR/RC outside Saskatchewan and Manitoba could only be designated after the land is reserve.

Under ALRCCA, land in any province can now be pre-designated.

This is a significant advantage because:

- you can **be sure the community agrees with the proposed use** before the land becomes reserve;
- you can **assure a business operator that there is no threat to its continued operation** following reserve status;
- **if the community rejects the proposed use, you can decide whether to continue with the ATR or plan for a different use.**



# Designations

**Preparation Phase** – FN identifies lands for designation, prepares the comprehensive plan and documents required to effect the Pre-Designation of those lands. Much of the work required in this phase is also required for the ATR/RC.

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

**Approval Phase** - ISC/CIRNAC Headquarters assumes lead to obtain the Ministerial Order pre-designating the lands. This last phase must be completed before the ATR can receive its approval.



# Urban Reserves

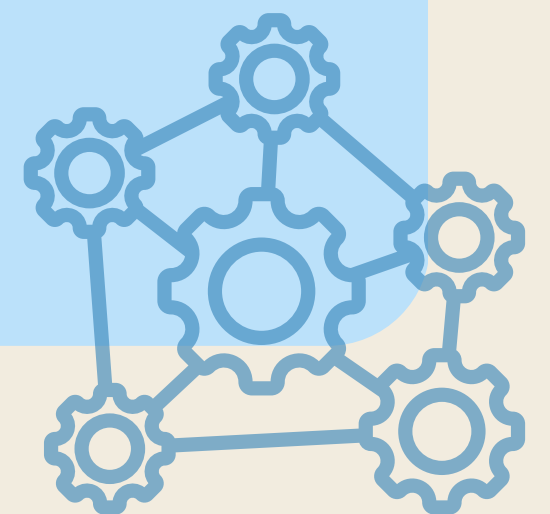
## Opportunity

- Economic, educational, and social opportunities that can be lacking in rural areas.
- Benefits that extend to on- and off-reserve members and non-First Nations residents.
- Improved living standards and purchasing power boost the local economy.
- Utilizing existing infrastructure lowers operating costs.



## Complexity

- Urban ATR/RC requires collaboration among various stakeholders;
- Effective communication is essential.





# Project Management

Project management is a crucial part of an Additions to Reserve project for a First Nation, as it ensures that the complex legal, financial, and administrative processes are managed effectively. It promotes clear communication and collaboration among stakeholders – such as government agencies, community members, and neighboring municipalities – while ensuring that the project aligns with the First Nation's values and long-term goals. Additionally, effective project management helps to maintain timelines, control budgets, and mitigate risks, ultimately contributing to a successful and sustainable project outcome.





## No Guarantee



**IMPORTANT:** An ATR/RC is not guaranteed.  
The final decision rests with, in most cases, the Minister of CIRNAC.

However, once a Letter of Support (LOS) is issued and all the work is done to make a complete submission, it is likely that the Minister's decision will be favourable.



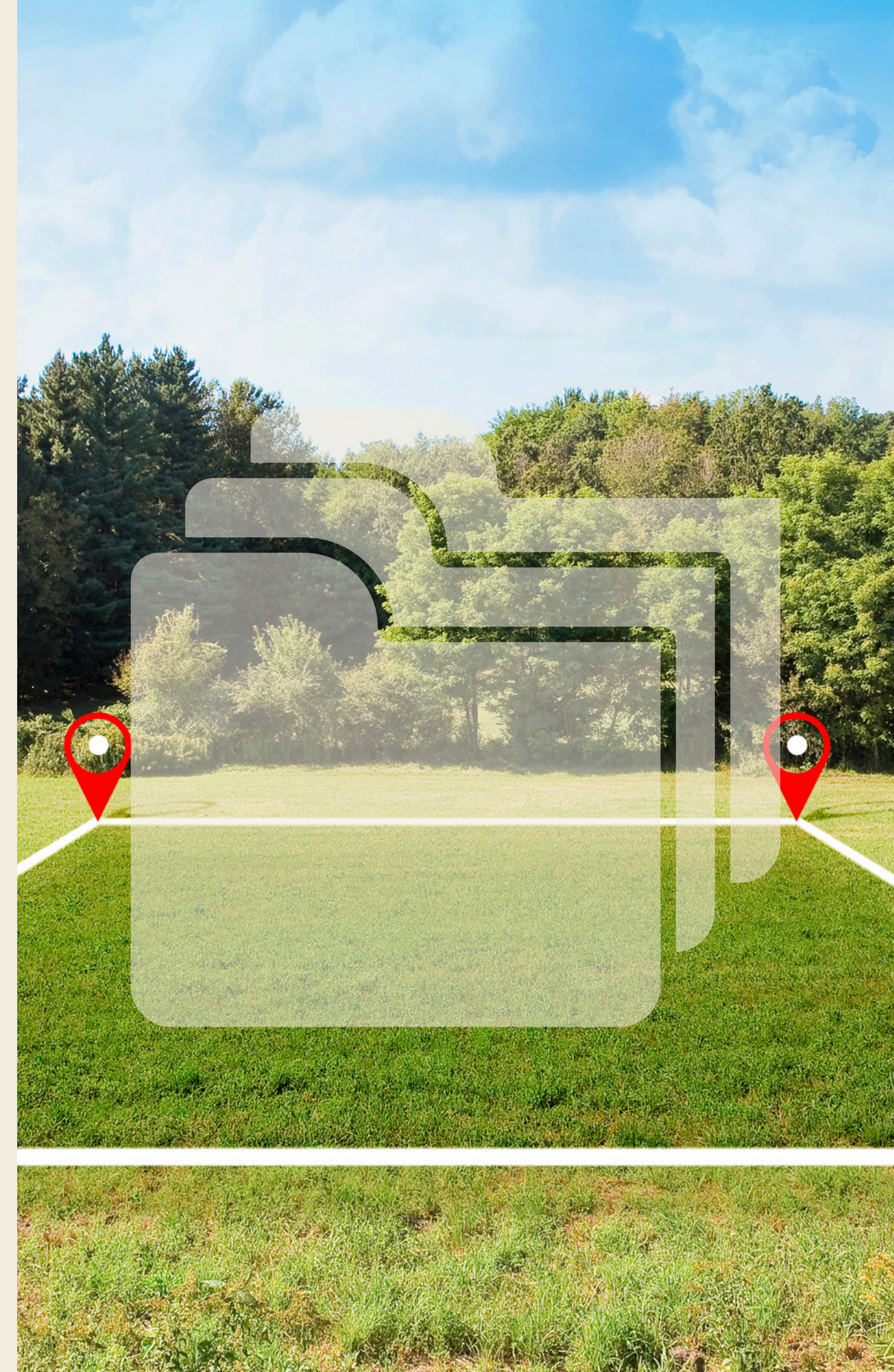
# Chapter 4: ATR Policy Categories

## 3 Policy Categories

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

### Please note:

The recent updates to the Policy Directive have eliminated the requirement to specify your ATR Category in your proposal.





## Legal Obligations

Most common forms of Legal Obligations for ATR/RC:

- Treaty Land Entitlement (TLE)
- Specific Claim agreements (that involve acquiring lands for the purpose of ATR/RC on a “willing seller, willing buyer” basis)

TLE and Specific Claim settlements currently account for the majority of ATR.

## Tribunal decisions

- The Specific Claims Tribunal, established in 2008, is part of the Federal ‘Justice at Last’ Policy, in collaboration with the AFN.
- It consists of judges who resolve Specific Claims to expedite resolution.
- First Nations can file claims with the Tribunal.
- Eligible claims include monetary damages for land/asset misadministration or unmet treaty obligations not accepted for negotiation or unresolved in a set time frame.
- The Tribunal may fund land acquisition.
- Claims can involve treaty land shortages, statutory breaches, or illegal disposessions.



# Community Additions

Some examples of community growth proposals:

- Land base is not suitable or insufficient for the intended use.
- For housing, schools, recreation, and economic development.
- Cultural importance (can include burial grounds, archaeological, or ceremonial sites).
- Commercial or industrial purposes for economic development.
- Geographic enhancements: minor adjustments to improve the physical integrity (regularize a road, connect two separate pieces of reserve).
- Non-Canada Agreements: First Nation agreements with other governments or Crown agencies.





# Selection Area

- The land selected for ATR/RC 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 allows for selections anywhere in the Province, while Manitoba's TLE selections are limited to Treaty/Traditional territories of the entitlement First Nation.
- The ATR Directive applies in all cases.



NOTE: Agreements that constitute a legal obligation justification for an ATR proposal take precedence over the Directive.

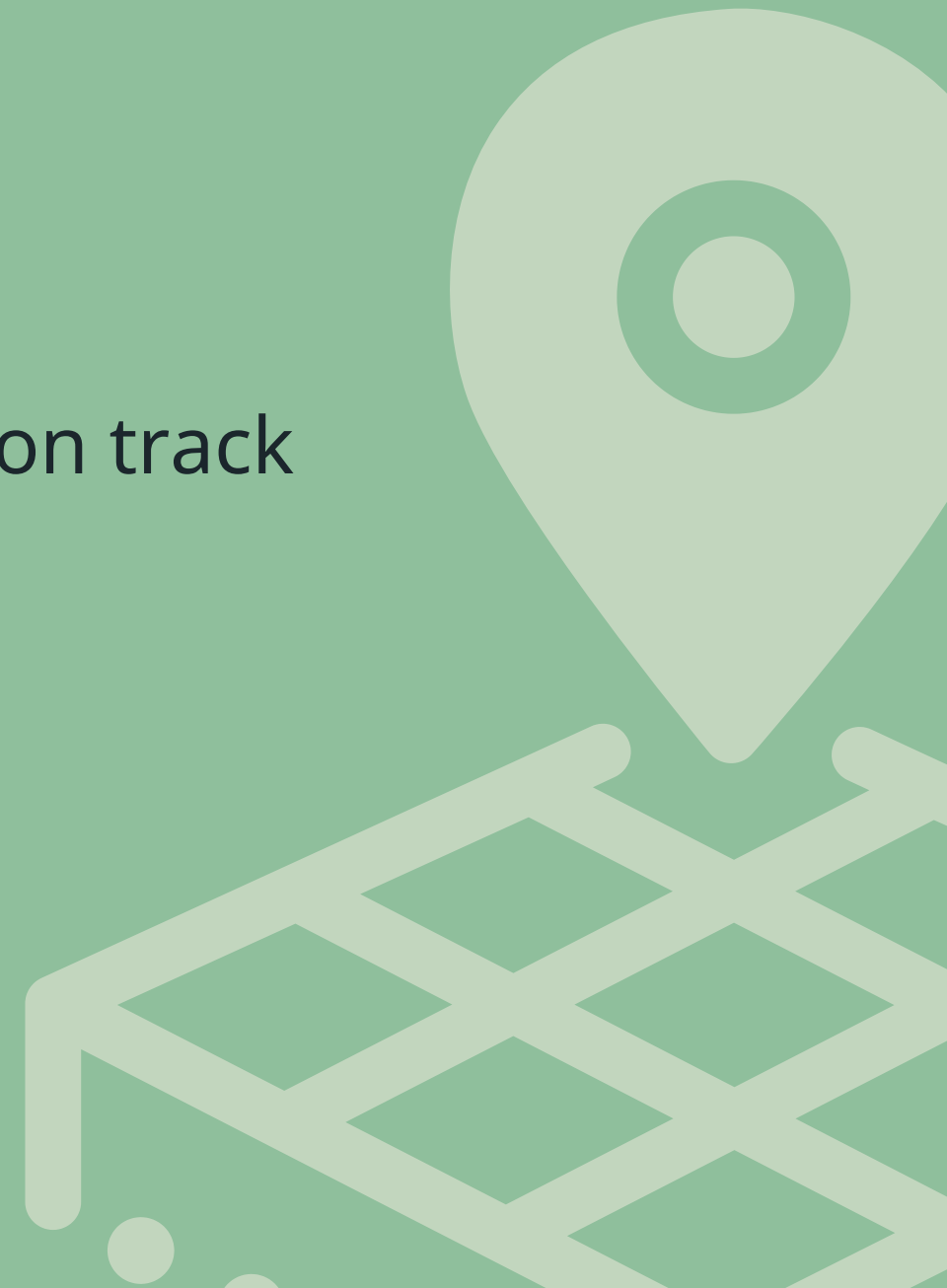


# Now the Work Begins!

The following slides will show how much work can be involved in an ATR.

## Remember:

- Maintain open and frequent communication with ISC
- Develop a clear and detailed work plan from the outset
- Strong project management will be key to keeping your ATR on track





# Chapter 5: Phase 1 - Initiation

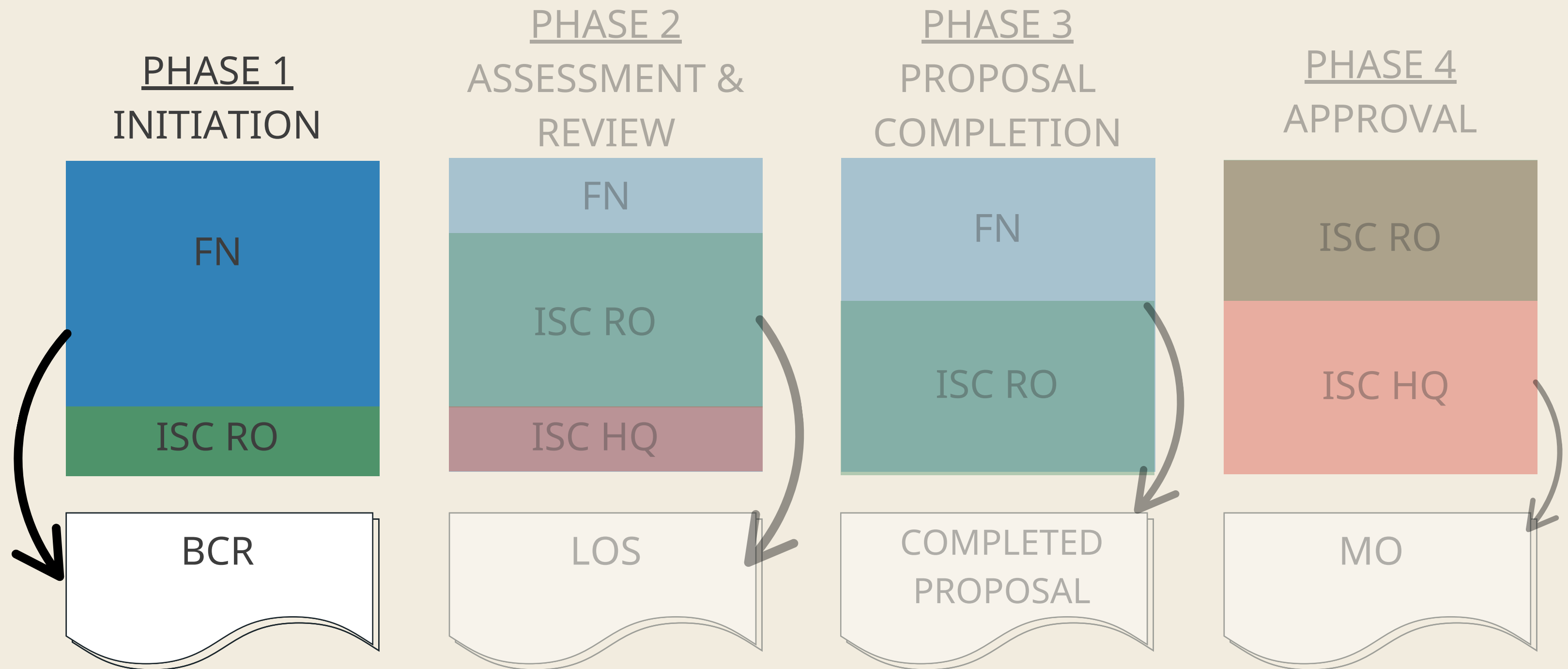
The initial phase primarily focuses on collecting and organizing information. A formal file should be created and kept updated throughout the process. It should contain the following details:

- Work Plan
  - All activities
  - Deliverables and their respective due dates
  - Timelines
  - Assigned responsibilities
- Meeting Notes
  - Participants and their contact information
  - Decisions made
- Contacts
  - Names of all involved parties (stakeholders)
  - Communications Plan





# Phase 1 - Initiation



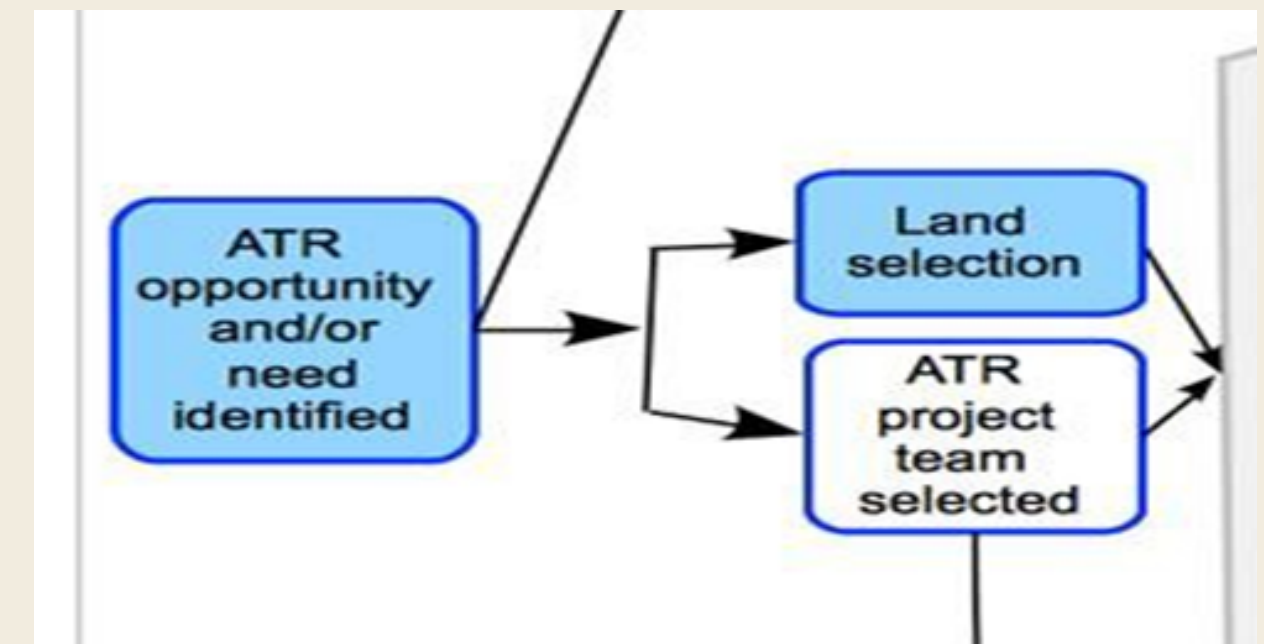


### Opportunity/Need Identified

- Land Use Plan
- Community needs
- Economic development opportunity

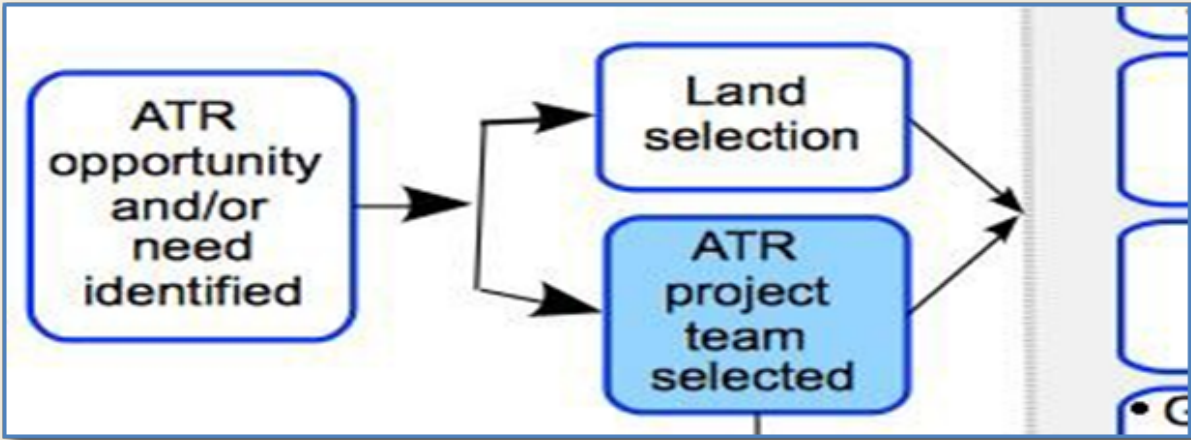
### Land Selected

- Scope the land, and include ISC, as much as possible
- Often, when land becomes available, FNs need to make a quick decision – land may prove to be unsuitable, but fee simple is always an option
- Be careful: waterways, environmental condition, next to a park?
- Fee simple or Crown land
- Be a smart buyer – LUPs provide terms of reference for acquisition





> CHAPTER 5: INITIATION

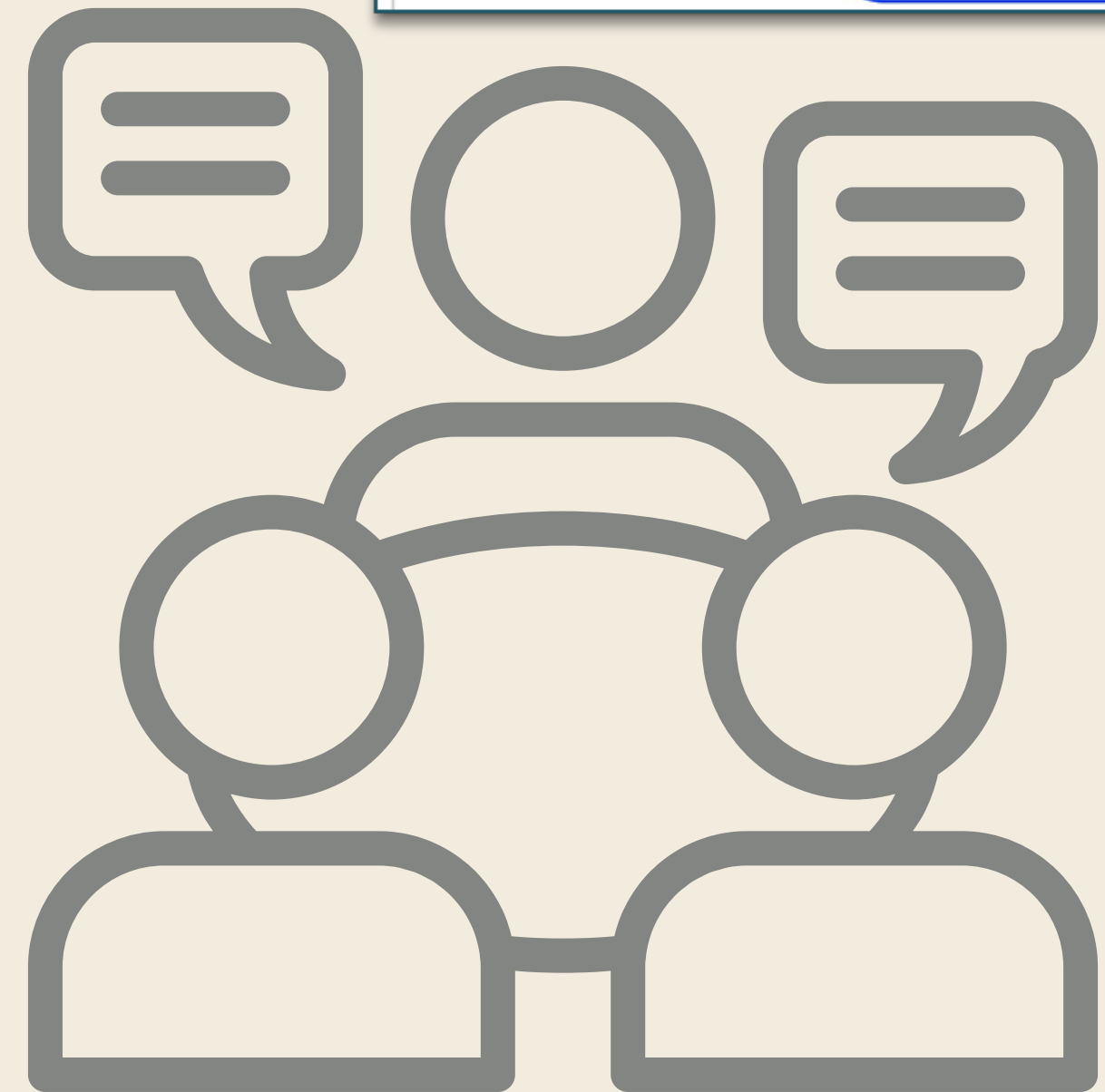
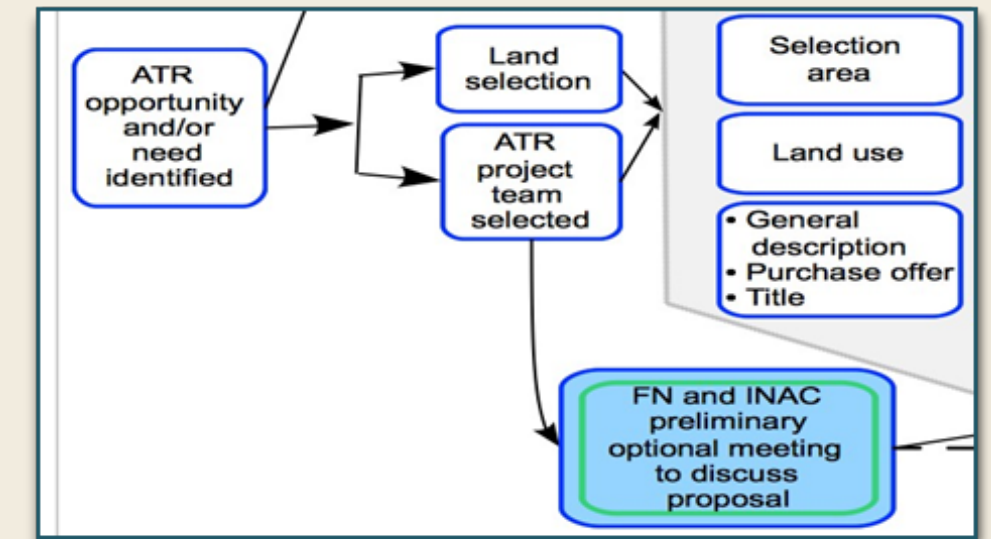




