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Urban Reserves

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1. Introduction

Increasingly, First Nations people are living in urban areas. In 1951, only 7 percent of the Native population lived in cities.¹ Since then, the urban First Nations population has increased steadily. According to the 2001 Census, 41.2 percent of First Nations people lived in urban areas.² With an increasing urban population, many First Nations governments are looking toward urban markets in an attempt to create economic development strategies for First Nations populations. The creation of urban reserves is one possible initiative to meet these objectives. To date, most urban reserves focused on economic development have been created in Saskatchewan, following opportunities created through *Treaty Land Entitlement* (TLE) settlements.³ However, under the federal government's *Additions to Reserves* policy⁴ there is potential for creating urban reserves in areas where their TLE settlement have not been reached.⁵ In British Columbia, some land selected through treaty negotiations will be found in urban areas, and First Nations there will face issues in negotiating with municipalities that are similar to those faced by First Nations with urban reserves established through ATR and TLE processes.

Urban reserves provide considerable opportunities for First Nations economic development. The purpose of this paper is to describe some of the benefits of pursuing this route to economic development, explore different routes available to First Nations wishing to establish urban reserves, and to summarize existing work that addresses one of the major challenges in creating urban reserves – negotiating with municipalities. The information in this paper is not exhaustive, and processes, and legal and administrative contexts, will vary in different areas. However this paper provides a basic overview and lists a variety of sources that First Nations may wish to consult in their decision-making about the possibility of creating an urban reserve.

The emphasis on this paper is not on reserves that became urban because cities expanded. Reserves that became urban because of city growth are found throughout Canada, for example the Musqueam Reserve in Vancouver, British Columbia, the Tsuu T'ina Reserve in Calgary, Alberta, the Opaskwayak Cree Nation in The Pas, Manitoba, the Wendake Reserve in Quebec City, Quebec, and the Membertou Reserve in Sydney, Nova Scotia. This paper focusses on lands for which First Nations propose to acquire reserve status in order to facilitate economic development opportunities, and the processes and challenges associated with this endeavour.

Acquiring urban reserve land is not sufficient for economic success. There are substantial challenges in decision-making about land management and administration once urban reserves are established. A number of studies have documented the need for good governance and good management as a key to success, after urban reserves have been established.⁶ First Nations also have a choice about whether to manage the land under the provisions contained in the *Indian Act*, or under the *First Nations Land Management Act*.⁷ However, a description of the advantages and disadvantages of different aspects of land management are beyond the scope of the present paper.⁸

The term “urban reserve” is particularly associated with the Saskatchewan experience under treaty land entitlement settlements. A recent Winnipeg City Council report noted that the term has negative connotations in that city as a result of recent debates, and suggested that alternative terms were “Aboriginal Development Areas” or “Aboriginal Business Improvement Zones”.⁹

First Nations groups negotiating the establishment of a new urban reserve may wish to use alternative terminology, depending on local attitudes and perceptions. For consistency with much of the existing literature, this paper will continue to use the term “urban reserves”.

This paper is based partly on an analysis of relevant policies, framework agreements and existing reports and documents. Where information is drawn directly from one particular source, that source is noted. Information was also collected through telephone interviews with representatives of various key stakeholders. These included individuals involved in the negotiation of urban reserves in Saskatchewan, First Nations economic development officers involved in decisions about the development of urban reserves, and representatives of municipal, provincial and federal departments involved with various aspects having to do with urban reserves.

The paper begins with a description of why a First Nation might attempt to create an urban reserve rather than obtaining urban land under a different type of land tenure. To illustrate some of the attraction of urban reserves, the paper summarizes the contributions urban reserves in Saskatchewan have made to First Nations and to municipalities. Then the paper reviews the steps involved in acquiring reserve status for urban land, providing a general overview of the federal *Additions to Reserves* policy and the Manitoba and Saskatchewan *Treaty Land Entitlement* processes. Since negotiations with municipalities have presented particular challenges in the establishment of urban reserves, the final section summarizes recommendations and insights from previous negotiations that might prove helpful to First Nations starting this process.

