

Summary of the 2023 AFN/ISC Regional Interviews

Purpose

This document provides an overview of key observations from interviews held between the Assembly of First Nations (AFN) and Indigenous Service Canada (ISC) regional representatives on the implementation of the current Additions to Reserve (ATR) Policy.

Background

In December 2022, then Minister of Crown-Indigenous Relations, Marc Miller, described the ATR process as a broken and glacial process. The ATR policy (directive) has been in place since 1972 and has been revised in 1991, 2001, and 2016. In 2019, the Minister of Crown-Indigenous Relations was authorized to issue ministerial orders under the *Addition of Lands to Reserves and Reserve Creation Act* (ALRRCA). However, the path to those orders remains slow and problematic. Additionally, funding for regions and First Nations has fallen short of the necessary resources for ATR proposals, and the implementation of negotiated settlements that include land has not adequately accounted for regional resource needs.

In response, First Nations-in-Assembly passed AFN Resolution 37/2023, *Returning Lands through Additions to Reserve Reform*, directing the AFN to analyze the existing policy framework for potential solutions. There are currently four (4) Additions to Reserve resolutions:

- **AFN Resolution 17/2023**, *Prioritize Land Back Through All Federal Laws, Policies and Programs*
- **AFN Resolution 21/2023**, *Replacing First Nations Lands Lost Due to Climate Disasters*.
- **AFN Resolution 37/2023**, *Returning First Nations Lands through Additions to Reserve Reform*
- **AFN Resolution 10/2024**, *Advancing Additions to Reserve Reform*

The AFN technical representatives held interviews with ISC regional representatives in 2023 to discuss their perspectives on obstacles, challenges, and opportunities in implementing the current ATR policy.

AFN Summary of Key Observations

What follows is an AFN summary of key observations from these interviews.

1. **Invest in capacity within First Nations and federal departments:** There is a need to organize and carry out skills and capacity-based learning workshops on a regular, annual basis inclusive of First Nations, Crown-Indigenous Relations (CIR), ISC, Natural Resources Canada (NRCan), the National Aboriginal Land Managers Association (NALMA), and the Lands

Advisory Board (LAB). Neither CIR nor ISC currently operate the ATR process and policy from program funding. Instead, each department relies upon its usual budgetary processes, even in cases where land is a component of fulfilling Canada's legal obligations. Budget 2021 was the first substantial fiscal investment to address the ATR backlog, but without a continued commitment of A-base funding, no progress can be expected.

2. **Formalize systems to plan, prepare and budget the actual costs of completing ATRs:** In full coordination with First Nations and across all relevant federal departments (ISC, CIRNA, NRCan, Environment, and DOJ), there is a need to ensure federal claims negotiation mandates are inclusive of all ATR costs through the complete implementation of negotiated settlements that include land.
3. **Formalize early engagement:** It is necessary to formalize early engagement on ATRs to understand First Nations' priorities, capacities and needs on a go-forward basis to inform ISC and CIR annual budgeting processes and next steps, including where NRCan may inform land descriptions and parcel survey needs. The shift away from ATR categories and elimination of justification requirements should be made expressly clear. Early engagement will require a commitment of human and financial resources for First Nations, ISC regions and NRCan to ensure efficiencies are meted out.
4. **Create Guidelines to identify key considerations to inform land selection:** There is a need to create guidelines to inform land selections, including advance notice from Public Services and Procurement Canada when federal land inventory becomes available. Other innovations, such as identifying land while claims negotiations are underway, creating ATR planning groups across sectors within CIR and ISC, and reviewing regional ATR inventories on an annual basis to plan for active and inactive files.
5. **Joint design of early communications plans:** Jointly designing the early communication plan for engagement with the provinces for the purposes of informing the timeliness of parcel title searches and the identification of registered third-party interests could facilitate ATR proposals. There is regional variation in ISC's interactions with provincial ministries necessary to ATR and, in some cases, by memorandum of understanding, this interaction has been formalized. Sharing best practices and lessons learned can also be beneficial.
6. **Clarify applicable environmental standards:** Conducting an environmental site assessment is a needed requirement of the policy. Both provincial and federal governments have legislative authority over environmental matters. There is a need to clarify applicable environmental standards, remediation standards when indemnification may be permissible, and clear ways to integrate First Nations operating with environmental land codes under the *First Nations Land Management Act*.
7. **Identify and address all legislative and policy gaps when resolving subsurface interests:** The 1951 *Mining Act* in Ontario, and other provincial

legislative and regulatory frameworks create gaps due to the lack of federal surface rights legislation. For example, there is no authority to compel a subsurface rights holder (under a provincial regime) to come to the table to negotiate surface access with a First Nation. One potential way forward is to formally establish a subsurface roundtable across all regions with a solutions-oriented focus to identify and address systemic challenges.

8. **Revise the sequencing of Municipal Service Agreements:** Currently the ATR policy requires a municipal service agreement prior to the Ministerial Order. Some First Nations question the sequence of the negotiation of a municipal service agreement to meet the needs of the First Nation. How might this be addressed and how does the policy formalize reinforcement of the principle that a municipality has no veto including the need to educate and inform regional municipality and local governments on the ATR policy and process.
9. **Clarify Duty to Consult Requirements:** Canada has introduced a duty to consult into the approval process leading to a Ministerial Order. There is much variability across the regions in the approach to this duty, but First Nations have been clear that satisfying this duty should not be viewed as another means of controlling and delaying the ATR process even more.

Next Steps

CIR has established a Technical Advisory Committee (TAC) to examine where immediate administrative advancements can be made to the current ATR Directive and plan for long-term transformation. The AFN participates with representatives from NALMA, LAB, ISC, CIR, and Westbank First Nation. A communication strategy is also a priority of TAC.