# Meet with ISC

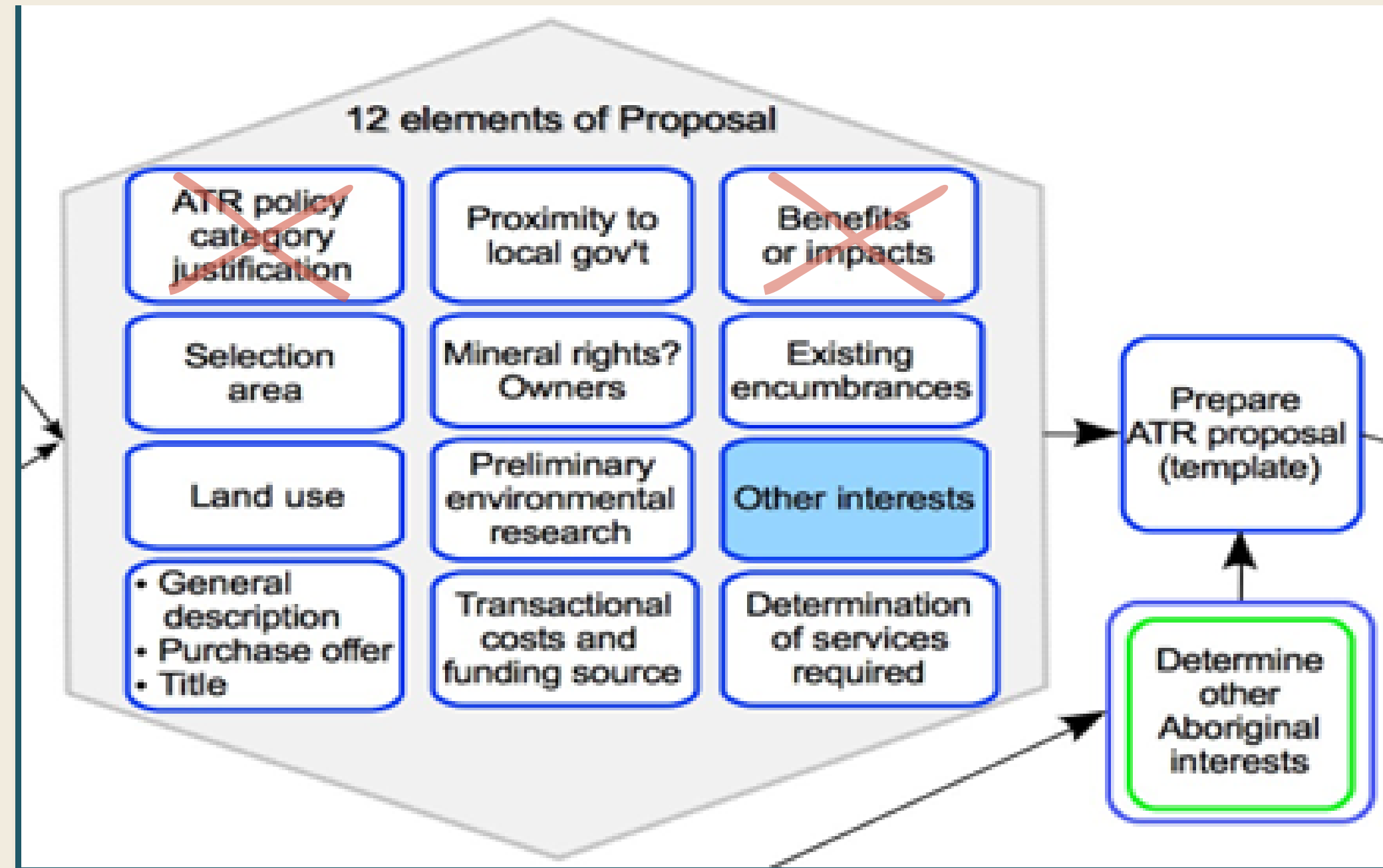
\*Optional, but it's advisable to do this as early as possible–  
FN should take the lead on this.

- The meeting serves to identify key contacts and kick start the planning process.
- Key issues to address include:
  - Proposed lands
  - Coordination of environmental efforts
  - Establishing municipal and provincial consultations
  - Discussing any presence of third parties
  - Identifying potential obstacles as seen by ISC





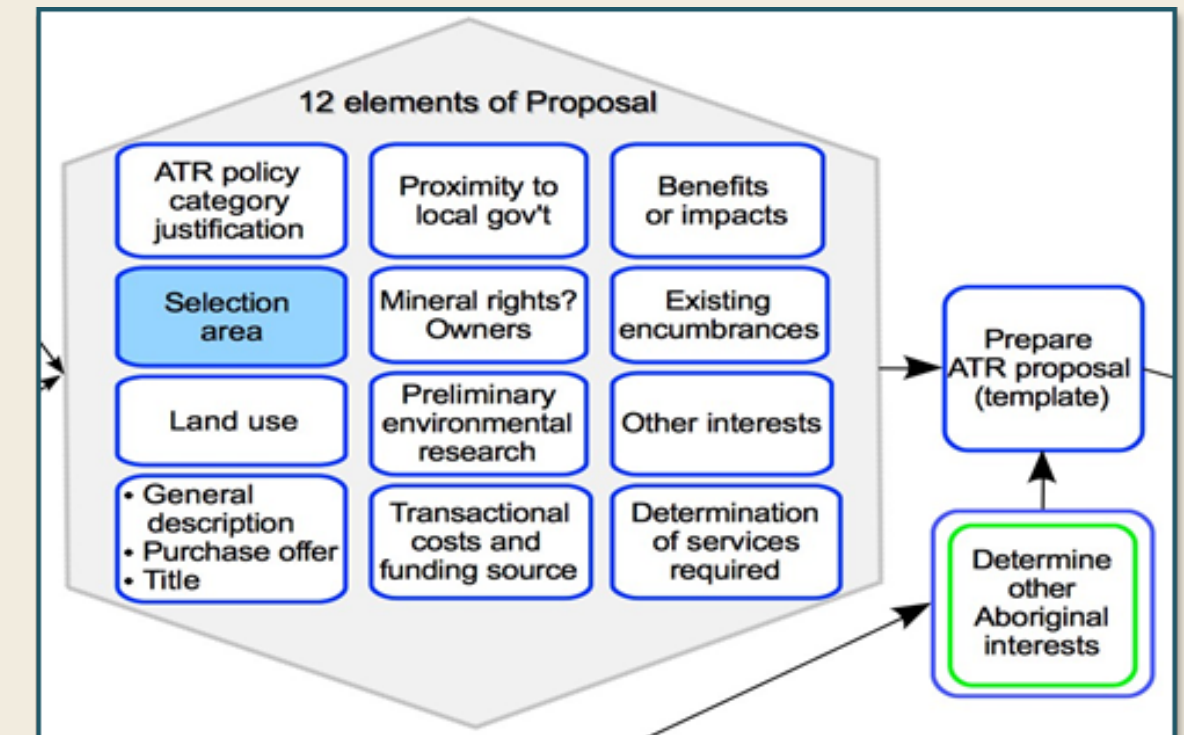
# Required documents for Proposal





# Selection Area

- Identify the selection area for your ATR/RC.
- Legal Obligation: The selection area may be specified in the agreement. Land proposed for ATR/RC must be located within that area. Any proposal outside the selection area must be explained, within the Traditional/Treaty area, and within the Province where the majority of reserve land is located.
- Community Additions or Tribunal: The selection area will most likely be your Treaty/Traditional Territory
- ISC may be able to assist with determining the selection area.
- If land is already purchased, confirm it is situated in the appropriate selection area.



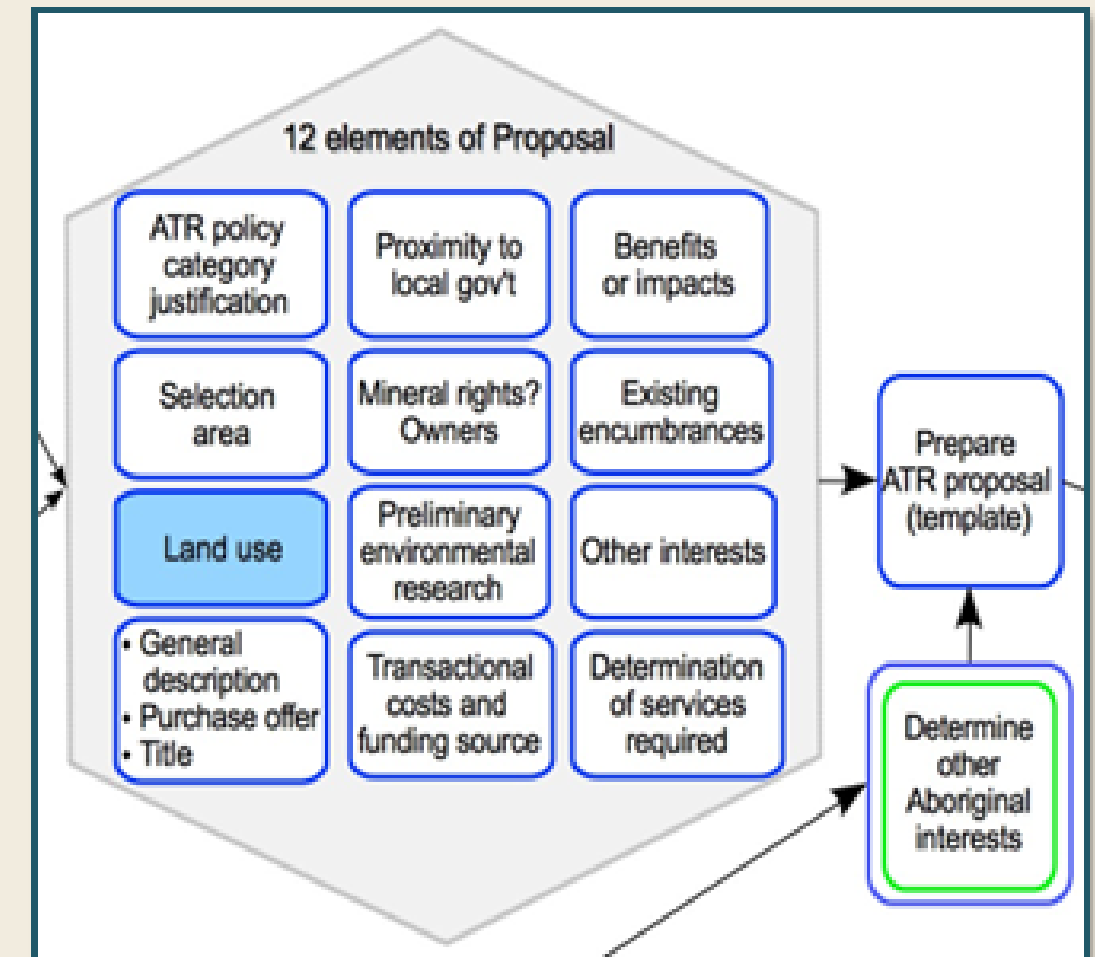


# Land Use

- Additional Housing: Clearly outline its proximity to nearby neighborhoods, schools, and other amenities.
- Special Activities: Take into account both the size and accessibility of the area.
- Commercial Development: Ensure that access and additional utilities are readily available. A Pre-Reserve Designation is required.
- Current Use: Be aware that the existing use may have implications that could lead to costs for adapting it to the intended purpose.



**IMPORTANT** Understand the environmental conditions of any land involved! Environmental issues could jeopardize the planned operation or hinder the completion of an ATR/RC.



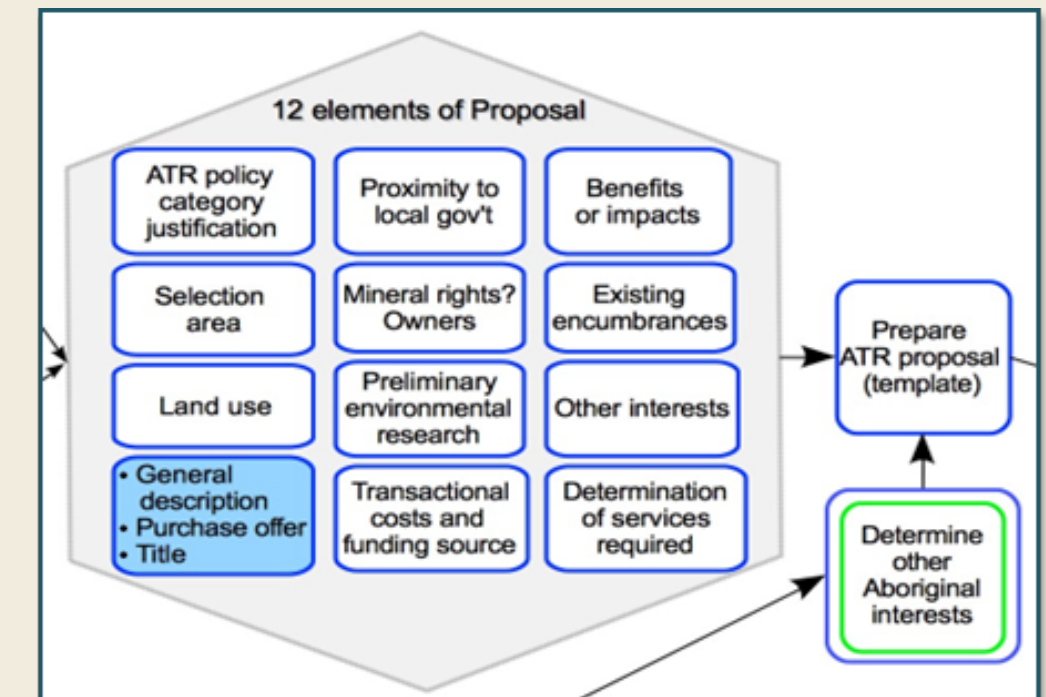


# Land Description

- Survey Plan: A new survey may be necessary, and it must comply with NRCan standards.
- Early Involvement: Engaging legal counsel and/or a surveyor early on can help identify any title or boundary issues that need to be resolved.

The required documentation includes:

- Offer to purchase (if available)
- Title search
- A general description to identify location and its proximity to the Local Government
- If mineral rights are to be included, the names of the owners should be provided.





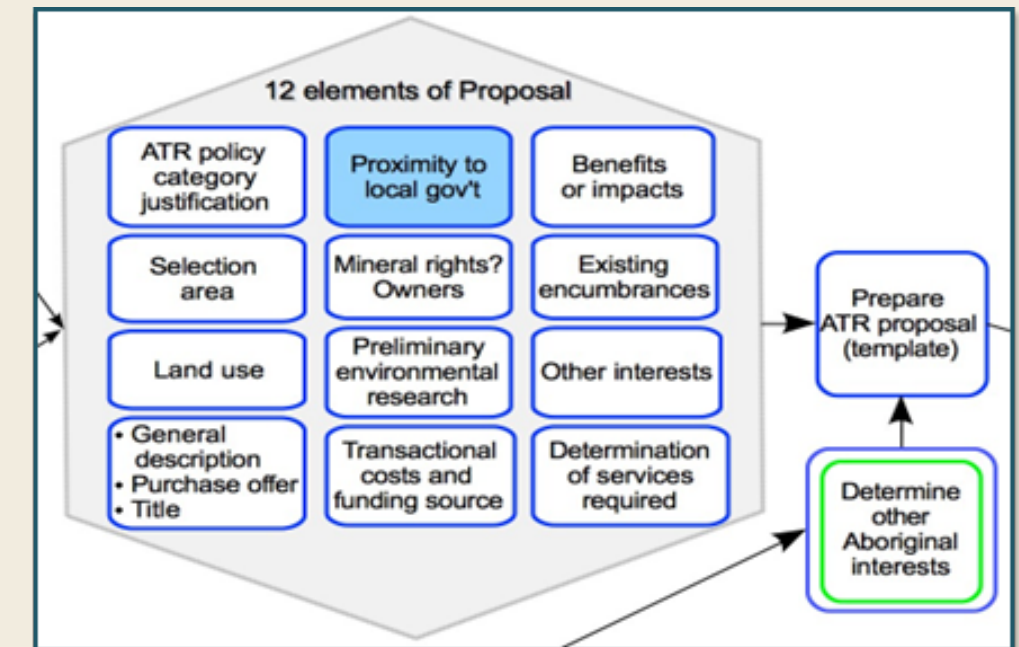
# Local Government

Importance of Proximity to Local Government and Service Considerations:

- Ensuring reliable fire protection and water services is essential.
  - Invest in developing FN services OR
  - Establish a service agreement

Meet with local government representatives early to:

- Establish reconciliation and relationship-building measures.
- Communicate the purpose behind your ATR to build understanding and support.
- Help municipalities understand the ATR process, as they are often unfamiliar with it.
- Arrange service provisions.
- Identify measures for tax loss adjustments.
- Determine the need for harmonization of land use.



Consider creating a protocol or process document to tackle issues such as:

- Engagement
- Cost
- Services
- Compatibility of use
- Implementation methods
- Decision-making processes
- Formation of implementation committees or working groups

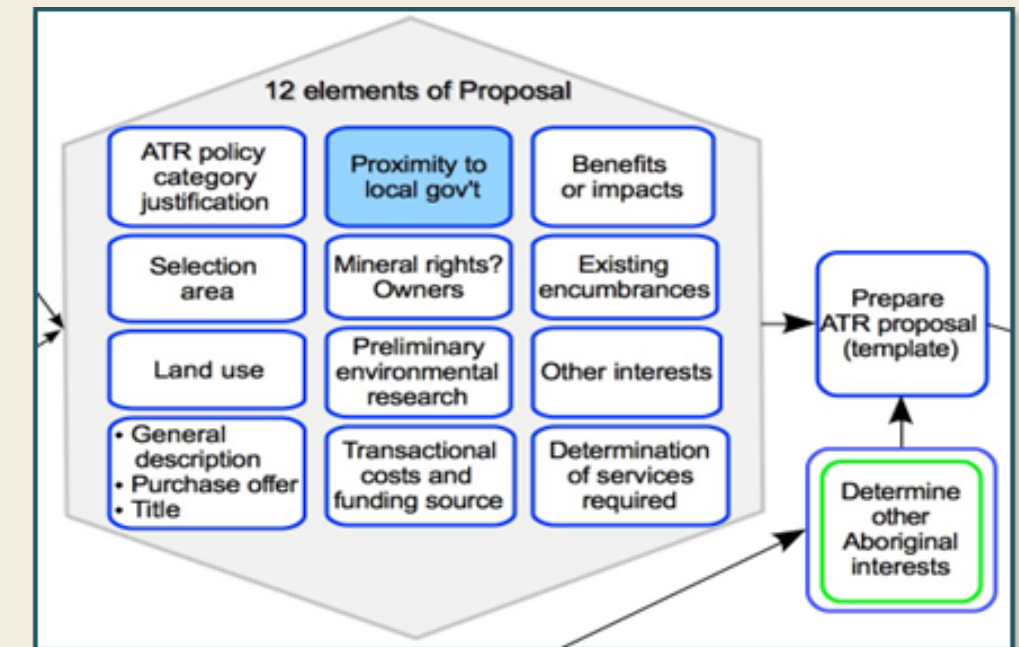


# Local Government

First Nation by-law harmonization with municipal by-laws may be helpful.