2. Advantage of Reserve Status over Other Forms of Land Tenure

First Nations can receive economic benefits from urban development through avenues that do not require the creation of urban reserves, for example through economic ventures on urban, non-reserve land owned by band corporations. These forms of land tenure may avoid some of the negative aspects associated with the development of urban reserves including the complexity and cost of negotiations and the often lengthy time frames associated with the development of urban reserves. Garcea¹⁰ notes that First Nations’ non-reserve investments in urban areas “would not be encumbered in the same way in which such properties on reserve are encumbered by virtue of the fact that bands cannot sell them without ministerial or cabinet approval” and they may provide more flexibility for First Nations to act quickly to dispose of assets, if necessary. Finally, urban reserves entail substantial financial risks for a First Nation, should the development fail¹¹ Nevertheless there are a number of elements that make the urban reserve route an attractive one.

Makela¹² describes two major consequences that arise once land acquires reserve status. The first consequence has to do with jurisdiction. On urban reserves, band council jurisdiction replaces jurisdiction by the municipality, and municipal bylaws do not apply.¹³ Band councils have the power to make bylaws under sections 81 and 83 of the *Indian Act*, including traffic regulation, zoning, regulation of construction, repair and use of buildings, trespassing, taxing of lands or interests in land and the licensing of businesses, trades, or occupations. Adams¹⁴ argues that reserve status serves First Nations’ interests in having clear jurisdiction over the land. Barron and Garcea¹⁵ view urban reserves as a reflection of the “unshakeable determination of the bands to maintain their own national authority and jurisdiction within the existing structure of the municipalities.”

A second consequence that arises once land acquires reserve status has to do with tax exemption. Section 87 of the *Indian Act* stipulates that First Nation properties on reserves are exempt from paying municipal or any other level of government taxes, and they are also exempt from paying school levies. The exemption from taxation can provide reserves with a competitive advantage in creating economic development since band councils can establish taxation and user fees that address their own development objectives. For example, they could lower taxes in order to attract businesses or to provide First Nations ventures with advantageous costs of doing business.

There are some additional advantages to creating urban reserves for the purpose of economic development.¹⁶ Businesses located on reserves are eligible for business assistance programs offered through Indian and Northern Affairs, Canada. They also have access to various sources of First Nations investment capital. Finally, First Nations employees who work on reserve are not charged income tax on on-reserve earnings, enhancing the ability of businesses on reserves to attract well-qualified employees.

Urban reserves offer a number of advantages for economic development that may compensate for the challenges involved in setting them up and creating economic development opportunities. However, First Nations contemplating the possibility of acquiring an urban reserve should consider their capacity at the time, as well as the possibility that another form of land tenure may meet their current needs.

3. Contributions of Urban Reserves to First Nations Self- Sufficiency and Municipal Economies

There is a growing literature documenting the contribution that urban reserves can make, both for the First Nations that create the reserves and for the municipalities in which they are located. Most of this literature comes from Saskatchewan, where close to 30 urban reserves have been created since the *Saskatchewan Treaty Land Entitlement Framework Agreement* was signed in 1992.¹⁷ Clearly some of these contributions would also accrue to First Nations' economic development initiatives under alternative types of land tenure. However, because of the challenges associated with the development of urban reserves, it is useful to provide a balance by documenting the positive outcomes for First Nations as demonstrated by the Saskatchewan experience. In addition, given the apprehension of many municipalities to the creation of urban reserves, it is equally important to describe positive municipal outcomes of urban reserve development.

The Western Economic Diversification Canada report on urban reserves in Saskatchewan, highlights the potential of urban reserves in achieving a higher level of economic self-sufficiency for First Nations communities (Figure 1).¹⁸ The original document provides evidence for each of the contributions listed in the figure. For example, for the first contribution above, the report notes that the Muskeg Lake Cree Nation Urban Reserve in Saskatoon “started with raw land and no infrastructure. Today, the asset value of the land, infrastructure and buildings is approximately \$18 million. It is obvious that this type of development and infrastructure could not occur on the parent reserve of the Muskeg Lake Cree Nation and continue to sustain itself due to its rural and isolated location.”¹⁹

Figure 1: Contributions to First Nations of Urban Reserves in Saskatchewan

Economic Impacts

1. More potential for self-generating revenue than on rural land and reserves.
2. Increase employment opportunities for First Nations closer to growing populations of urban First Nations.
3. Create an environment for the successful development of First Nations owned businesses.
 - 3.1. First Nations can capitalize on both rural and urban economies with diversified land holdings.
 - 3.2. First Nations have access to wider markets, high-income consumers, more skilled labour, lower transportation costs than on reserves

Social and Political Impacts

1. Reduce dependence on federal government funding.
2. Raise the standard of living for their members.
3. Increase the ability to contribute to meeting social services needs in urban areas, as well as on parent reserves in rural areas.
4. Help First Nations meet their cultural and political development objectives.
5. Provide a cultural environment for First Nations' members to interact as entrepreneurs, clients, educators, students, and public citizens.
6. Provide a centralized location for First Nations government businesses and organizations to operate, which benefits educational and social services.

Urban reserves have also created benefits for the municipalities within which they are located. City planners in Saskatoon, for example, note that:

The creation of Urban Reserves in Saskatoon has resulted in benefits to the City in the capacity of financial, political and social advantages. Financially, the City benefits directly from revenue generated through services it provides to Urban Reserve developments and indirectly from taxation revenue and job creation generated by off-reserve spin-offs. Politically, the creation of reserves within Saskatoon has created positive relationships between First Nations and the City. Socially, Urban Reserves within the City stand as a symbol that First Nations people are making a positive contribution to the community.²⁰

The way the Western Economic Diversification Canada document describes these benefits is listed in Figure 2.²¹ While the Saskatchewan experience in municipal-First Nations negotiations concerning urban reserves broke new ground, the positive consequences of urban reserves could be experienced in other parts of the country as well.²² Other studies and reports also list positive results for both First Nations and municipalities of creating urban reserves.²³

Figure 2: Contributions to Municipalities of Urban Reserves in Saskatchewan

1. Municipal governments benefit from increased revenue from service provision.
2. Urban reserves provide stronger linkages between First Nations and municipal governments.
3. Urban reserves create an increased demand for professional service during the development of urban reserves.
4. Urban reserves have a positive impact on local real estate markets.

4. Policies and Processes for Creating an Urban Reserve

Under subsection 91(24) of the *Constitution Act, 1867*, Parliament has exclusive legislative authority over “Indians and Lands reserved for Indians”.²⁴ The *Indian Act* represents the principal expression of federal authority over First Nations communities and the land reserved by the Crown, as the legal title holder of all reserves, for First Nations’ use and benefit, but it does not provide for the expansion of reserve land.²⁵ Subsequently the federal government created its Additions to Reserves (ATR) policy to allow for the expansion of existing reserves and the establishment of new reserves. In Saskatchewan and Manitoba there are particular Treaty Land Entitlement Framework Agreements (TLEFA) that apply to all First Nations acquiring land and creating reserves pursuant to province-wide land claims agreements signed by federal, provincial and a number of First Nations bands. While many of the processes for creating reserves are similar under ATR and treaty land entitlement policies, the latter contain some provisions that are particular to the entitlement process, and particular to the province.²⁶ Finally, urban reserves may be created in BC under current land claims negotiations with various First Nations. Basic elements of each of these routes for creating urban reserves are summarized in the following sections.

4.1 Additions to Reserves under Federal Additions to Reserves (ATR) Policy

In 1987, Indian and Northern Affairs Canada (INAC) developed the federal *Additions to Reserves* (ATR) policy to govern the process through which First Nations could expand their reserve base, or, in the case of landless First Nations, create a reserve.²⁷ Consolidated in 1991, the policy was subsequently reviewed in partnership with the Assembly of First Nations and a revised version was released in 2001.²⁸ Under the ATR policy, the federal government grants reserve status to land that a First Nations has received or is entitled to receive through a variety of processes including land claims settlement, legal purchase, or any other legitimate means.