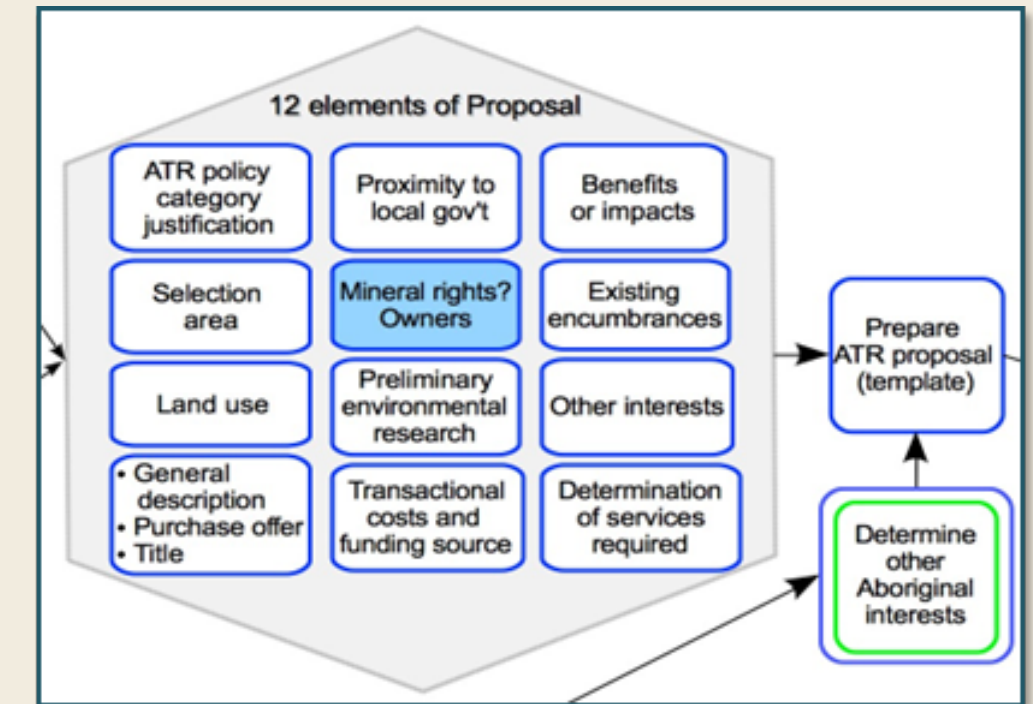
Areas of harmonization can include:

- land use or zoning standards
- building and safety standards
- public utilities
- animal control
- health and safety
- traffic regulation
- property maintenance





# Mineral Rights



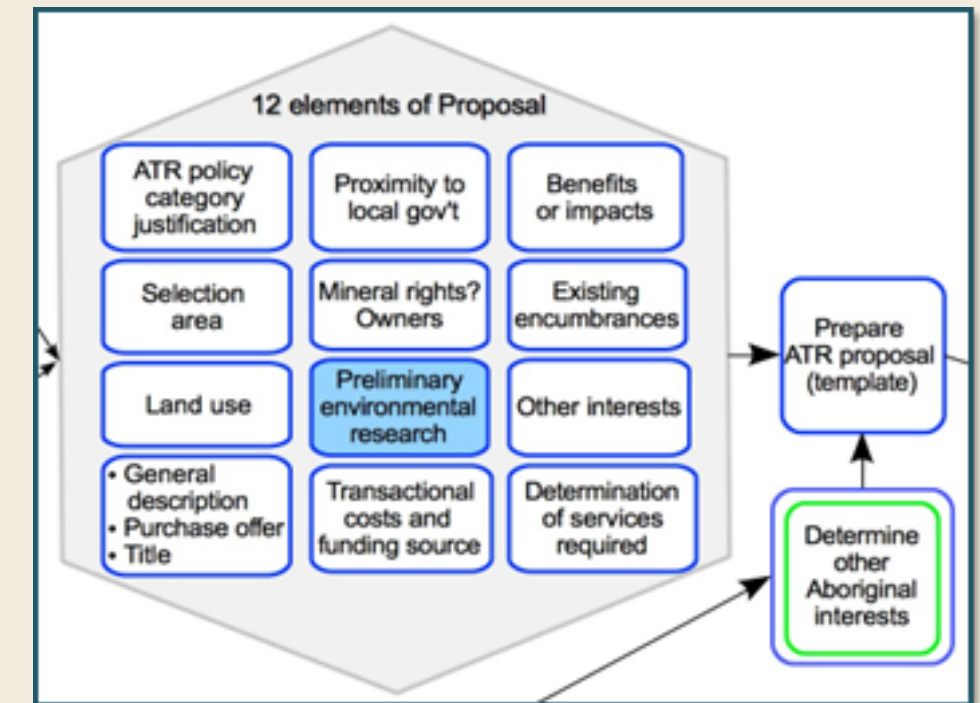


# Environmental Research

## Preliminary Identification Stage

During this phase, your focus will be on initial identification only.

- Explore the Area:
  - Engage with individuals familiar with the parcel.
  - Consult the library or the titles office.
- Consider the following questions:
  - What is the current use of the land?
  - Are there any indications of contamination? If so, it's crucial to identify this early.
- Regulatory Compliance:
  - Ensure the land meets relevant regulatory standards:
    - If it's designated for industrial use.
    - Land intended for housing must be exceptionally clean.
- Potential Complications:
  - Be aware that water boundaries and park lands may introduce challenges:
    - In such cases, organizations like Fisheries and Oceans Canada (DFO), transportation authorities, and Parks Canada might get involved



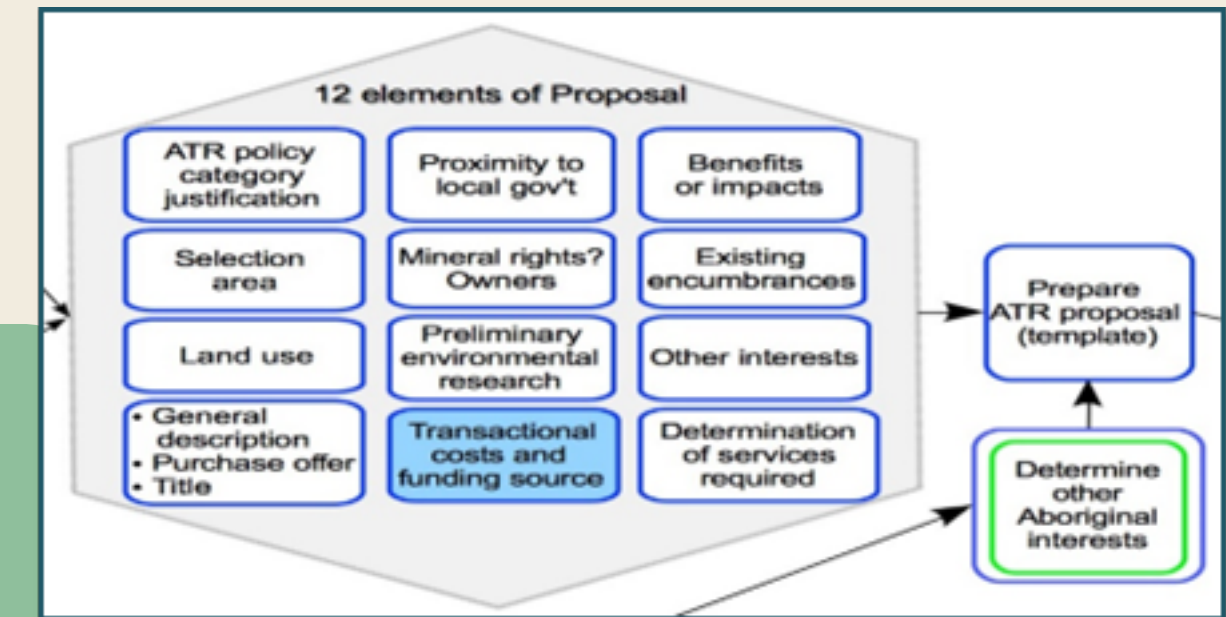


# Budget

Identifying your costs and funding sources:

## Types of costs

- Acquisition
- Title search
- Land transfer
- Legal expenses
- Surveys
- Environmental Site Assessments (ESA)
  - Phase 1, 2?, Remediation? Expiry after stale date?
- Negotiations with local governments
- Infrastructure costs (school, roads, health facilities)
- Administration costs
- Legal counsel and other professional services
- Tax loss adjustment
- Third party interests: buy-outs or compensation



Funding sources:

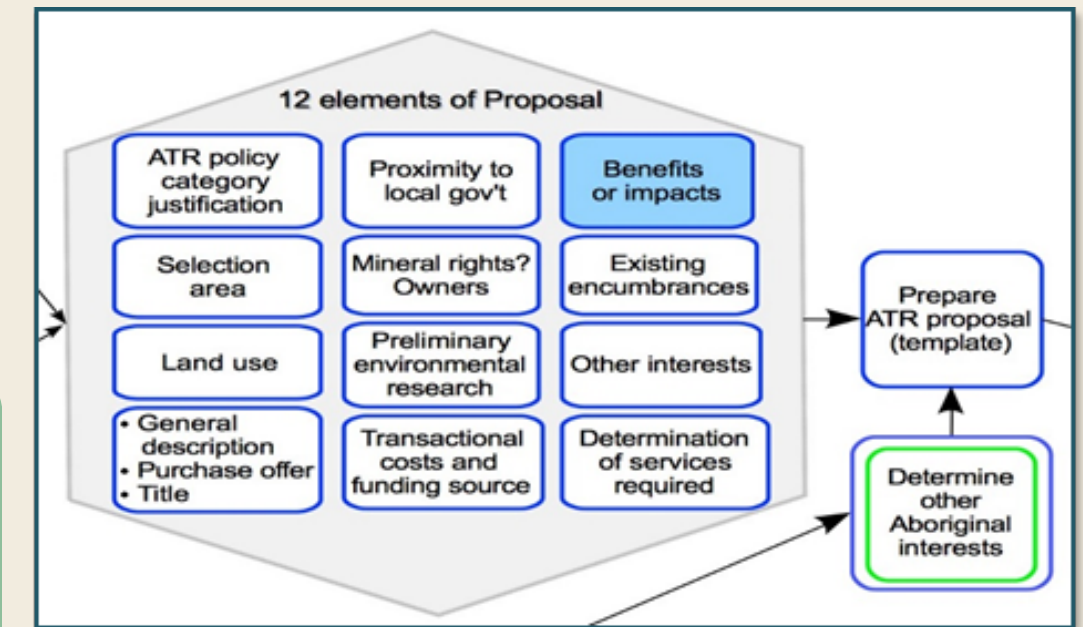
- Settlement claim or agreement may provide funding
- ISC Funding announcements
- Lands and Economic Development Services Program (LEDSP)



# Impact/Benefits

## Considerations for Impact and Benefits Assessments:

- Fulfillment of legal obligations for Canada
- Decisions from the Specific Claims Tribunal
- Advantages for neighboring communities
- Costs associated with providing services for First Nations and Local Government
- Compliance with First Nations Land Use Plans or other governmental regulations
- Influence on regional infrastructure management
- Effects on regional traffic or transit management strategies
- Impact on protected or environmentally sensitive regions
- Considerations regarding culturally significant areas (ceremonial sites, burial grounds, archaeological locations)





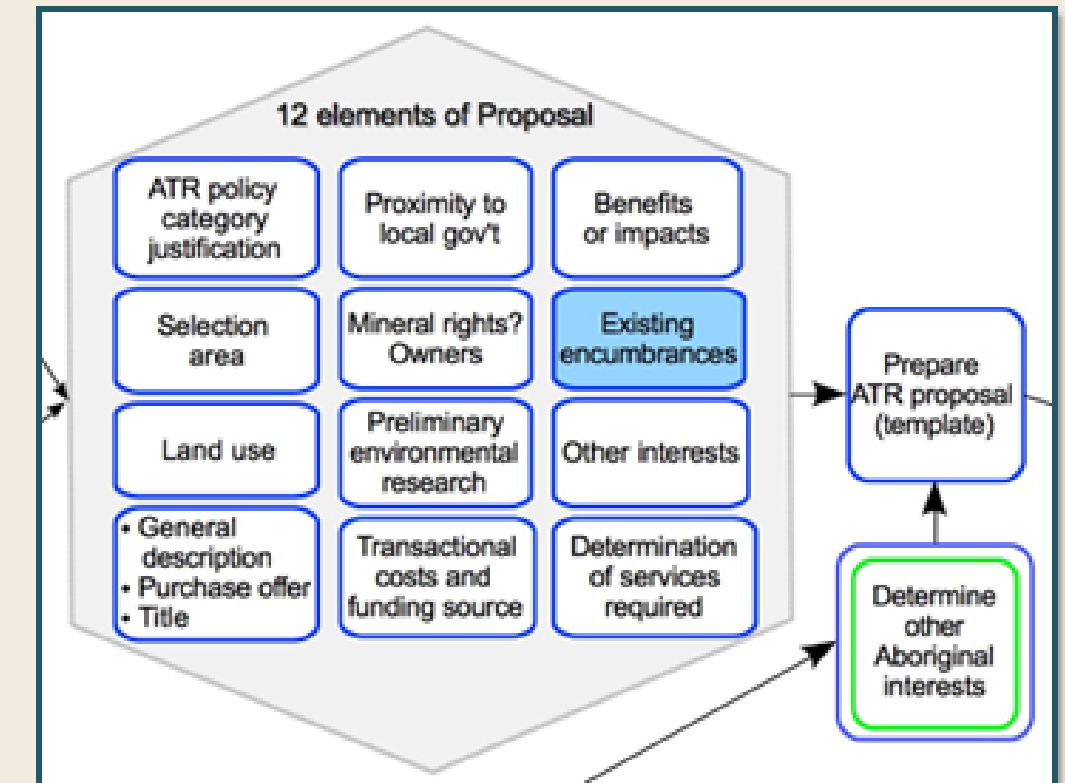
# Encumbrances

Your proposal should include the following elements:

- Identification of existing encumbrances or charges, which can typically be determined through:
  - Title search
  - Provincial or territorial canvass
  - Site visit
- Third-party interests, whether registered or unregistered
- Leases
- Licenses
- Permits
- Easements
- Rights of way

## Good title is essential!!!

All title issues must be resolved, and encumbrances should be either extinguished, replaced, or minimized to an acceptable level.





# A note on Good Title/ Clear Title

## Good Title

While there may not be specific case law to reference, “Good Title” is generally understood as one that does not expose a buyer to litigation, hazards, or any factors that could impact peaceful possession or market value.

## Clear Title

According to Black’s Law Dictionary (9th ed.), a “Clear Title” is defined as “a title free from any encumbrances, burdens, or other limitations.”

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



## A note on Good Title/ Clear Title

The standard government agreement for purchase and sale specifies that “Good Title” refers to a “Clear Title”. This means that the vendor is obligated to transfer Good Title to the property, free from all restrictions, reservations, encroachments, easements, tenancies, and encumbrances.

- This definition broadens the Department of Justice's review of Good Title to include verifying that the vendor possesses Clear Title to the property, or that it only carries the encumbrances accepted by the Minister of Indigenous Services Canada.
- The Minister of Justice, through delegated authorities, must certify Good Title, which necessitates a thorough title search and legal opinion. This search incorporates off-title investigations, requiring communication with various utilities and agencies to confirm that no issues exist regarding the property. Completing off-title searches may take several months and could lead to issues that necessitate further research and negotiation.



## A note on Good Title/ Clear Title

- Title work was traditionally part of real estate transactions but has largely been replaced by title insurance, which is cheaper and quicker.
- Governments do not use title insurance, as they are self-insured and it doesn't meet FRPFIA requirements. 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.
- Conducting a proper title search and obtaining an opinion during the initial acquisition of land for ATR can streamline the process and address title issues proactively, leading to more efficient ATR application processing.



## A note on Good Title/ Clear Title

- ☒ Hire a lawyer to conduct a title search at the time of acquisition!
- ☒ Avoid depending on title insurance—a detailed title search will provide you with significantly more information about the land!
- ☒ Confirm compliance with DoJ standards by performing a comprehensive title search!



## A note on Good Title/ Clear Title

- In some provinces, First Nations are not recognized as legal entities under Land Registry Acts. If you acquire land in these provinces and register it under a First Nation's name, the Land Registry may accept it.
- However, when Canada seeks to acquire the land for Additions to Reserve, the Department of Justice may not accept it since they can only accept land from legal entities recognized by the Registry Acts. This could lead to delays and frustration. To avoid issues, consider registering land under a corporation, trustee, or a partner in a Limited Partnership.



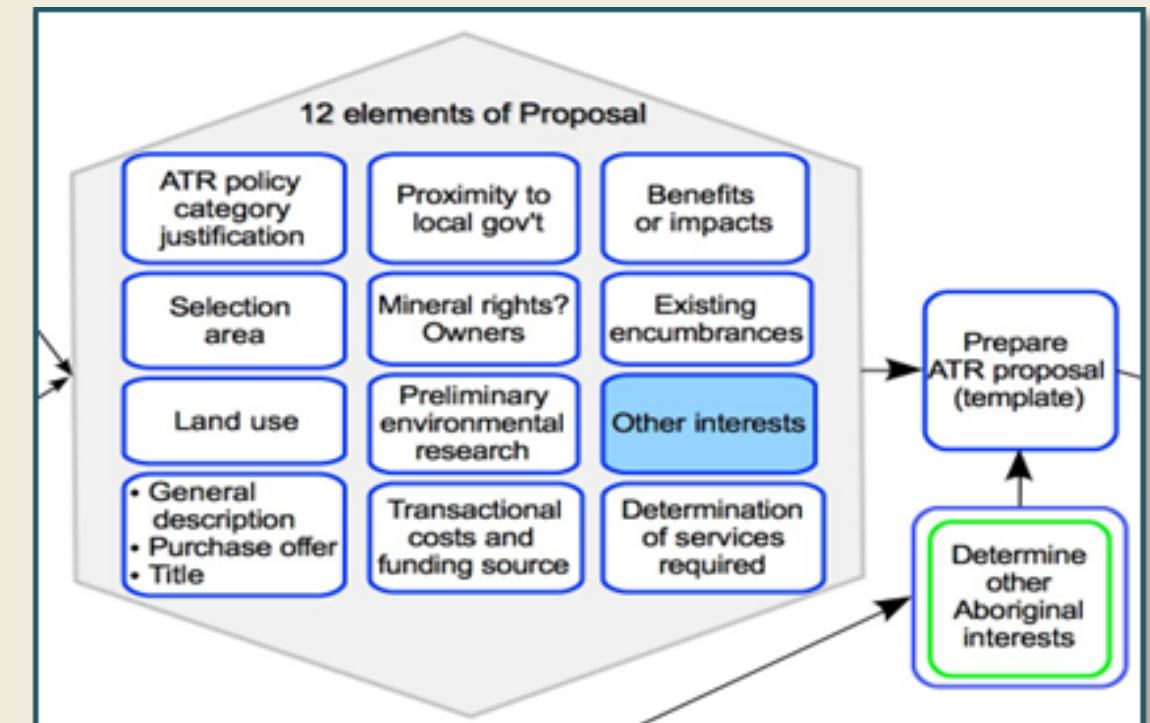
# Other Interests

## Provincial Governments & Federal Departments:

- The FN should inquire 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.

## Aboriginal and Treaty Rights:

- FN, Métis or Inuit peoples may have overlapping rights or interests in the land
  - A claim of adverse impact on Aboriginal and Treaty rights must involve specifics, they cannot be a general assertion.
  - Where adverse impacts exists, accommodation must be made.
- The FN may want to begin its own discussions with Indigenous groups who may have overlapping interests or rights.
- ATRIS is a web-based information system that can provide you with information on treaties or agreements to determine which Aboriginal groups require consultation.





# Services Requirements

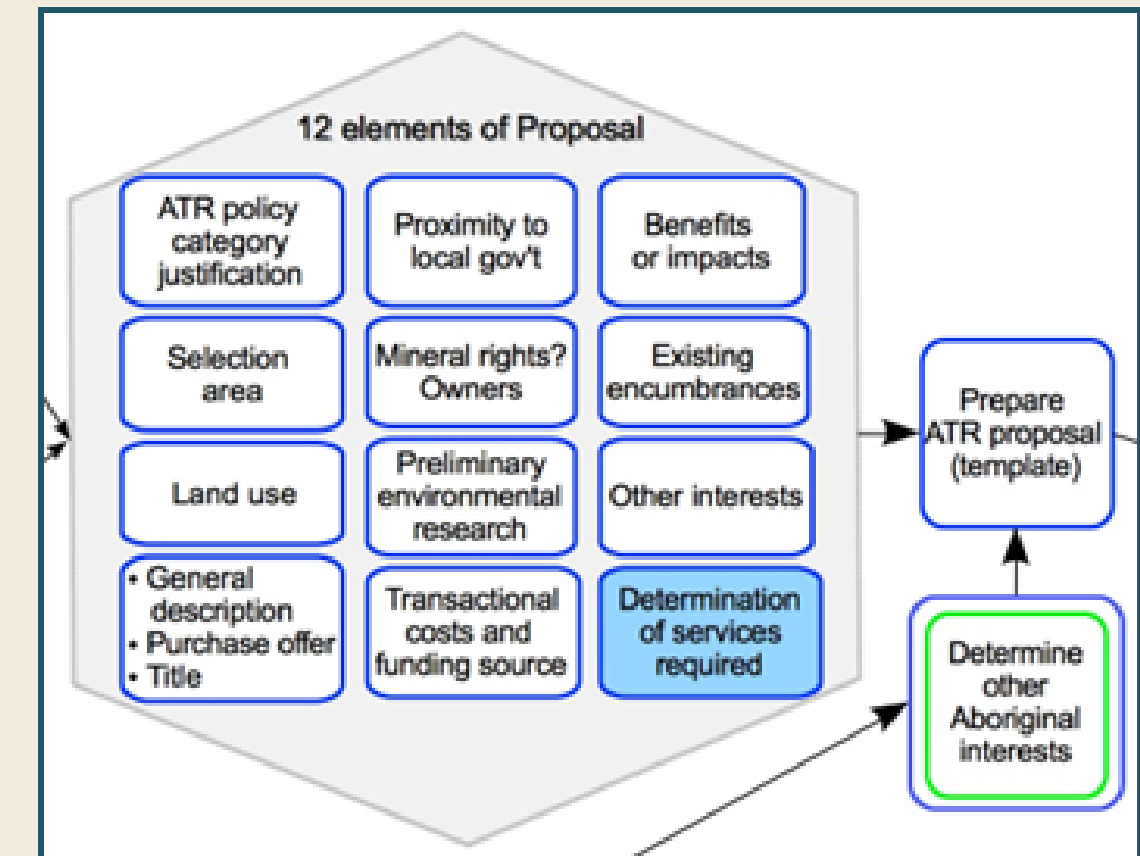
## Obtaining the Official Community Plan (OCP)

Acquire the OCP from the neighboring municipality, this will help you understand:

- How the municipality utilizes the land
- Whether services such as water, fire protection, policing, and road maintenance are extendable.
  - If your proposed use conflict with the OCP, be prepared for discussions.
- An ATR/RC could also bring advantages to the municipality, which can be explored by reviewing the OCP to identify potential areas of alignment.

## Importance of Early Engagement

Engaging early and collaboratively with a municipality is essential for building goodwill and ensuring a successful proposal. Although municipalities do not hold veto power, it's important to address their legitimate concerns. Remember to document all interactions with the municipality!

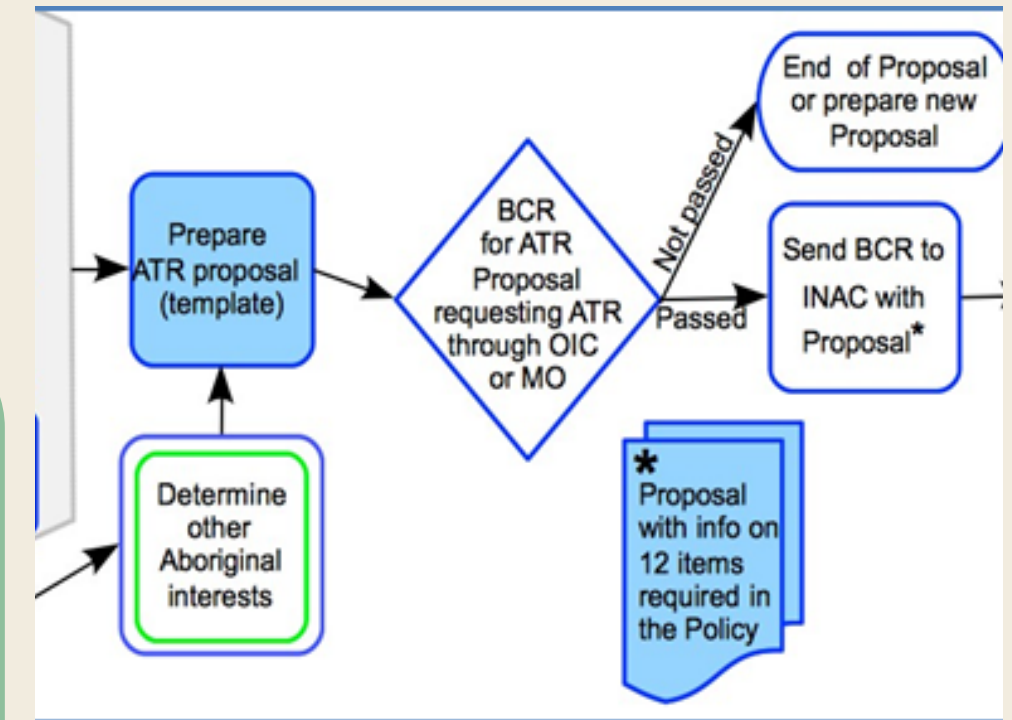




# Band Council Resolutions (BCR)

## A good BCR will include:

- Information sheet naming the reserve and its location, with a map of a location sketch
- If Legal Obligation: agreements with specifics that apply
- Current and proposed land use
- Offer(s) of purchase, if made
- Legal title/deed showing name of registered owner(s)
- Proximity of proposed land to local government
- If mineral rights to be included, name of registered owner(s) shown on deed
- Environmental information (preliminary history, current and intended use)
- Transaction costs (and potential funding sources)
- Impacts and benefits of proposed land use
- List of existing encumbrances (identified by title search, canvass, site visit)
- Any known interests (prov., terr., Aboriginal, other)
- If services required, list and plans for them





# BCR

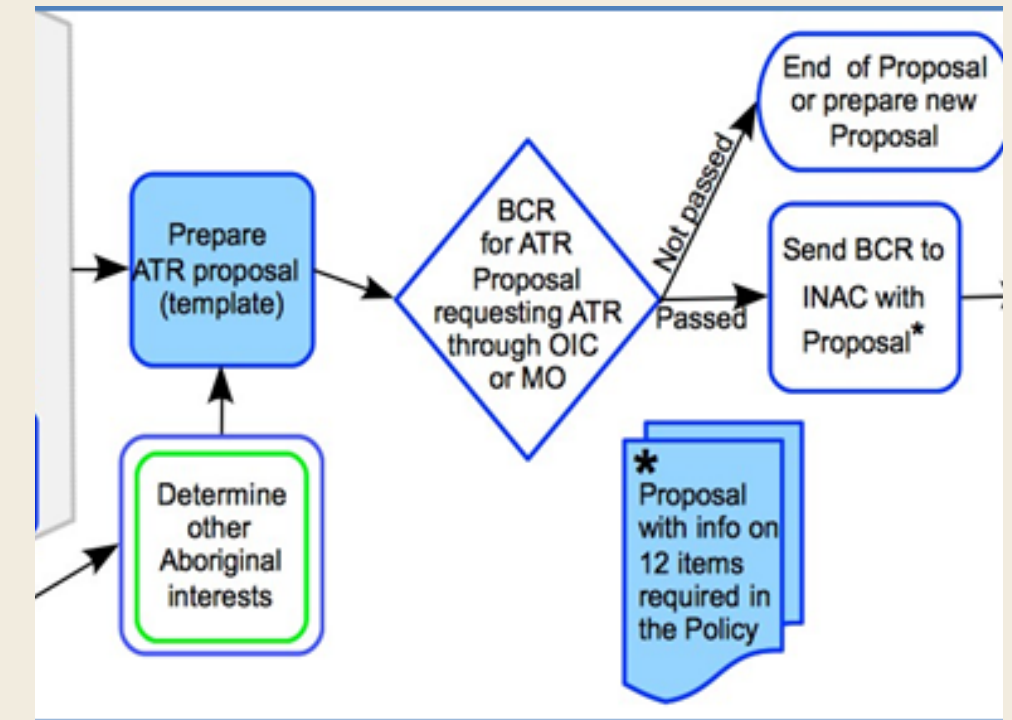
Each ATR proposal must include the following elements:

- The formal proposal for ATR/RC
- The name and number of the reserve
- Approval by a quorum of the Council, with signatures from all members

Submission Guidelines:

- Provide two copies: one for the First Nation and one for Indigenous Services Canada.
- Send the documents to the ISC Regional Office located in the region where the majority of the FN's land is situated, regardless of the selection area.

This completes Phase 1, and the project will now move to Phase 2 of the ATR process. Phase 2 is primarily the responsibility of ISC.





# ACTIVITY 1

You are the land manager for First Nation ABC. A counselor has identified a parcel of land with economic development potential. The land is owned by an industrial operator in a city adjoining your reserve. Chief and Council want your views on acquiring it for reserve purposes, and they have asked how long it will take to add to reserve. You are aware that First Nation ABC settled a land claim the year previous.

In preparation for your preliminary project planning, you walk the property, talk with some people involved in the operation, and note the following:

- The operation involves the utilization of chemicals stored on the site.
- The site is zoned industrial, and you hear property taxes are high.
- The boundary of the property is not clear – there's a fence on the adjoining property that appears to encroach on this one.
- You've heard that another buyer is interested in acquiring the land.
- You've dealt with the nearby municipality and you're aware they know little about additions to reserve.

Before meeting with Chief and Council, it's important to have a clear picture of the project. This includes understanding the potential risks, identifying who else may be affected or involved, and preparing to address any challenges.



# Groups 1 & 2: Affected Parties Analysis

Affected Party	Role/Interest in the ATR	Level of Influence	Frequency of Communication	Communication Preference	Notes
Who is this person or organisation?	What is their role in the project? Why are they interested or involved?	(High, Medium, Low)  Do they make decisions, influence outcomes or have limited power?	What do they need to know? At what points in the process should they be informed?	How should you engage with them?	Are there any risks, challenges or sensitivities that your team should be aware of in working with them?

# Groups 3 & 4: Risk Analysis

Risk	Likelihood	Impact	Mitigation Strategy	Person/Group Responsible
What could go wrong?	(Rare, Unlikely, Possible, Likely, Certain)  How likely is it to happen?	(High, Medium, Low)  How serious would the consequences be?	How can we prevent or reduce the risk?	Who will monitor/manage it?





No



Yes

Does the First Nation  
play any role during Phase 2 -  
Assessment & Review?





# Chapter 6: Phase 2 - Assessment and Review

In the Assessment and Review phase, the primary responsibility falls to the ISC Regional Office to evaluate the ATR proposal.

- Have all the criteria in the process been fulfilled?
- If additional information is needed, the First Nation may have tasks to complete.

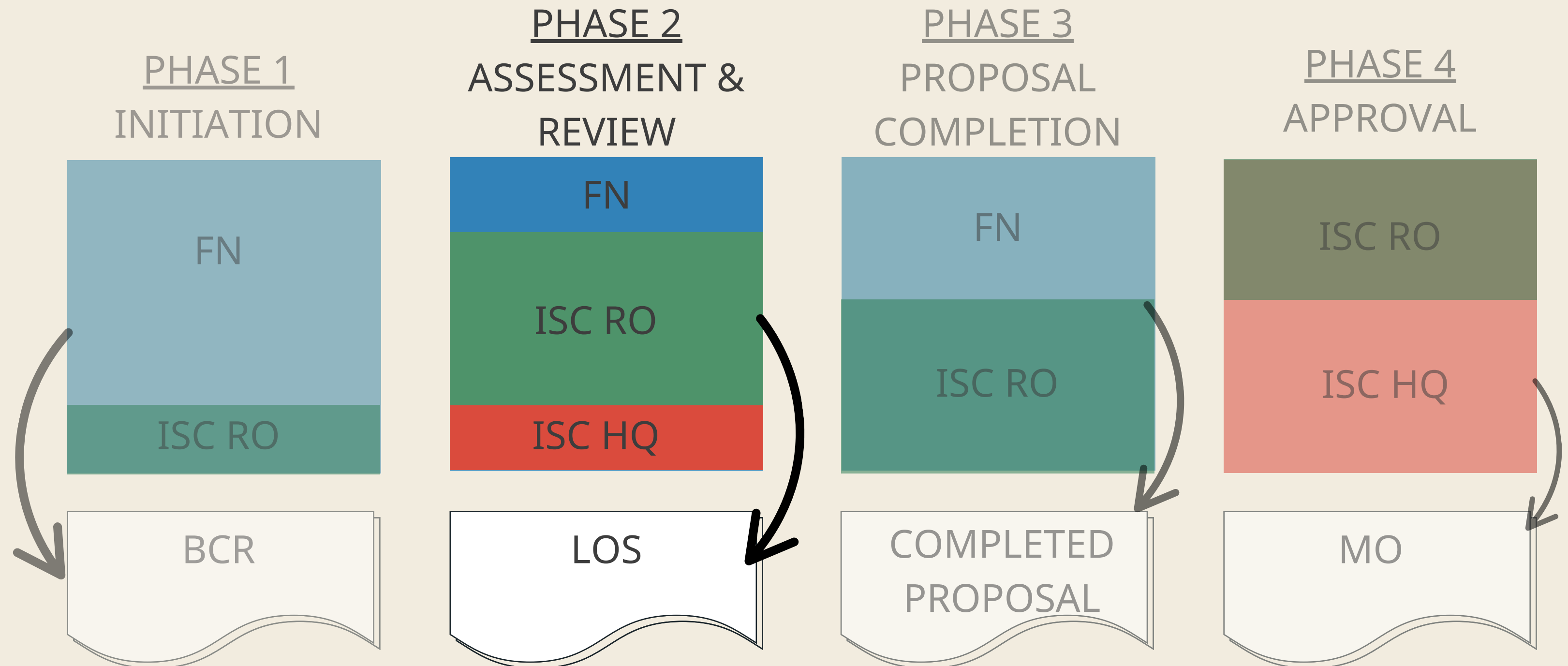
The key deliverable for Phase 2 is the Letter of Support (LOS).

The ISC Regional Office will inform the Regional Director General (RDG) on whether to issue the LOS.





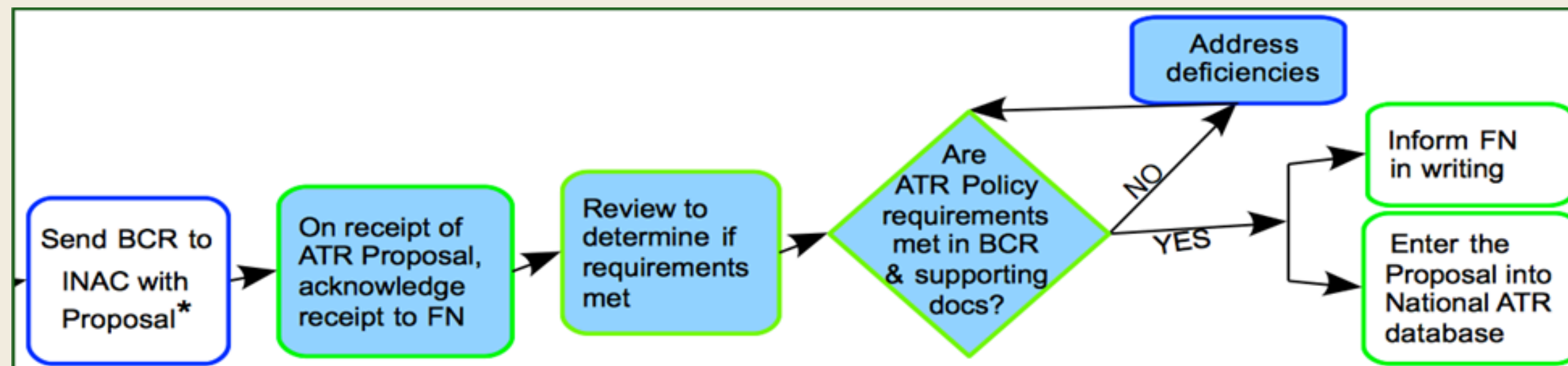
# Phase 2 - Assessment & Review





# Regional Review

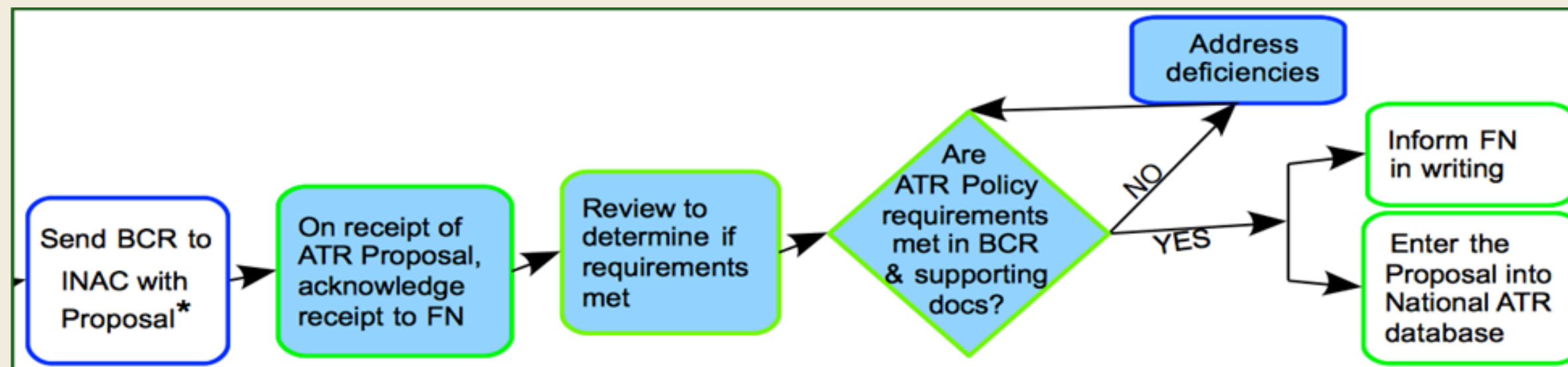
- The receipt of the FN's ATR package marks the beginning of Phase 2, and the ISC Regional Office (RO) will notify upon receipt.
- The RO will inform whether the submission is complete or if additional information is required.
  - Important: NATS is now the platform used for making and reviewing submissions.
- Once the RO receives a complete submission, several elements will be reviewed, including:
  - Duty to Consult
  - Funding
  - Other Governments
  - Impact/Benefits Analysis





# Duty to Consult

- The Supreme Court ruling on Duty to Consult (Haida/Taku) requires consideration of any other Aboriginal groups interest in ATR lands.
- The Government of Canada must respect potential or established Aboriginal or Treaty rights of First Nations, Métis, and Inuit through proper consultation.
- If there is a potential adverse impact, appropriate accommodations must be made.





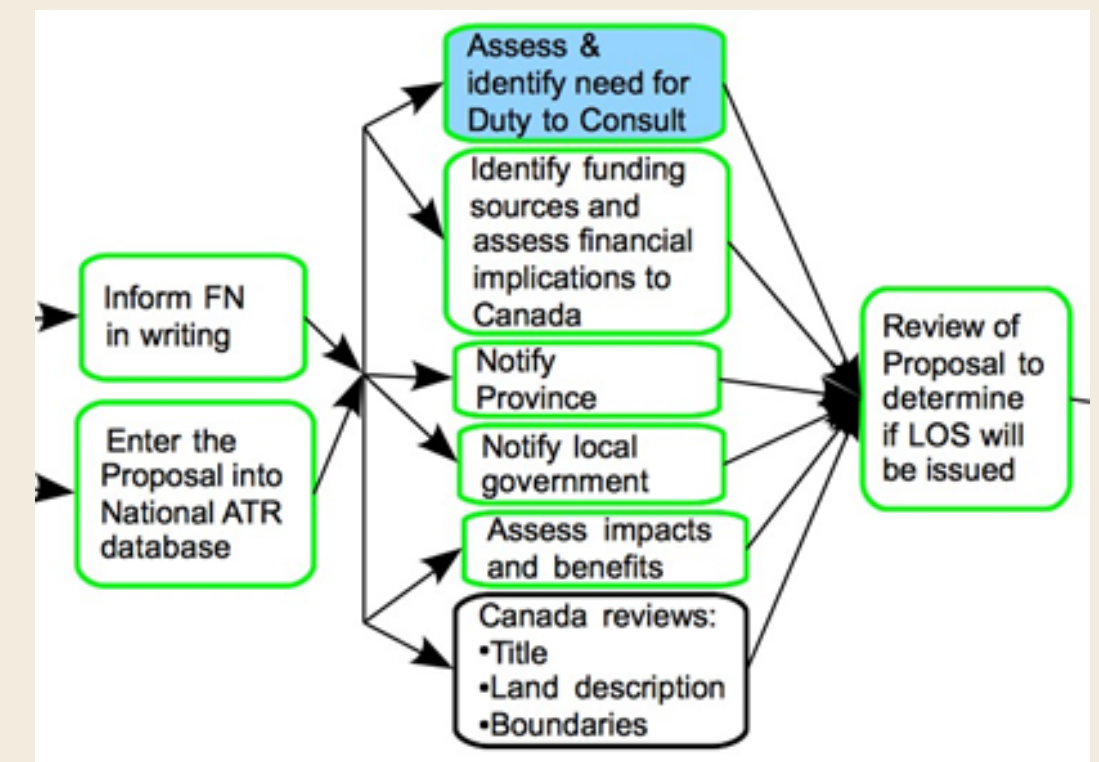
# Duty to Consult

## ISC's Role:

- It is the responsibility of ISC to identify which Indigenous groups may require consultation and to include them in the Letter of Support. However, First Nations can provide significant assistance in this process!

## Additional Resources:

- ATRIS may be useful in assessing impacts. You can also refer to the link in the manual for the guidelines that ISC follows to meet their duty to consult.





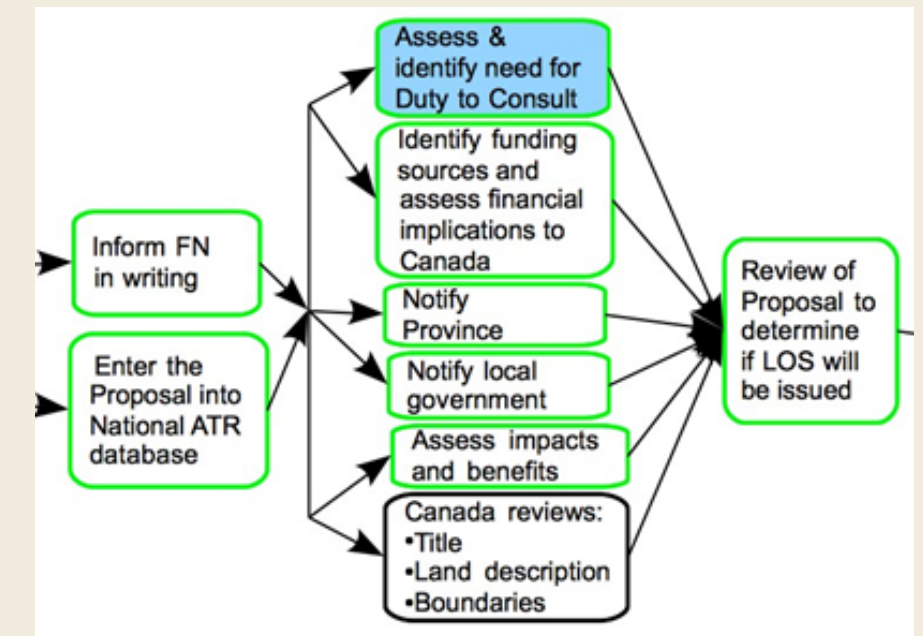
# Funding

ISC is neither required nor prohibited from providing funding.

- It may be necessary to seek alternative funding sources.
  - When necessary, ISC will collaborate with other federal departments (e.g., Health and Welfare for health clinics).

Both long- and short-term costs must be outlined, as they impact First Nations and ISC budgets:

- Land acquisition and related transaction costs
- Surveys
- Environmental expenses (assessments, remediation, mitigation, monitoring)
- Anticipated negotiation costs with local governments
- Infrastructure and capital expenditures: housing, roads, water, etc.



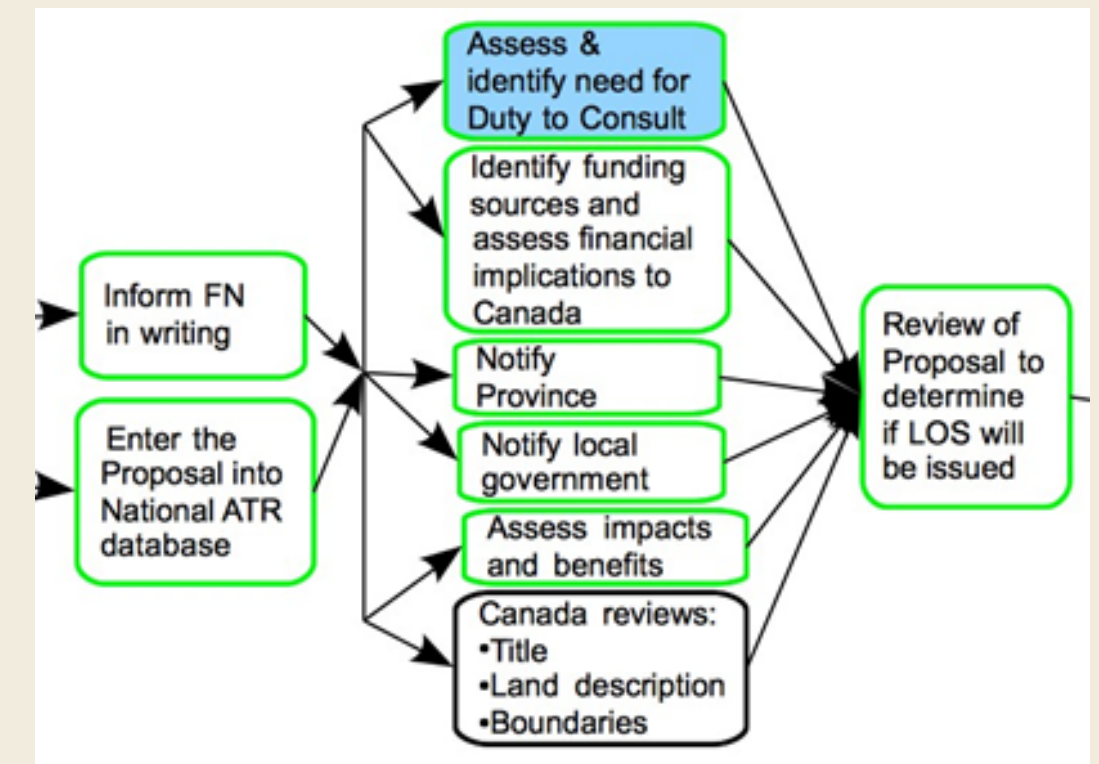
- Does your ATR/RC involve other government departments with potential funding programs?
- Have you received funding for ATR/RC through a claim, litigation, or Tribunal decision?
- First Nations can apply for the Lands and Economic Development Services Program (LEDSP) if they haven't been compensated for those activities. While LEDSP isn't ideal for ATR/RC, it is accessible to assist First Nations.
- Under this program, the First Nation manages contracting and reporting, with ISC providing support to assist with meeting departmental requirements/standards.