The following section summarizes the ATR policy categories through which First Nations can expand or acquire reserve lands and discusses the processes involved in creating reserves under this policy. It is important to emphasize that this is a general overview. First Nations interested in pursuing the establishment of a reserve under the federal ATR framework should obtain a copy of this policy, which is available as part of INAC’s *Land Management Manual*. Copies are also available at regional INAC offices, and on their web pages. Finally, Pankratz and Hart note that although the ATR framework is based on a federal policy, different INAC regions can have slightly different requirements and procedures with respect to applications.²⁹ They suggest the First Nations groups contact regional INAC offices early in the planning process.

Policy Categories for Additions to Reserves

There are three policy categories identified by INAC which can be used to justify a proposal to grant reserve status to an area of land (Figure 3). The first policy category addresses legal obligation. Most urban reserves created for economic development to date have been established using this policy justification. The most commonly used legal obligation to create additions to reserves refers to land First Nations have received or are entitled to receive under treaty land entitlement frameworks or as a result of a Specific Claim settlement.³⁰ Most of the urban

reserves in Saskatchewan have been created subsequent to treaty land entitlement settlements. Occasionally additions to reserves will result from land that is subject to a legal dispute and reserve status is created subsequent to a court order. Finally, a legal obligation to granting reserve status may result from the return of land to a First Nation when it is no longer required for the original purpose for which it was taken. Land reversions usually have to do with railways and roads that are no longer needed, but they may also include military bases.

Figure 3: ATR Policy Categories for Creating New Reserves

Category I: Legal Obligation

1. Lands selected under Treaty Land Entitlement Frameworks
2. Land subject to legal dispute, with reserves resulting from court order
3. Return of First Nations land used for a variety of purposes

Category II: Community Additions

1. Lands added to support community growth
2. Geographic enhancements
3. Return of unsold, surrendered land

Category III: New Reserves/Other

1. New reserves created for social or commercial purposes
2. New reserves resulting from provincial land offerings
3. Establishment of new reserves for landless First Nations
4. Other

The second policy category is “community additions” and refers to additions to existing reserves resulting from community growth, geographic enhancements, or the return of unsold, surrendered land. A community growth proposal to increase an existing reserve area usually occurs when there is not enough land available to satisfy the housing, school, recreational or community economic development needs of an on-reserve population. Geographic enhancements are small adjustments to roads, right-of-ways or geographic in-filling that enhance the physical integrity of an existing reserve. The third category refers to the return of surrendered, unsold land that will be added to an existing reserve area. Because most reserves are currently located in rural areas, and because this category refers to the expansion of existing reserve areas, this category is unlikely to be a major contributor to the creation of urban reserves.

The third policy category, “New Reserves/Other” also has several subsections. The first subsection, “social or commercial need” refers to proposals to create new reserves for social or commercial purposes such as residential or institutional expansion. The development of an urban reserve for the purposes of economic development could be justified using this category especially for First Nations who are not signatories to treaty land entitlement agreements. Proposals for creating new reserves pursuant to this justification need to demonstrate that the economic development opportunity cannot be pursued through an alternative form of land tenure. Other subsections under this policy category include the establishment of new reserves resulting from provincial land offerings or unsold surrendered land that is not within the service area of the existing reserve, the establishment of new reserves for landless First Nations, the relocation of exiting communities (usually as a result of a natural disaster), and two “catch-all” categories referring to legal obligations beyond existing federal commitments and unresolved questions of community need. While subsections other than the “social or commercial need” one

could be used to justify the creation of new reserves for economic development purposes, the former would appear to be the most relevant for this purpose.

Principles and Processes Governing the Creation an Urban Reserve Under Federal Policies

The federal government's *Additions to Reserves* (ATR) policy identifies a number of principles governing reserve acquisition, and the main steps to be followed in the process. These apply to urban as well as to rural reserves, with variations depending on whether the land involved is federal or provincial Crown land, or privately owned, and depending on the policy category under which the proposed addition is justified.