# Lands and Economic Development Services Program (LEDSP)

Activities eligible for funding under LEDSP:

- Survey work to support ATR and instruments (utilities, access, right of way, easements, etc.)
- Environmental Site Assessments (ESA)
- Support related to property transactions, addressing property title issues, reservations, etc.
- Support to negotiate instruments for utilities and third parties (encroachments, access, etc.)
- Support to consult and negotiate with local governments regarding service agreements, tax loss, etc.
- Designations



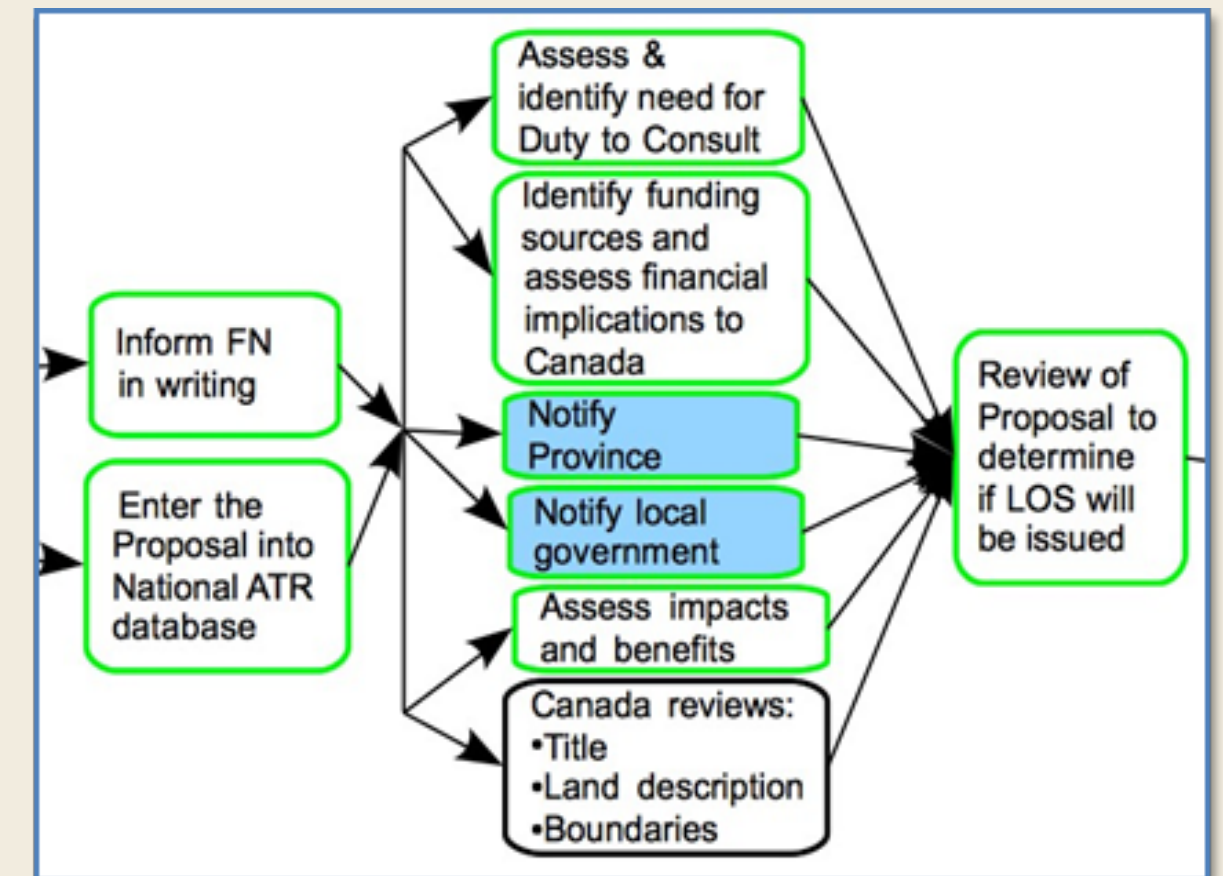


# Notifying Governments

ISC must notify the following parties for various reasons:

- The municipality regarding tax adjustments, zoning, by-law applications, and service payments (e.g., roads, sewers, fire).
- The provincial government, including Indigenous Affairs and relevant ministries (highways, conservation, waterways, agriculture).
- Any parties with interests in the land, like leases or permits.
- Other federal government departments involved.

This notification serves as a notification only ; the First Nation will engage more if resolutions are required.





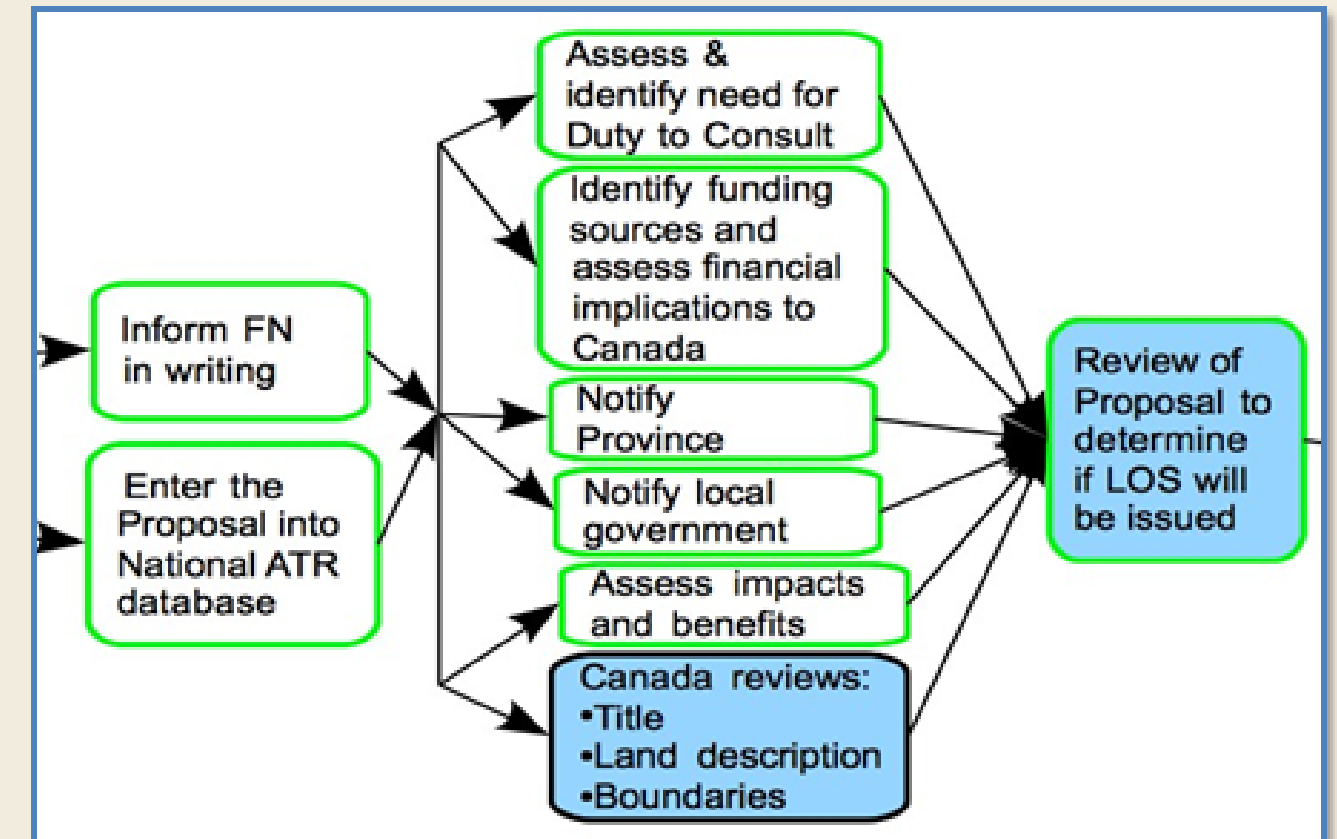
# Assessment Complete

Department of Justice (DoJ) will conduct a title search to:

- Confirm the validity of the title
- Identify any encumbrances
- An ATR cannot proceed without a good title!

After assessing all aspects of the Proposal and verifying the title with Canada, a Review Committee consisting of experienced ATR staff at the Regional Office will thoroughly examine the entire Proposal.

They will focus on all criteria, especially the Impacts and Benefits. This committee will provide guidance on whether to recommend a Letter of Support.



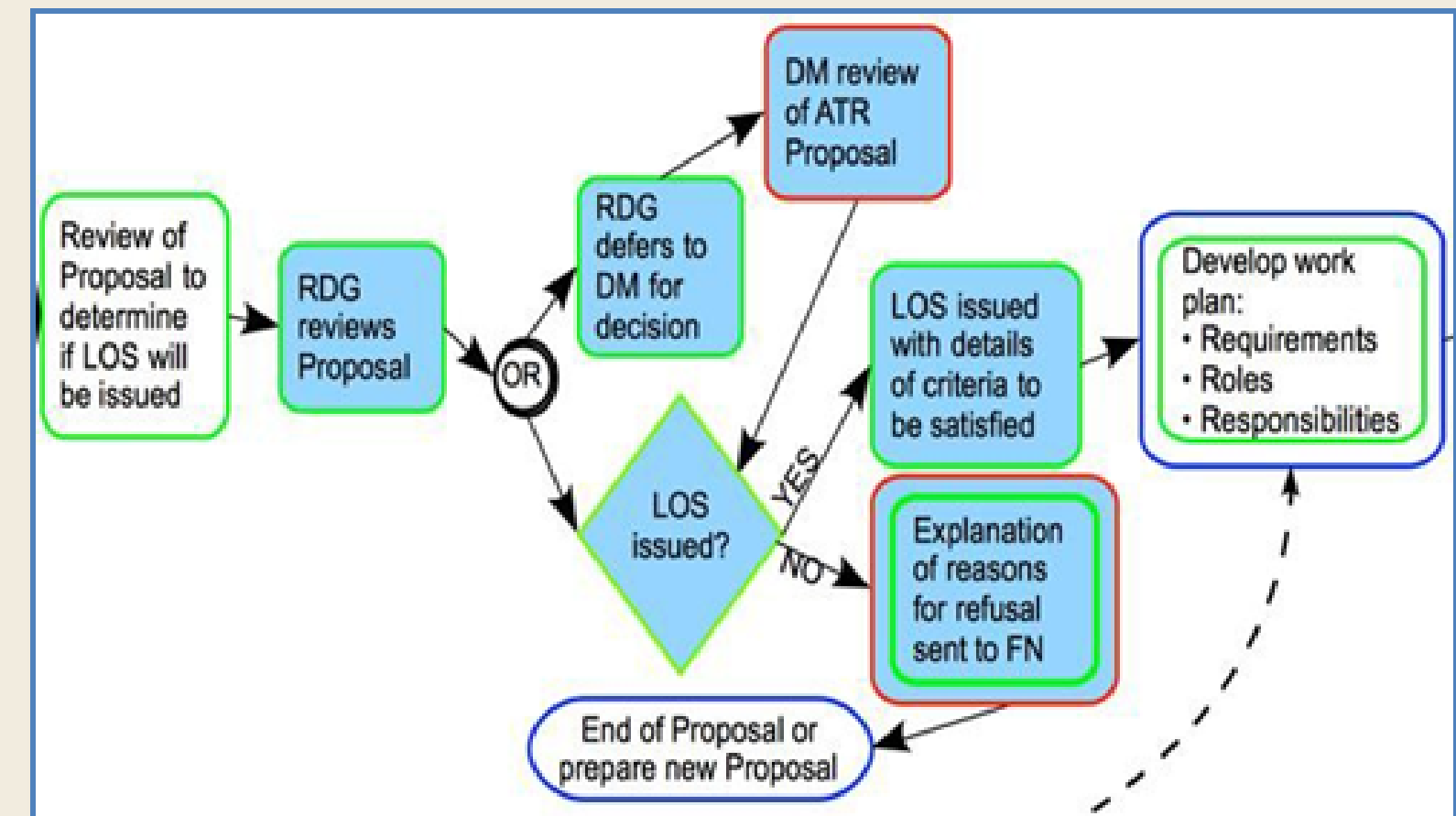


# Letter of Support

Authority of Regional Director General (RDG) to Issue a Letter of Support (LOS)

- The LOS will highlight any outstanding issues that need addressing in Phase 3.
- These issues must be resolved prior to submitting the proposal for final approval.

If the proposal cannot be supported and an LOS is not issued, ISC will provide a written explanation to the First Nation.






# Keeping your ATR on Track

An ATR can be left on the backburner for many reasons:

- Holidays
- Staff turnover
- Elections
- An ISC officer or PM managing too many files
- Lengthy Department of Justice review

You are the driver of the ATR process. Maintain consistent communication with the RO and other involved parties to ensure progress continues!





What **strategies** or **resources** can  
you use to make sure your ATR  
project stays on track?



# Chapter 7 : Phase 3 - Proposal Completion

With the Letter of Support secured, you will now focus on addressing the issues identified in earlier stages.

- Note: New challenges may arise, so it's wise to anticipate the unexpected and integrate these possibilities into the work plan.

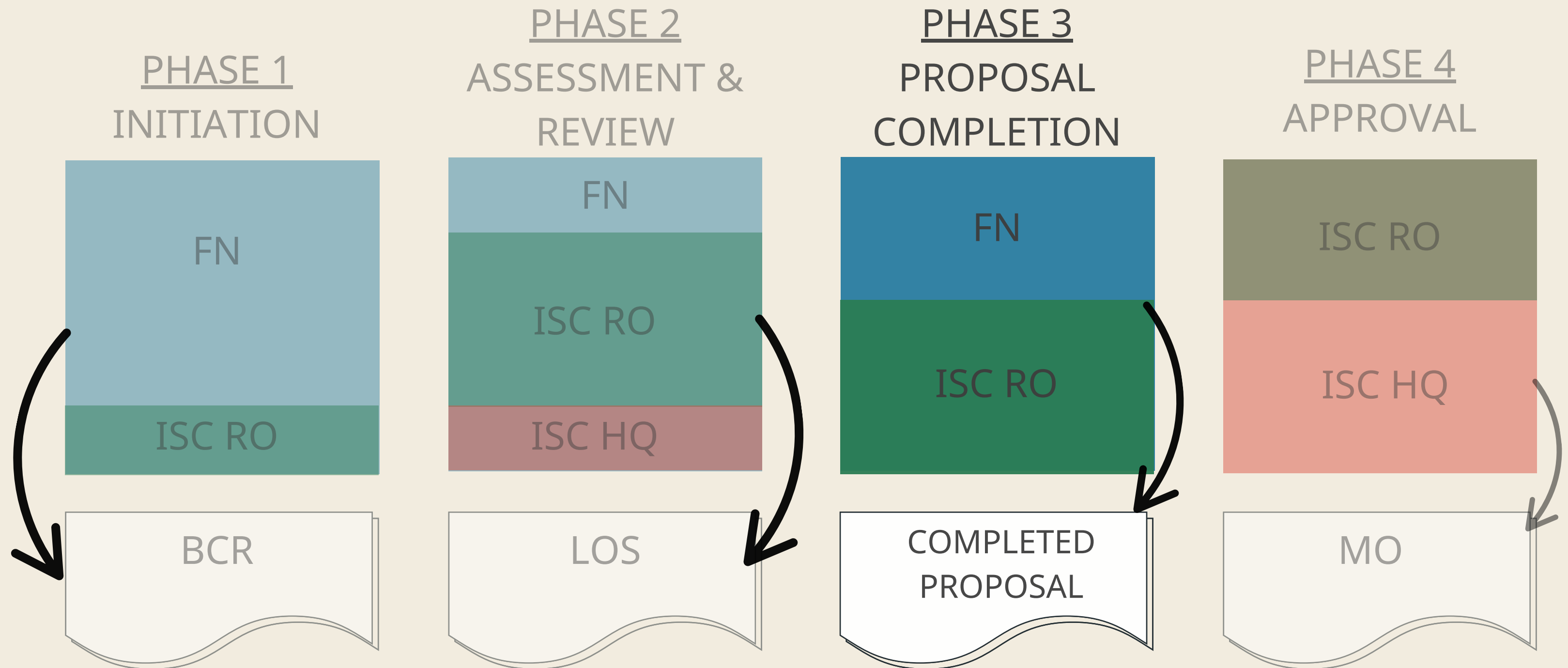
Delays are inevitable. There may be complications with contractors (such as ESAs and surveys), unexpected staff absences, or seasonal interruptions to planned activities (for example, snow can halt a survey or ESA).

However, keep in mind that progress can still be made during these delays—effective project management helps to navigate setbacks while ensuring continued progress.





# Phase 3 - Proposal Completion ☒ ☒ ☐

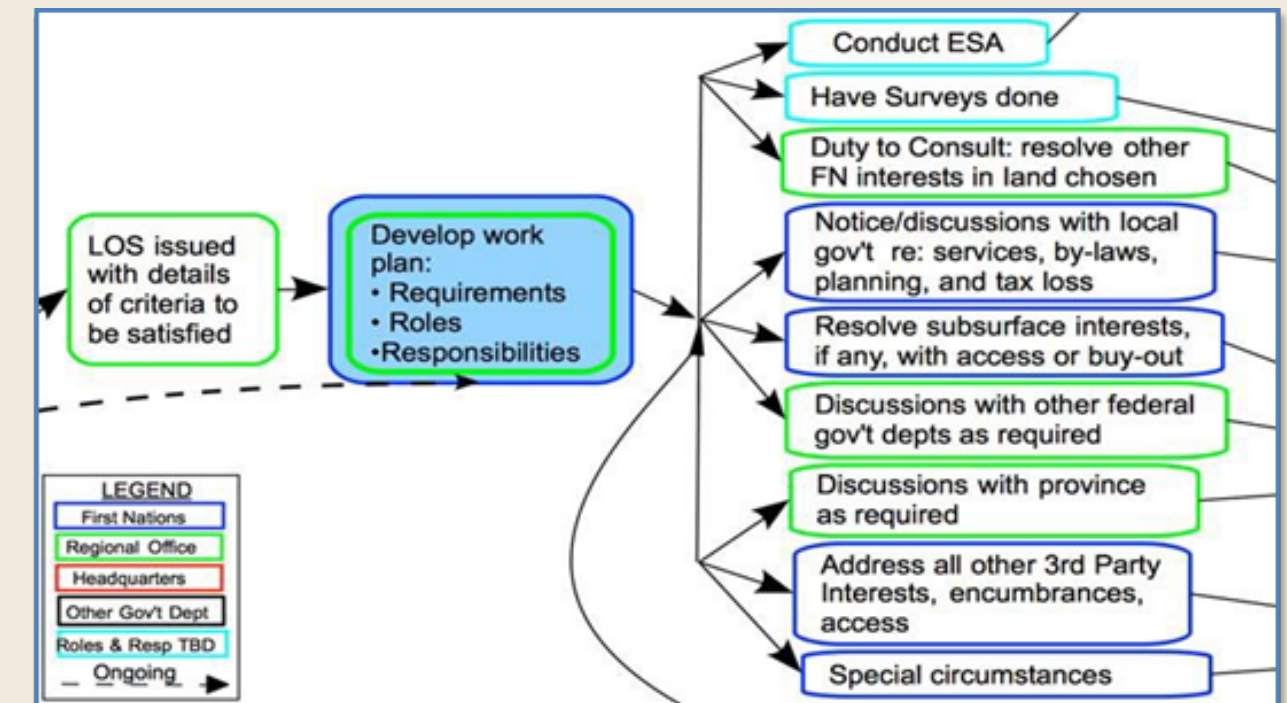




# Joint Work Plan

## Meeting to Develop a Work Plan

- ISC will organize a meeting to create a work plan.
- It is essential to determine what needs to be done and who will be responsible.
- Required Support:
  - legal counsel;
  - environmental agent;
  - surveyor;
  - and more!
- Communication is Key:
  - Identify the audience (members, external groups, governments).
  - Decide who will represent the FN.
  - Determine how information will be shared (Internet, newspapers, etc.).
  - Ensure that messaging remains consistent.

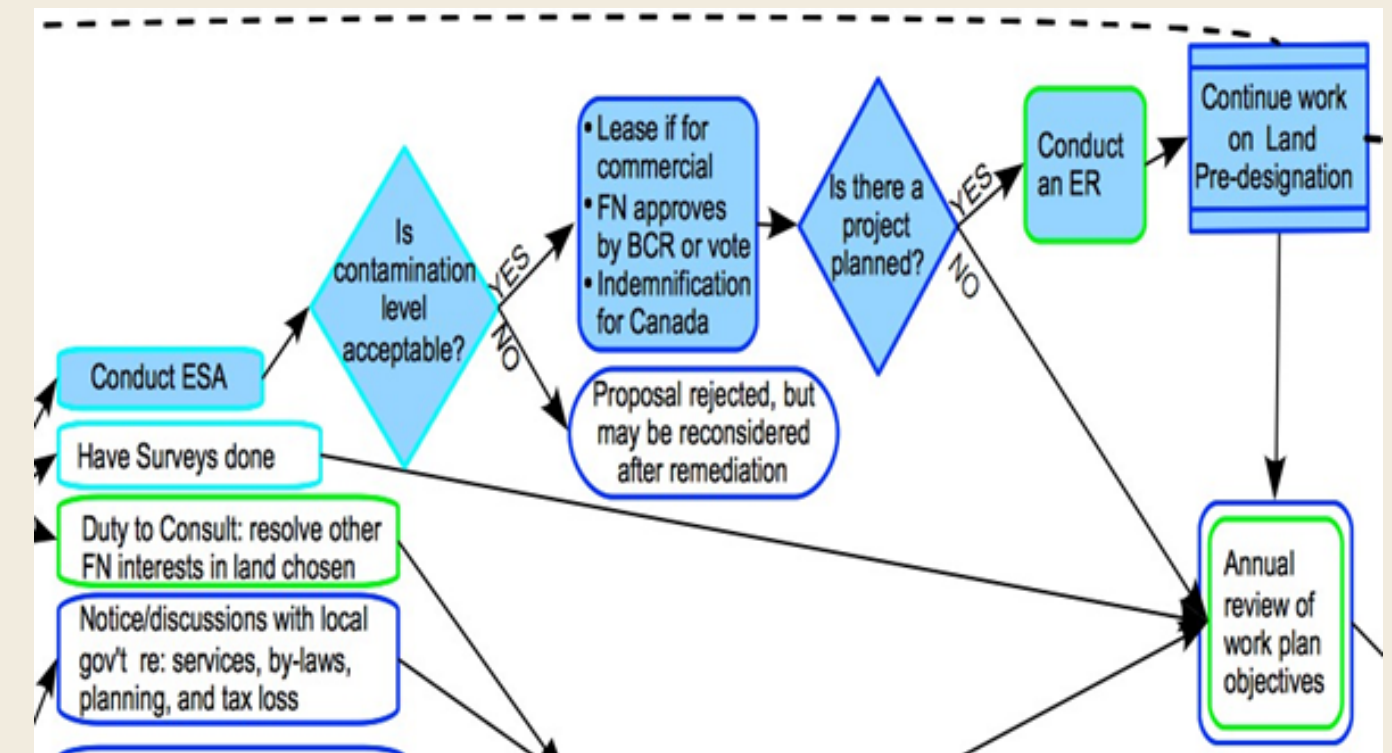




# Environmental Issues

## Key Considerations in the ATR Process

- Maintain communication with ISC throughout – adherence to federal standards is essential.
- Potential costs involved – who will bear the expenses?
- Is the First Nation interested in the land, even if it cannot be designated as a reserve?
  - If so, initiate the ESA as soon as possible.
  - If not, evaluate the timing carefully.
  - Consider whether you want to incur ESA costs if the land can't become reserve.
- The ESA may be influenced by weather conditions. Effective project management will help to determine how to plan ahead for your ESA.





# Environmental Issues

## ESA Phase 1:

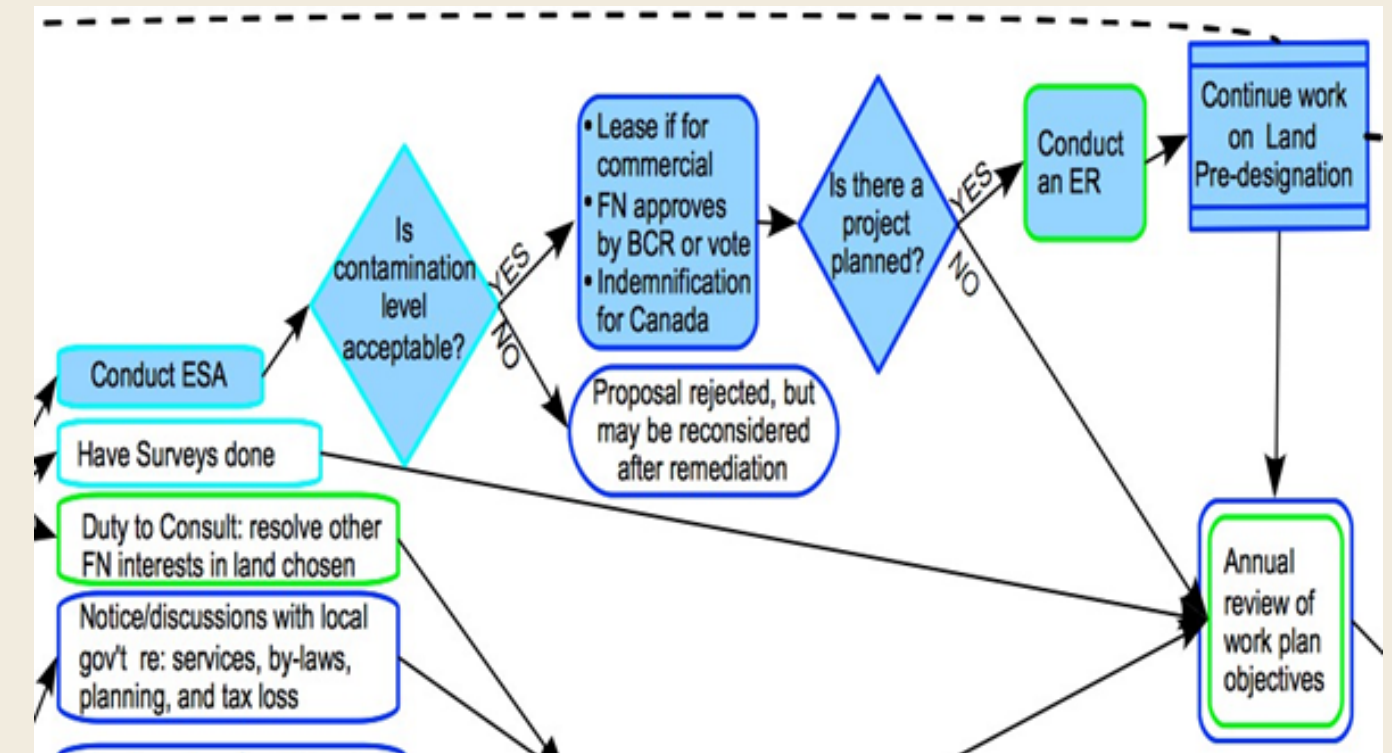
- Records review
- Interviews/Site visits
- Produces evaluation report on information and issues.

## ESA Phase 2:

- Initiated if Phase 1 reveals contamination or potential contamination sources.

## Stale-dating of ESA:

- Valid for 5 years; requires an update or new ESA afterward.





# Consider an enhanced phase 1 ESA

## Enhanced Phase 1:

- Enhanced Phase 1 ESA can cut costs and improve efficiency.
- This method incorporates Phase 2 work into the Phase 1 investigation.
- For example, if staining is observed during the site walkabout, sampling can be added to the Phase 1.
- This proactive approach avoids costs and delays associated with re-scheduling additional visits.



# Environmental Issues

ESAs are mainly the responsibility of First Nations and may receive funding through claim settlements, the responsible polluting party, or, in limited cases, ISC. Additionally, departmental funding can serve as a source for ESA financing.

ESAs can differ by region, but should generally include:

- Public Services and Procurement Canada
- Regional Environment Unit
- First Nations must ensure that the agent complies with federal standards
- Chief and Council must pass a BCR to accept the report



# Federal Statutes that Apply to Reserve Lands

Impact Assessment Act : projects proposed for reserve lands

Canadian Environmental Protection Act: pollution control

You can refer to the lands management manual for more information on these Acts and how they apply to reserve lands.



## Activity 2

You've been called into a briefing with Chief and Council to provide an update on First Nation ABC's ATR progress.

### **Before Phase 2 is completed:**

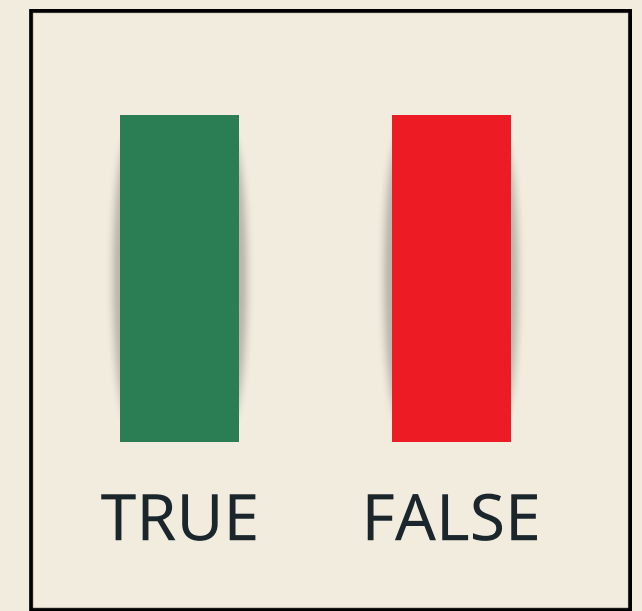
The federal government is reviewing the proposal and will be consulting relevant First Nations, following the Haida/Taku SCC decision. You also know that another community, First Nation XYZ, believes it has an Aboriginal/Treaty interest in the ATR lands and may claim adverse impacts.

### **After Phase 2 is completed:**

You notice some barrels on the site that concern you. Community members have conflicting opinions—some dismiss the idea of chemical storage, while others say barrels are leaking toxins. On your second walkaround, you do not see evidence of leaking.



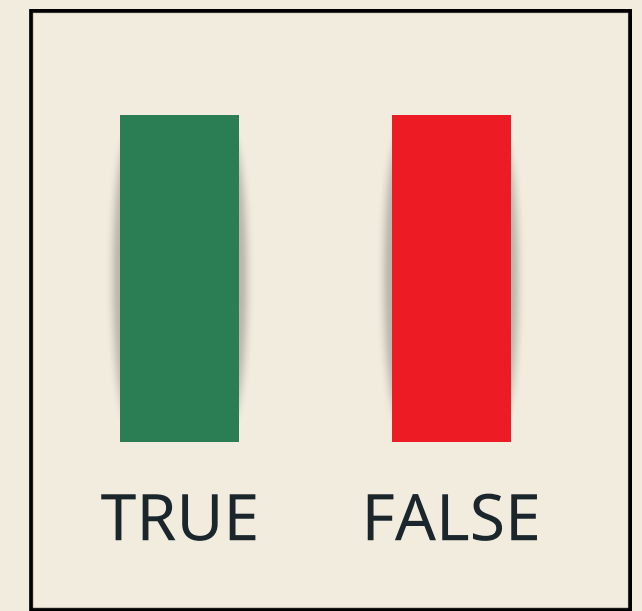
## TRUE OR FALSE



1.You shouldn't contact First Nation XYZ before ISC does.



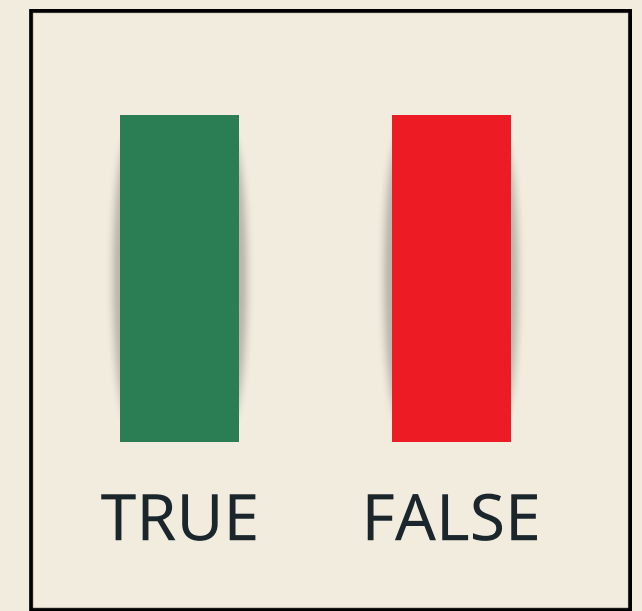
## TRUE OR FALSE



2. Before Phase 2 is complete, Chief and Council should be aware that First Nation XYZ may raise concerns about adverse impacts.



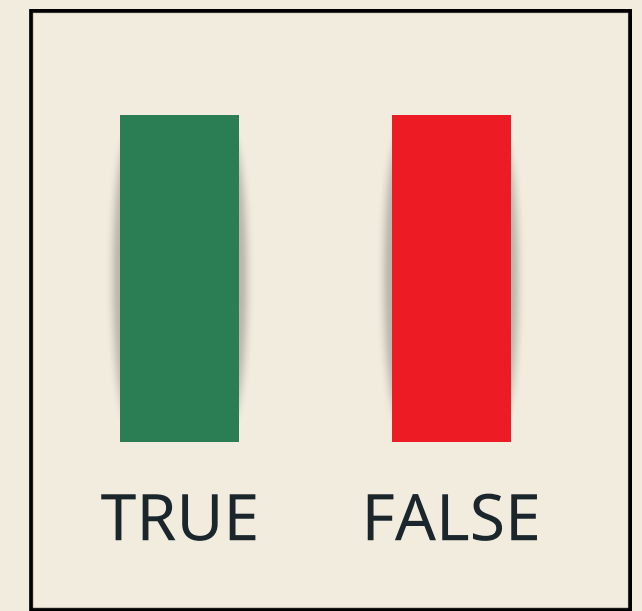
## TRUE OR FALSE



3. First Nation XYZ holds veto authority and can prevent your ATR from moving forward.



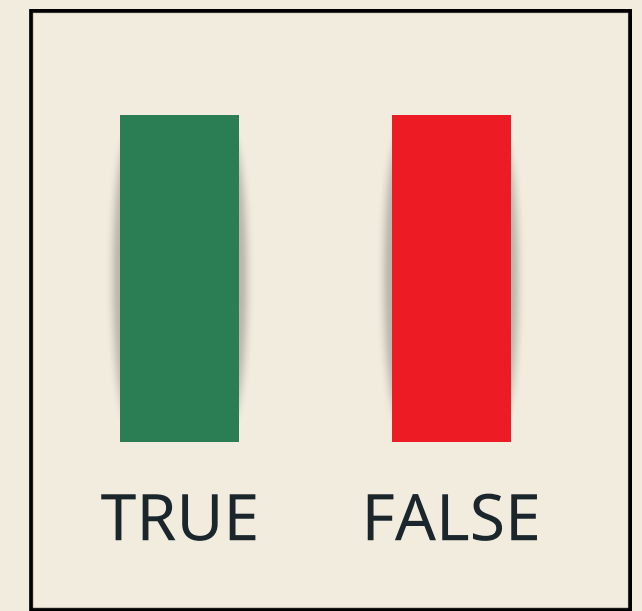
## TRUE OR FALSE



4. Phase 2 starts with the Letter of Support.



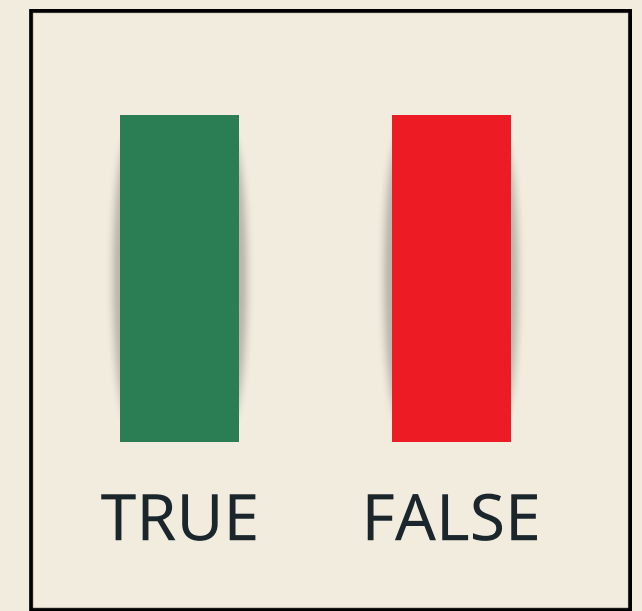
## TRUE OR FALSE



5. Once Phase 3 has started, if the ISC Regional Office has not yet arranged a joint workplan meeting with you, you should wait until they contact you.



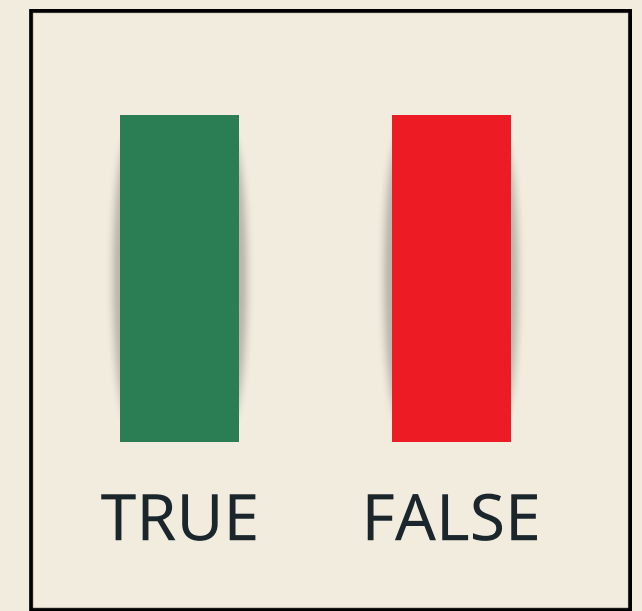
## TRUE OR FALSE



6. At this stage, you have the information needed to present Chief and Council with an outline of the next steps.



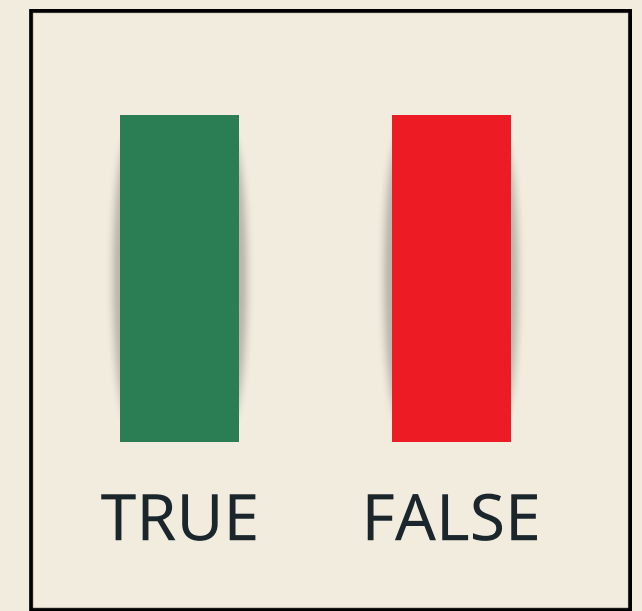
## TRUE OR FALSE



7. If the ATR relates to a settled claim, you should verify funding for the Environmental Site Assessment (ESA).



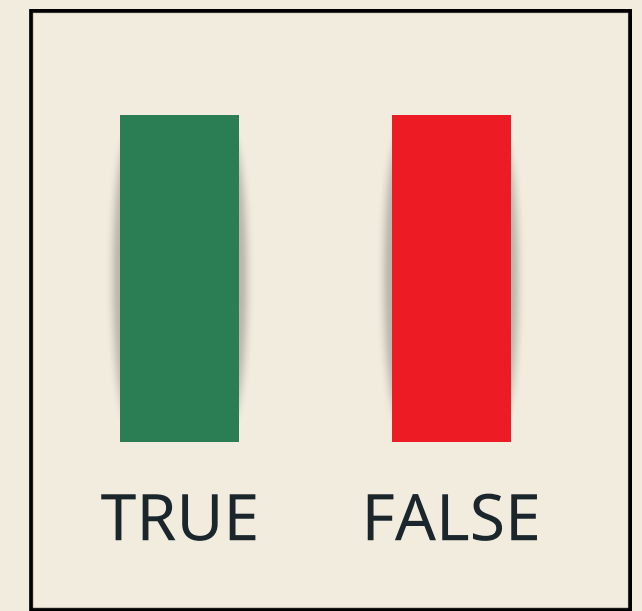
## TRUE OR FALSE



8. If the ATR is a community addition, you should advise Chief and Council about options for ESA funding.



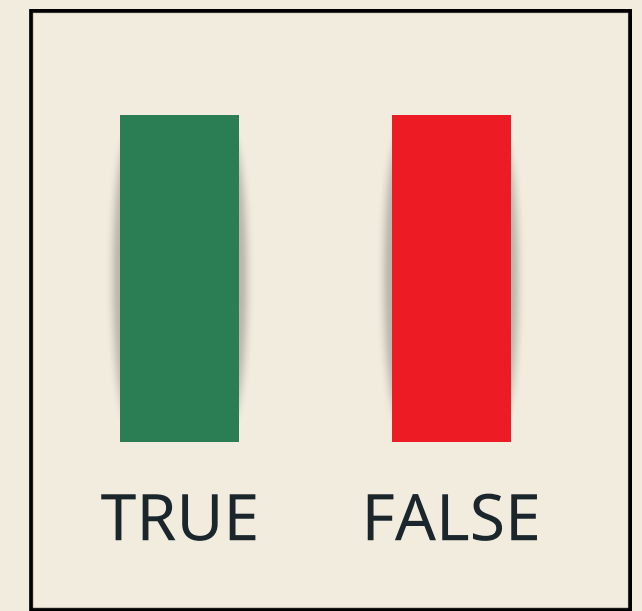
## TRUE OR FALSE



9. It is realistic to expect the ATR to be completed in less than a year once Phase 2 is complete.



## TRUE OR FALSE

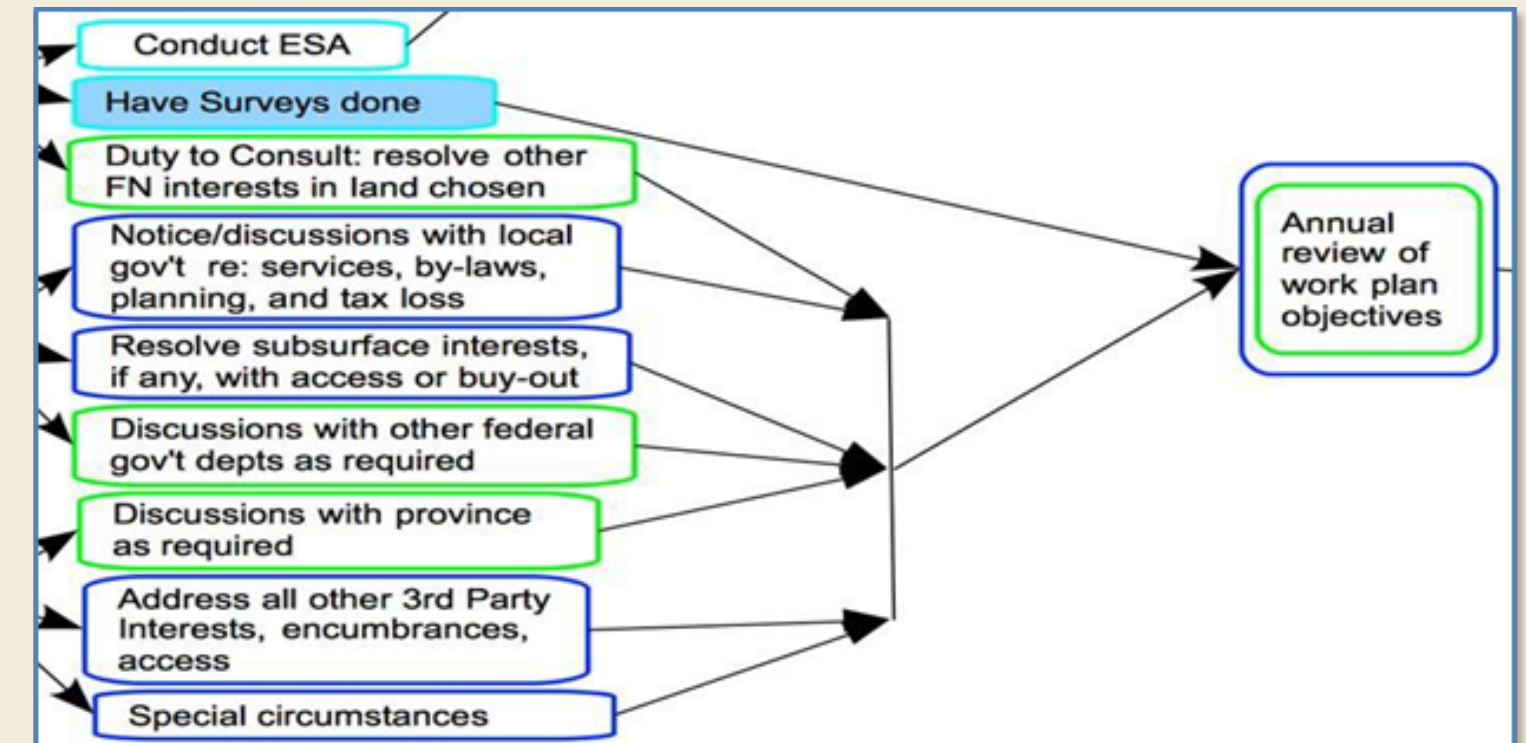


10. Conflicting community concerns about contamination should be taken seriously and factored into planning.



# Surveys

- Lands proposed for reserve require surveys.
- Surveys can be expensive and time-consuming.
- First Nations are responsible for surveys unless specified otherwise.
- If the Department funds the surveys, they will proceed only when funds are available.
- NRCan organizes surveys; privately-retained surveyors are allowed if they meet federal standards.
- NALMA has a Survey Delivery Program for First Nations (excluding FNLM bands) that contracts land surveys. For details, refer to the NALMA section in the Additional Resources chapter of the toolkit.





# Surveys

- Identify who is responsible for the survey during the Work Plan meeting with ISC (claims, federal funding).
- Quick surveys are uncommon; delays often arise from scheduling or availability issues.
- Anticipate the survey process to take approximately a year.
- Winter months in Canada can complicate surveying and costs may increase as a result.

## Process and Requirements for Surveys:

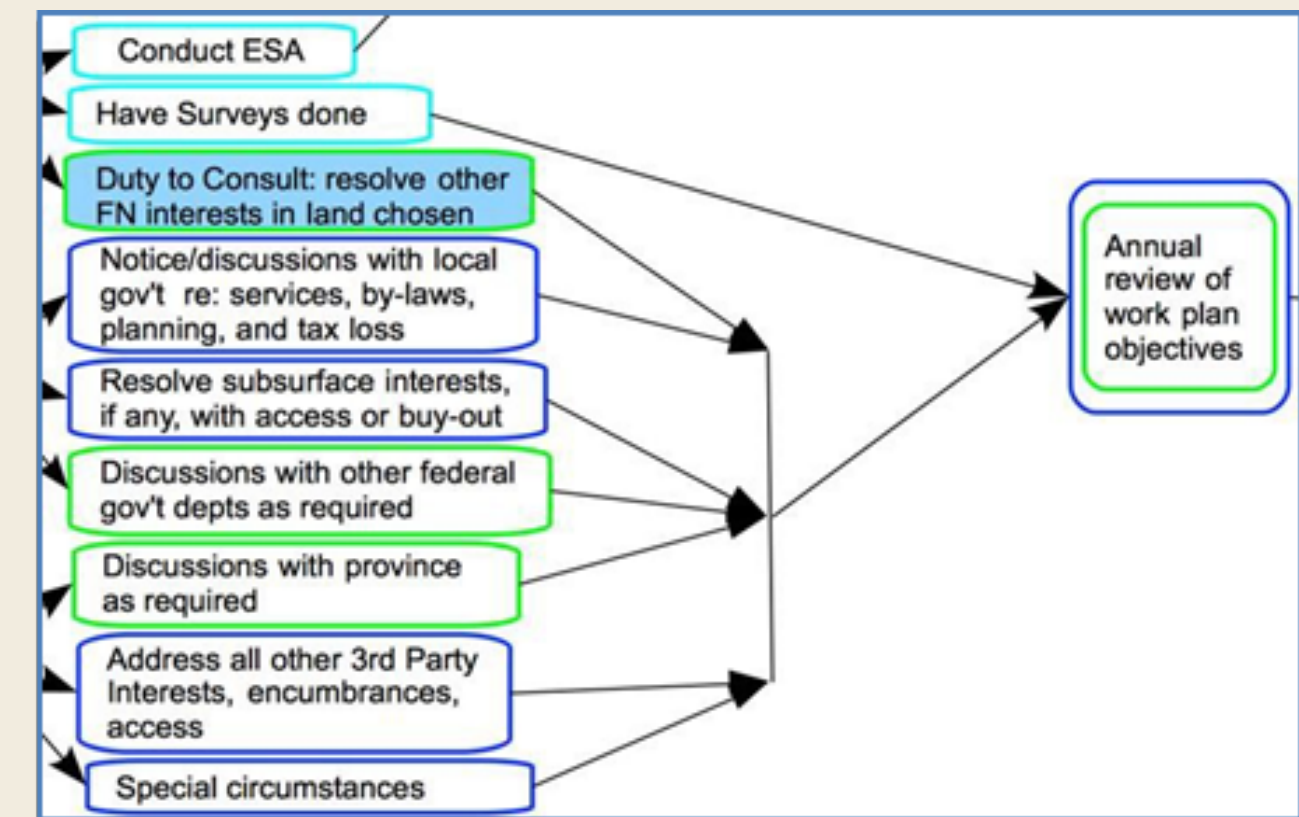
- RO informs the Legal Surveys Division, Client Liaison Unit of NRCan.
- NRCan oversees the survey process.
- CLSs are trained to interpret legal property descriptions and understand how legal frameworks affect survey methods.

First Nations may hire private surveyors, but they must be qualified as Canada Lands Surveyors. If using your own surveyor, coordinate with the RO to ensure compliance with federal standards.



# Duty to Consult

- First Nations with potential interest in the land proposed for ATR must be notified.
- If a notified FN claims adverse impact, ISC must consult with them.
- Upon confirming a claim, ISC must accommodate the affected First Nation's interests.
- Involvement of First Nations can expedite consultation and help resolve issues.

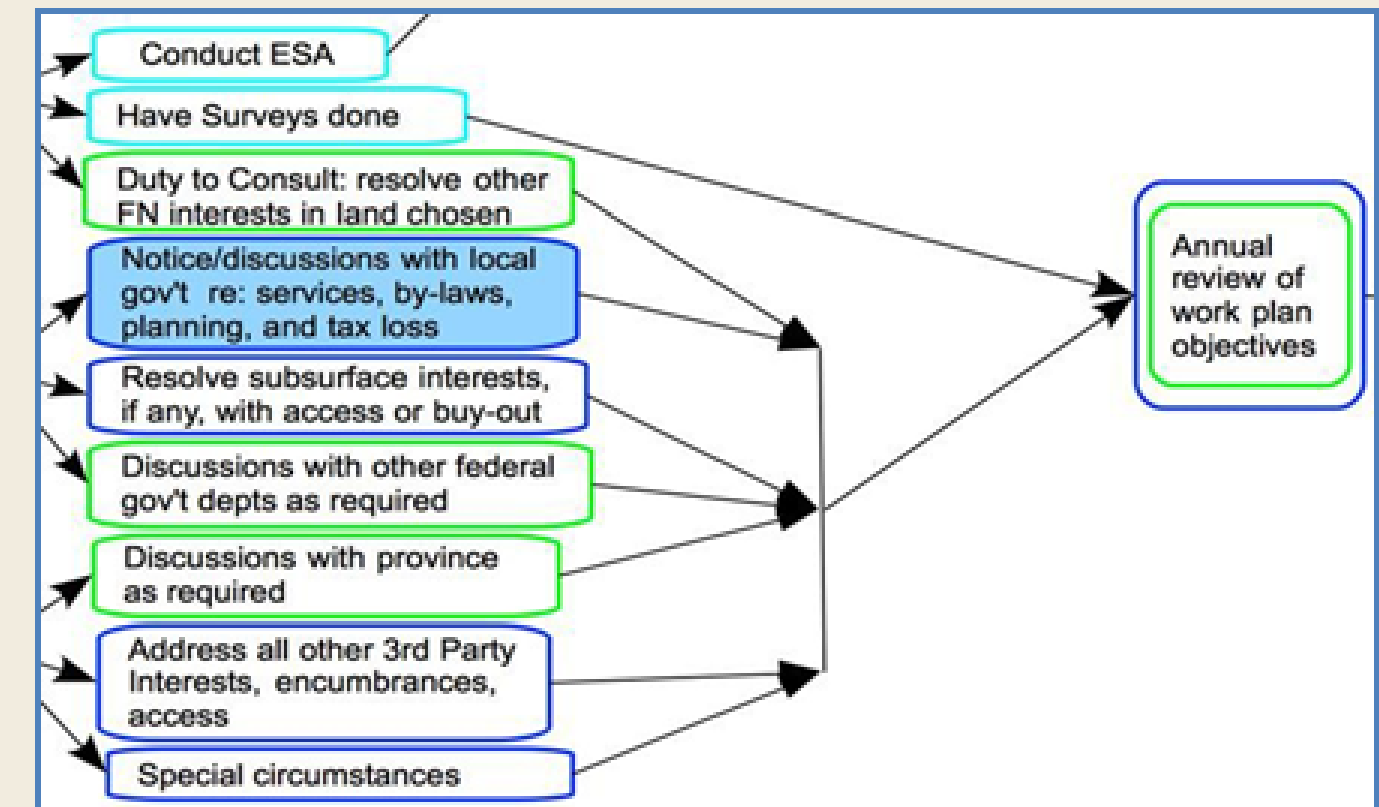




# Local Government

## Key Considerations for ATR Lands and Municipal Services:

- Do the ATR lands require municipal services?
  - If they do, negotiate a Municipal Services Agreement (MSA).
- An MSA can help to offset municipal tax losses from an ATR, consider this during your negotiations.
- It is advisable to proceed contractually; a Memorandum of Understanding (MOU) may also be effective.
- Is additional housing part of the ATR? Will the reserve need a school?
- Will there be a need for harmonization of land use?
- ISC will have issued the official notification of the ATR to municipalities, requesting a response within 90 days. The First Nation will become more involved if any issues arise.





## Stay Proactive!

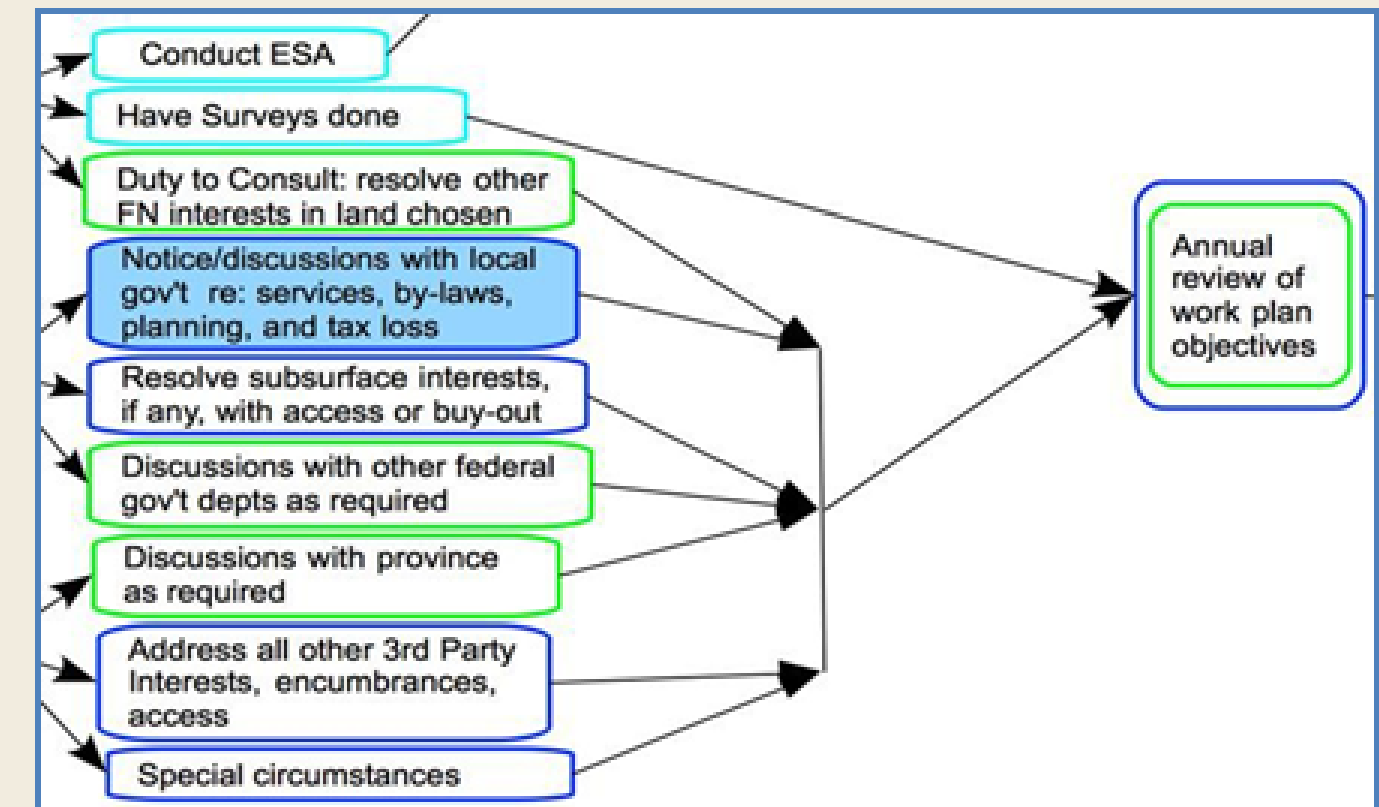
It's important to be proactive about municipal consultations, as municipalities may overlook notifications, and these consultations often involve multiple exchanges.



# Local Government

## Tax Considerations:

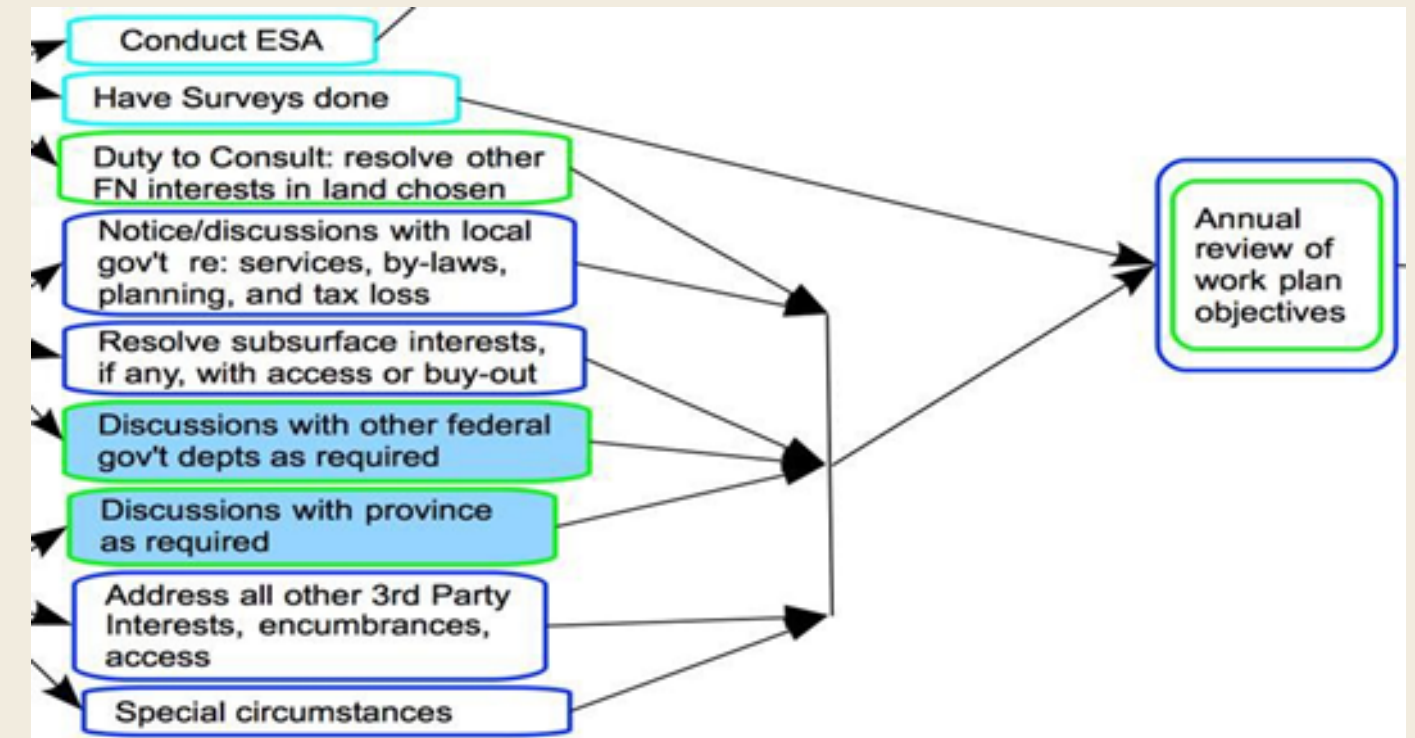
- FN must negotiate with the municipality to mitigate loss of tax revenue.
- Payments can be lump sum or annual for 3-5 years, with five years of tax loss being common.
- Municipal revenues from an MSA may offset tax losses.
- Meetings between the Chief and Mayor are best practice for discussions on services and mutual understanding.
- Maintain records of discussions to preserve corporate memory as staff changes occur.





# Other Government Departments

- Address any issues from Phase 1 and 2 consultation with federal departments.
- If the ATR is being completed to fulfill a legal obligation, then notifying other government departments is simply a formality.
- Without legal obligation, you may have to engage with Parks Canada, DFO, Health Canada, etc.
- The Province, while lacking veto power, can refuse to sell land. This gives them leverage that you have to consider to secure their cooperation



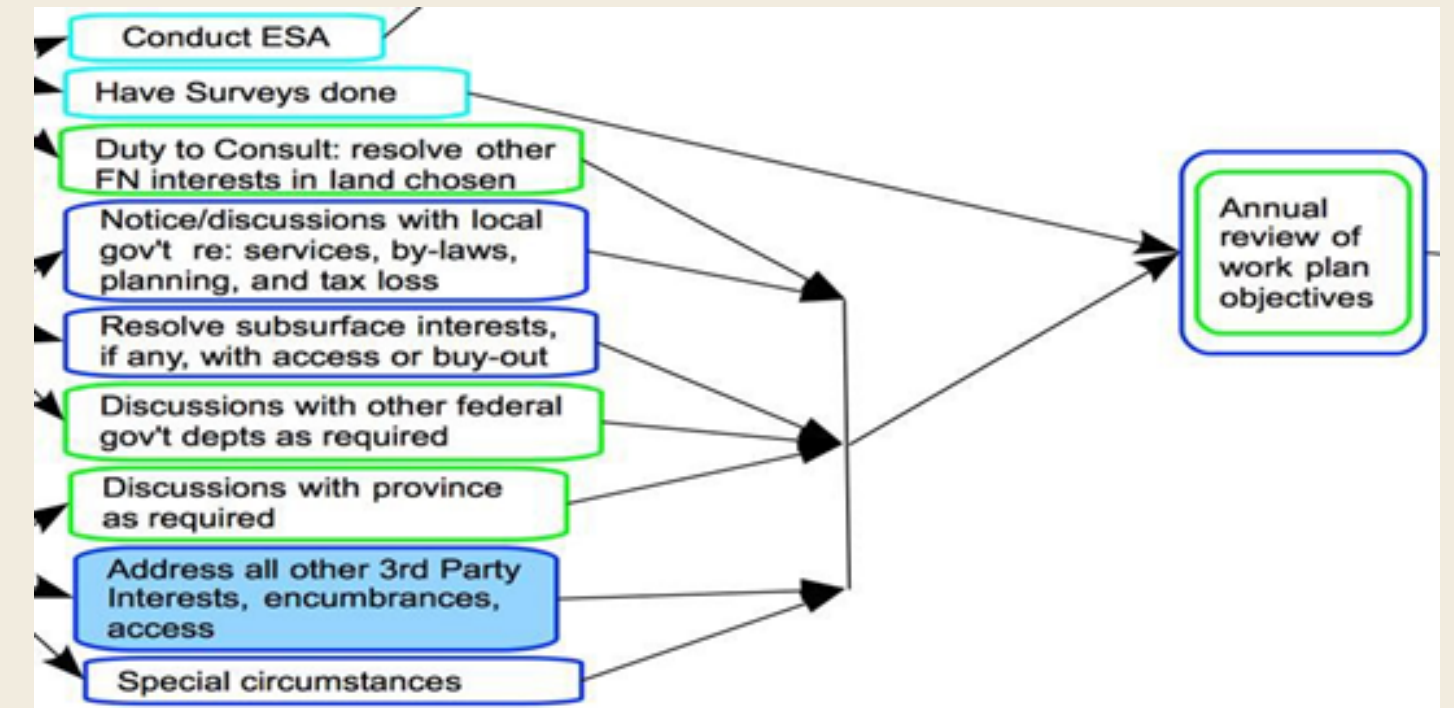


# Third Party Interests

Third party issues that have been identified must be resolved for the land to be added to reserve. Keep detailed records of resolutions and efforts made. Examples of third-party interests include utilities, industries, businesses, and recreational areas.

- Consider the viability of buy-outs carefully, weighing the costs against potential project delays and possible price reductions if the buy-out can wait.

**IMPORTANT:** All interests must be resolved before ATR to ensure relevant process requirements are met, as the FN is responsible for these interests once the land is added to reserve.

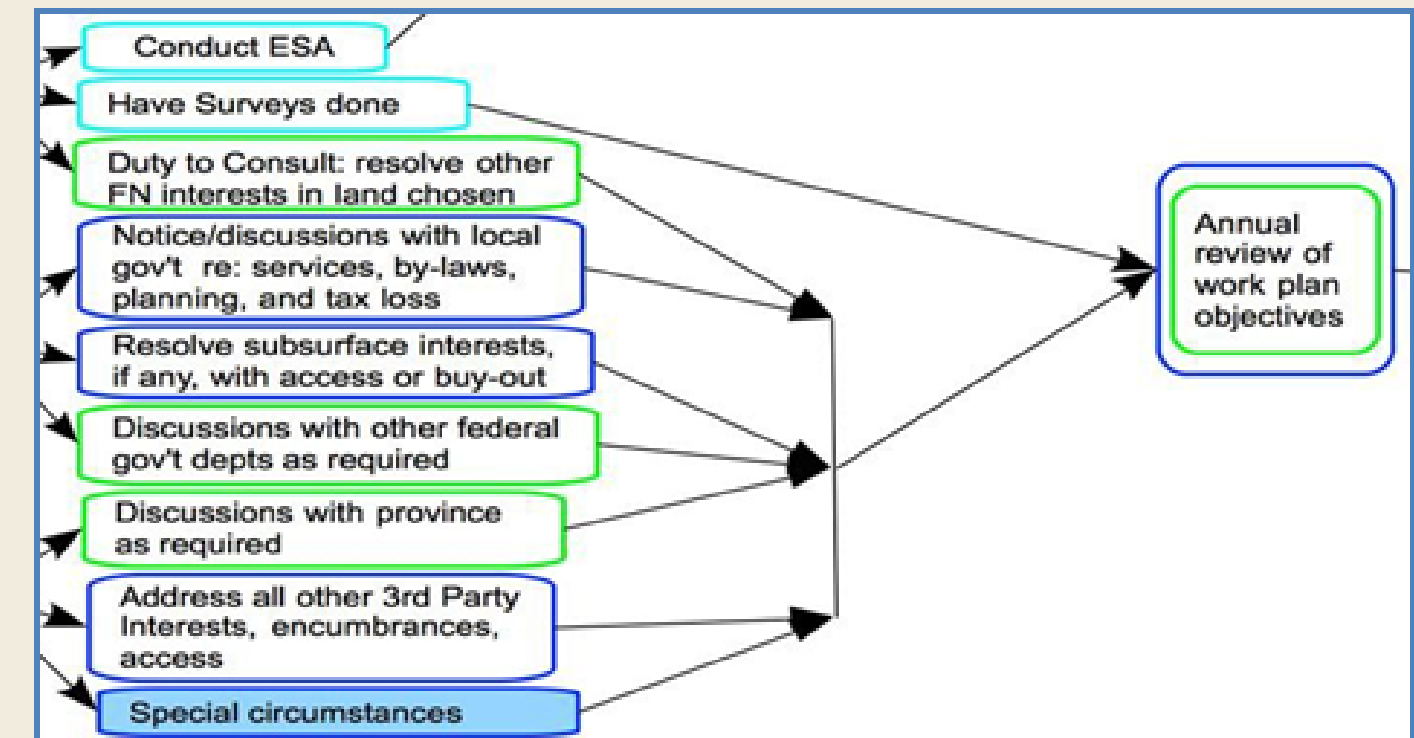




# Special Circumstances

## Special Circumstances include:

- Accretion or erosion of land
- Natural disasters, such as flooding, where risk and well-being are critical considerations
- Sub-surface rights (should always be included, but sometimes cannot be included)
- Partial subsurface interest or rights additions (only part of interest acquired)
- Small mineral additions (where surface is not reserve)
- Correcting a Reserve Creation Order in Council or Ministerial Order (where surface rights are unclear)
- Joint reserves (complicated, require joint management agreement)

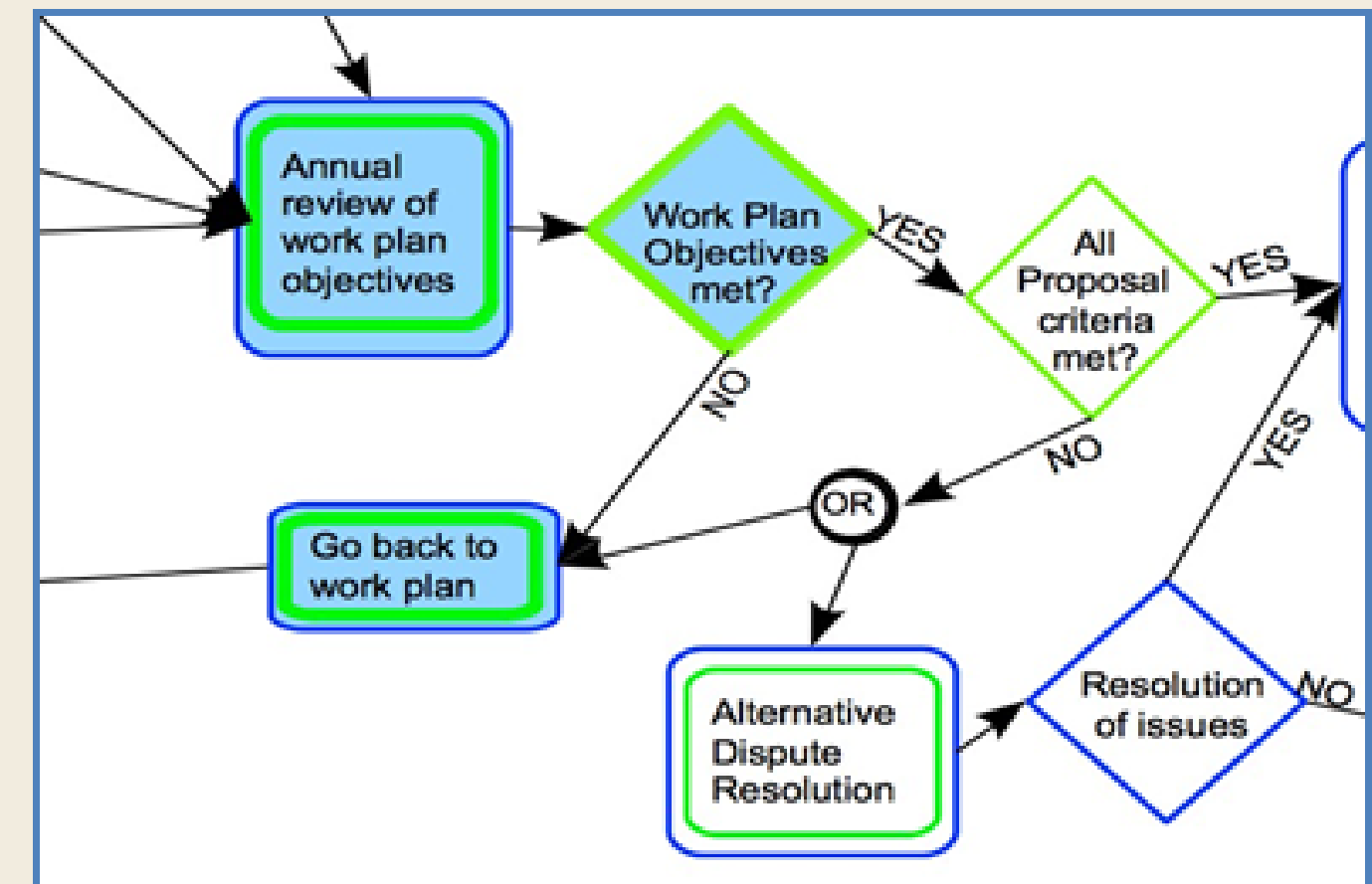




# Annual Review

ISC will hold an annual meeting to assess the ATR proposal's progress, measured against the workplan.

Regular meetings with ISC officials are crucial; consider monthly meetings instead of waiting for the annual review.





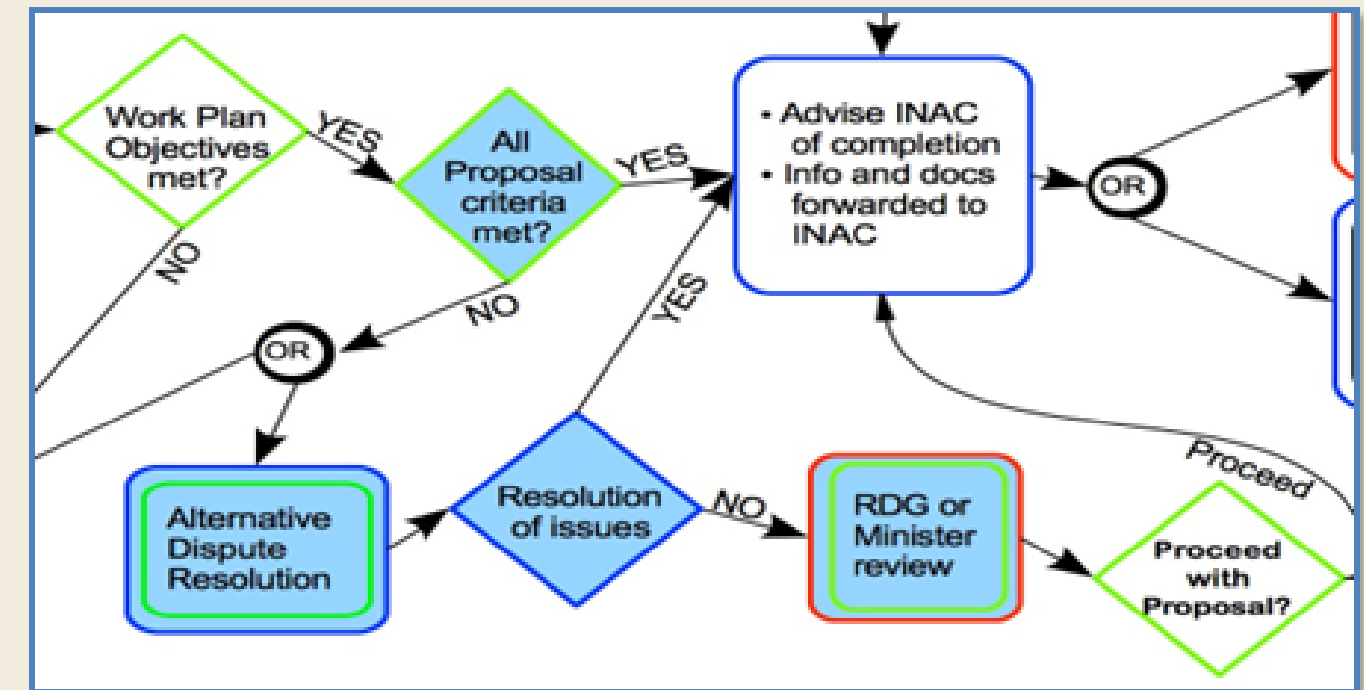
# Dispute Resolution

When disputes occur, alternative resolution methods should be considered:

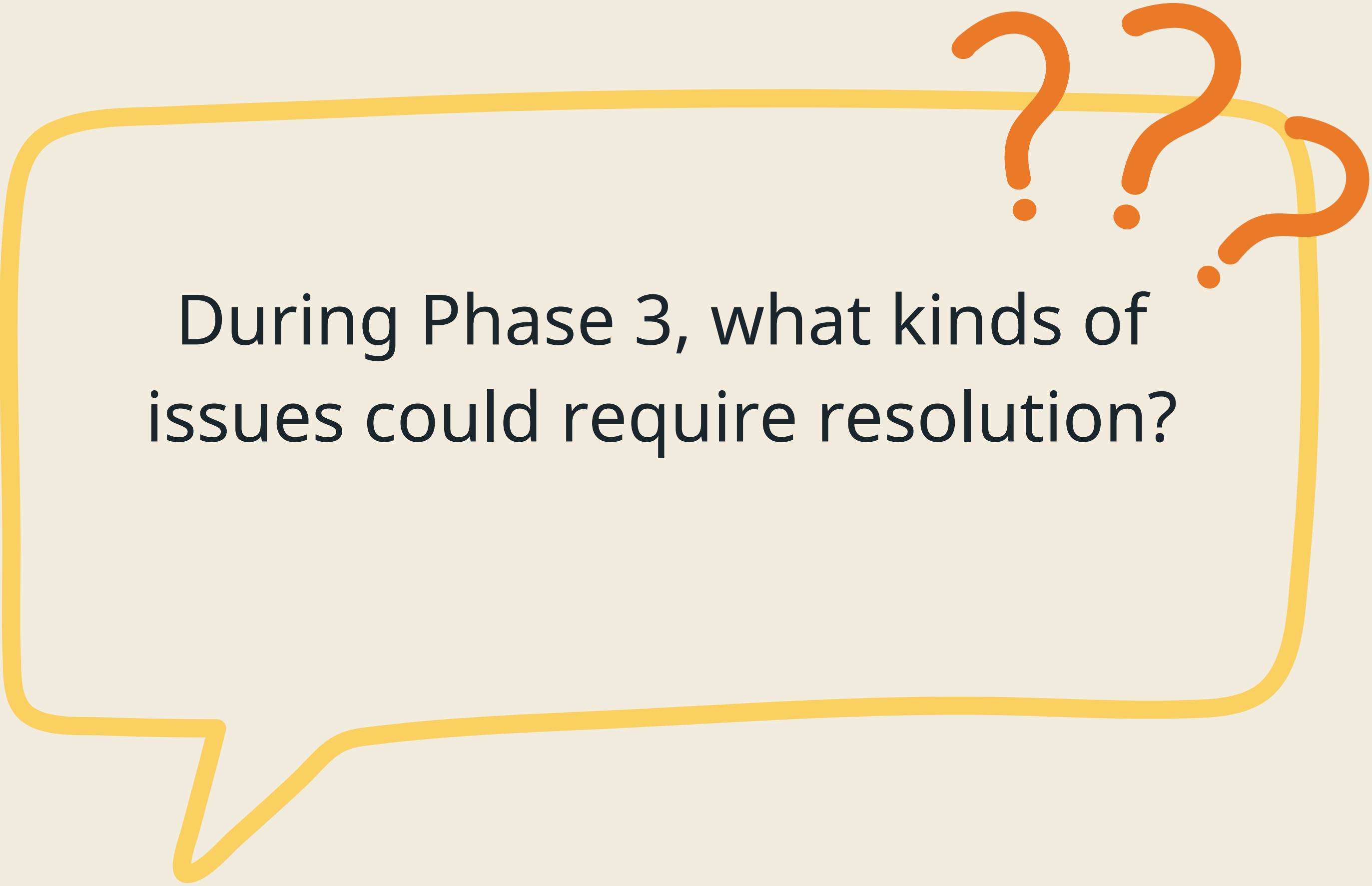
- Conciliation: Joint work meetings
- Facilitation: Neutral third party facilitates meetings
- Mediation: Third-party mediator guides consensus; may be binding
- Other forms: There may exist distinct approaches by the First Nation

The First Nation typically funds facilitation and mediation, while ISC generally has no role.

If issues remains unresolved, ISC may still support the ATR.





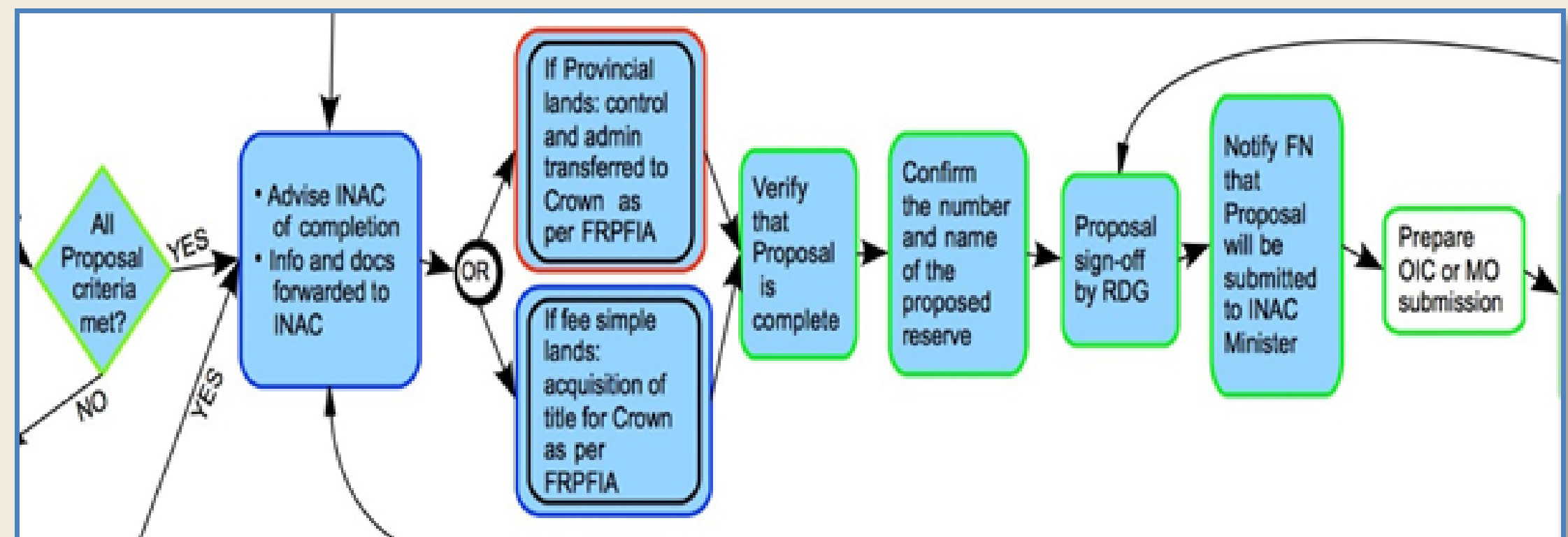


During Phase 3, what kinds of  
issues could require resolution?



# Completion

- Once the FN has finalized all phases, notify the RO.
- The RO will conduct a review for completeness.
- Upon completion, the land transfer to Canada will move forward.
- ISC will then inform the area's MP.





## Activity 3

Continuing with the same ATR project from Activities 1 and 2, you and your team at First Nation ABC are now working on the ATR file. Each group will represent a member of the ATR Project Team, with a specific task to lead in resolving Phase 3 issues. Read your assigned role carefully and collaborate to answer the questions. Be prepared to share your recommendations with the larger group.



# Surveying Team

You've been asked to prepare for the survey of the ATR lands.

1. How will survey funding be determined in:
  - a. A claims context?
  - b. A community additions context?
2. If you consider retaining your own surveyor, what factors do you need to weigh before making that decision?
3. When advising Chief & Council, what key factors should you highlight about the time needed to complete the survey?



# Municipal Relations Team

The municipality has raised two concerns:

- Losing \$20,000 annually in tax revenue once the land is added.
- Ensuring water and fire services will be provided to the ATR lands.

1. How would you strategize to address these issues?
2. What steps should your planning and record-keeping include?
3. How will you formalize any agreement with the municipality?



# Environmental Assessment Team

The Phase I ESA revealed contamination exceeding industrial standards.

1. What is the next step in the environmental assessment process?
2. What possible findings could emerge from this step?
3. How should you plan to advise Chief & Council about these results?



# Groups 1 & 2

## Surveying Team

You've been asked to prepare for the survey of the ATR lands.

- 1.How will survey funding be determined in:
  - a. A claims context?
  - b. A community additions context?
- 2.If you consider retaining your own surveyor, what factors do you need to weigh before making that decision?
- 3.When advising Chief & Council, what key factors should you highlight about the time needed to complete the survey?

# Groups 3 & 4

## Municipal Relations Team

The municipality has raised two concerns:

- Losing \$20,000 annually in tax revenue once the land is added.
  - Ensuring water and fire services will be provided to the ATR lands.
- 1.How would you strategize to address these issues?
  - 2.What steps should your planning and record-keeping include?
  - 3.How will you formalize any agreement with the municipality?

# Groups 5 & 6

## Environmental Assessment Team

The Phase I ESA revealed contamination exceeding industrial standards.

1. What is the next step in the environmental assessment process?
- 2.What possible findings could emerge from this step?
- 3.How should you plan to advise Chief & Council about these results?



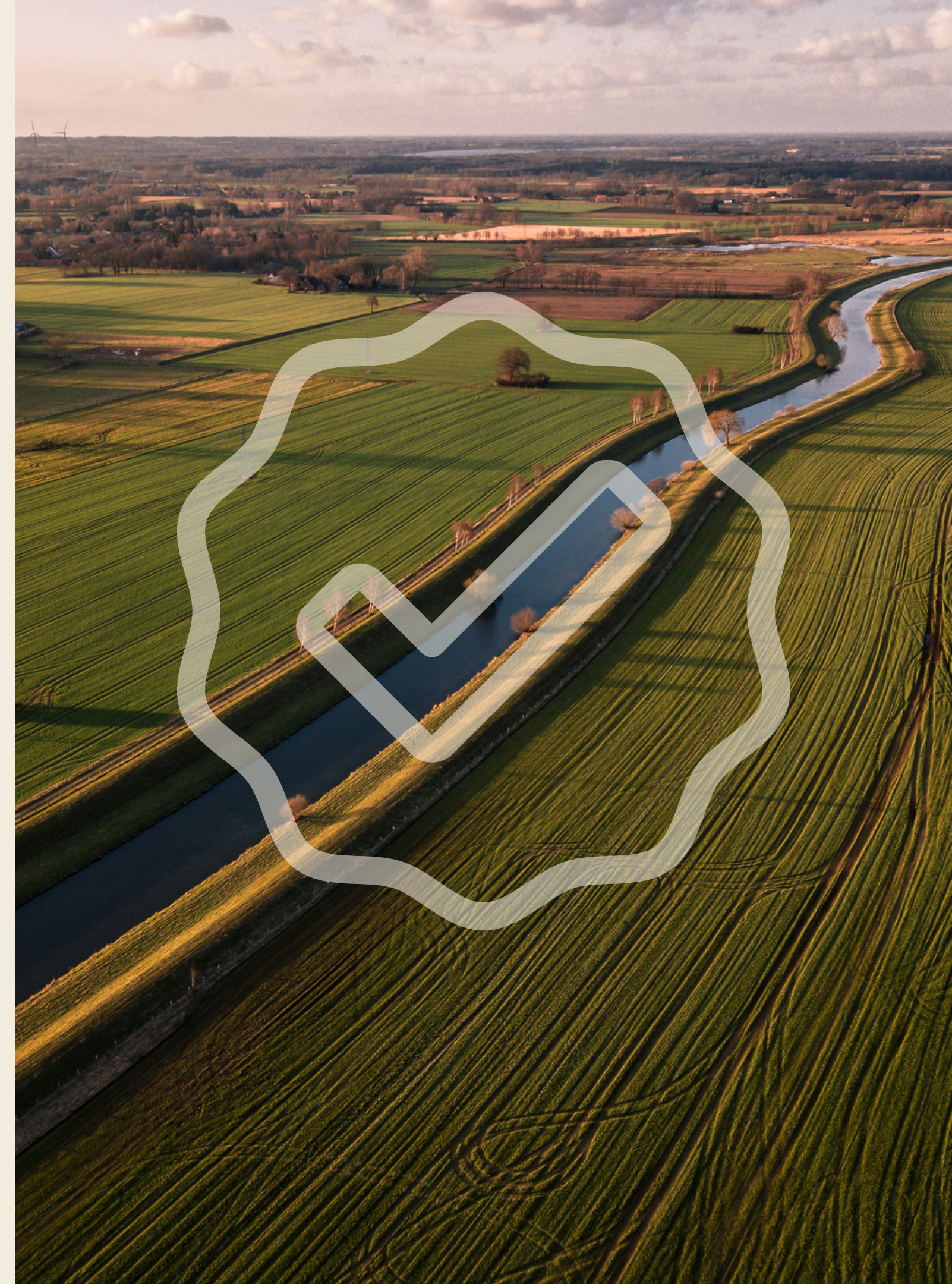
# Chapter 8 : Phase 4 - Approval

Once the Proposal is finalized, it enters the fourth and final phase of the process.

In this stage, a decision is made regarding the approval of the ATR.

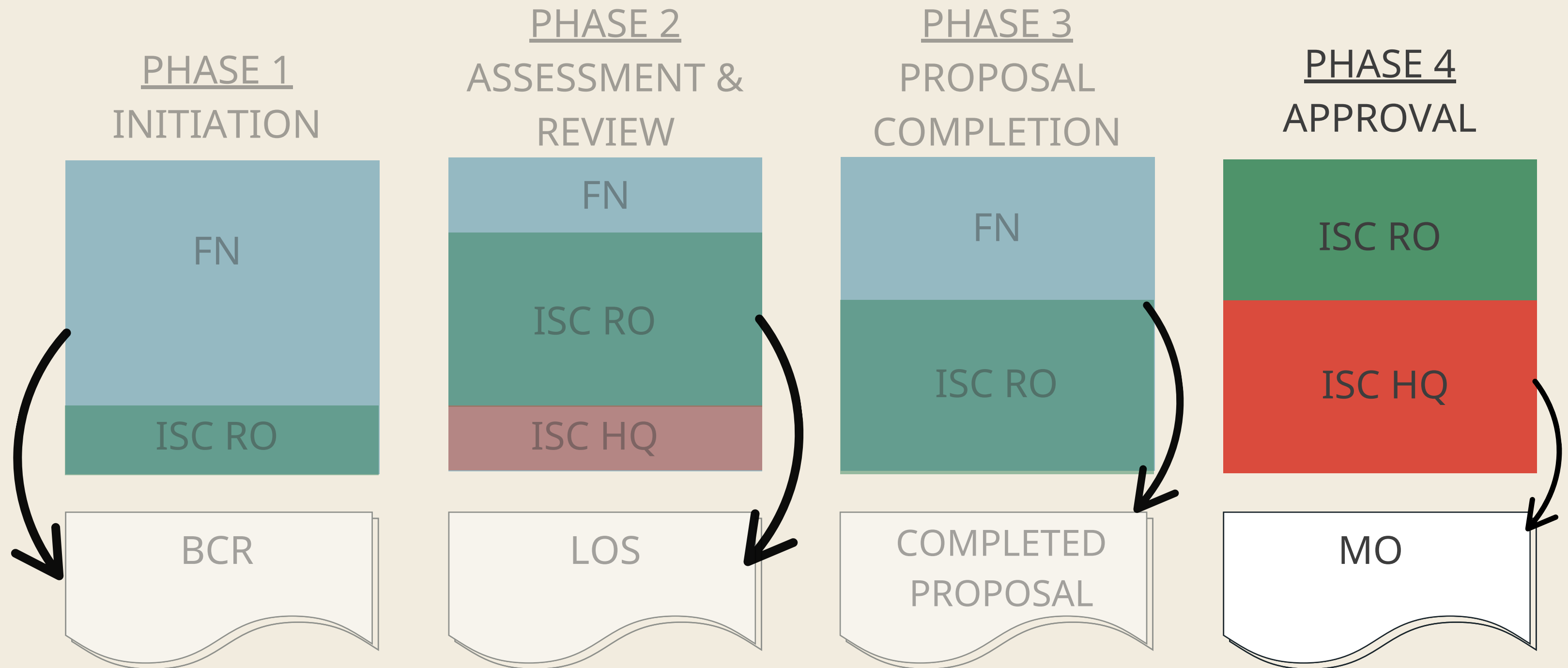
Typically, reserve status will be granted through a Ministerial Order (MO).

NOTE: Information pertaining to Phase 4 is provided solely for the benefit of First Nations. The matters addressed in this phase fall exclusively under the responsibility of ISC; First Nations have no responsibility in this part of the process.





# Phase 4 - Approval





# Approval

The responsibilities of ISC include:

- Once it is confirmed that the Proposal is complete, ISC will inform the First Nation.
- The Regional Officer will prepare the submission package for the MO.
- The submission package undergoes regional review by ISC and the DOJ before the RDG recommends to the Minister that the lands be designated as reserve.
  - Keep in mind that departmental reviews can take time—sometimes months.
- After the reviews are finalized, the Minister will sign an order to add or create the reserve land.
- The region will notify the First Nation and relevant parties once the Order is signed and will facilitate the registration of the parcel in the Indian Lands Registry System (ILRS).



# COMPLETE

In most cases, it will be a long, complex process.

Work with your team to ensure all the ATR documentation is error-free.

- 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.

**Remember:**

Reserve land has a unique legal status, and because Canada's fiduciary obligation applies to ATR transactions, this makes the process complex and often lengthy.

That said, you've gained valuable knowledge that should help you navigate the process!



Interested in continued ATR training?

### Virtual ATR Training Topics

ATR  
for Chief &  
Council



National Additions  
to Reserve  
Tracking System  
(NATS)



ATR Policy  
Redesign  
Updates and  
Q&A



Scan the QR code provide feedback on our training, and  
let us know what you'd like to see next!