Figure 4: Principles for Additions to Reserves under Federal Policy

1. Respect Aboriginal and Treaty Rights
2. Established Community Relations
3. Informed Provincial/Municipal Relations
4. Good Title Transfer and Third Party Interests in Land
5. Affordable Financial Implications and Funding Sources
6. Good Environmental Practices

There are six main principles guiding additions to reserves (Figure 4).³¹

1. Respect Aboriginal and Treaty Rights: The process must respect Aboriginal and Treaty Rights. One implication is that a First Nation should ensure that other affected First Nation's interests in the proposal are considered.
2. Established Community Relations: The First Nations should take the lead in establishing and early dialogue between the First Nation, the public, affected individuals and interest groups.
3. Informed Provincial/Municipal Relations: Provinces and municipalities must be advised and have an opportunity to express their views on the proposal.
4. Good Title Transfer and Third Party Interests in Land: There must be appropriate surveys, land description and title searches. Third party interests (lessees, subsurface right holder and others) must be resolved prior to acquisition of the land.
5. Affordable Financial Implications and Funding Sources: Proposed additions must be affordable to the First Nation, INAC and possibly other government departments. Therefore funding requirements must be identified before the land is acquired.
6. Good Environmental Practices: Both the First Nation and INAC must ensure that the land is not contaminated by its former or anticipated uses. Therefore the land may need to be assessed and if necessary remediated.

There are three main phases in the process: the application phase, the consultation and negotiation phase, and the federal approval phase (Figure 5). These three phases are explained in the body and Appendices of Chapter 10 of INAC's *Land Management Manual*, and "Appendix D: ATR Process" from that Manual is reproduced here as Appendix A.³² In general, the steps are as follows.

Figure 5: Steps in the Process of Creating an Urban Reserve under Federal Policy

Phase I: Application Phase

First Nations submits a proposal with required information, supported by a Band Council Resolution

Phase II: Consultation and Negotiation Phase

Consultation with a variety of stakeholders, including the province, municipality and thirs party interests

Phase III: Federal Approval Phase

Federal approval, land purchase, and order-in-council creating reserve status.

The first phase is the application phase. Before a First Nation submits a proposal to acquire reserve status for a parcel of land, it needs to compile a significant amount of information concerning the parcel of land and the justification for proposing that the land be converted to reserve status. This information includes the following elements.

1. Policy category under which the First Nation is applying for reserve status for the land. This is an extremely important element, especially when the proposal is not governed by legal obligations such as treaty land entitlement or Specific Claims settlements. The First Nation will need to make a good case to justify the granting of reserve status in order to ensure that it can withstand any possible objections.
2. Current and proposed land use, location, legal description of the land, mineral rights, and third party interests (e.g. leases, permits, rights of way) and agreements in place affecting the land.
3. Identification of costs in obtaining the land and anticipated sources of funding. Since the establishment of reserves may impact INAC budgets as well as the budgets of other departments, the federal ATR policy requires attention to this issue.
4. Available environmental assessment information.
5. Plans to inform First Nations' community members about the proposal.
6. Results of any communication with the local municipal and provincial governments.

Further information may be required, depending on the specific circumstances. The Federation of Canadian Municipalities recommends that First Nations and the INAC regional officer should meet as soon as possible in ATR process and also consult regularly.³³ The First Nation formally initiates the ATR process by submitting a request for an ATR to INAC, usually in the form of a Band Council Resolution. The Band Council Resolution must be accompanied by the required documentation.

The second phase is the consultation and negotiations phase. It involves regional INAC staff in proposal development and it requires consultation with a variety of stakeholders. Once the Band Council Resolution is submitted, regional INAC staff will inform the First Nation of any additional documentation required for the proposal. Together with the First Nation, INAC staff will determine their respective roles with respect to developing a communications strategy with the local communities, the province, and the municipality.³⁴ At this stage issues concerning environmental audits, appraisal for the value of the land, and legal survey issues, are also addressed if required.

The province and the municipality within whose boundaries the proposed reserve is located must be consulted in order to attempt to resolve any outstanding issues. Provincial and municipal governments must respond within three months, identifying any issues they have with the proposal. Negotiations with municipalities commonly address issues such as compensation for the loss of municipal and school taxes, by-law compatibility between the reserve and the neighboring municipalities, service agreements, and a dispute mechanism for resolving disagreements. Where either the First Nation or the municipality requests it, the ATR requires negotiation between the two parties. The ATR policy stipulates that the municipality does not have “a general or unilateral veto over the granting of reserves status”.³⁵ Where the First Nation and the municipality cannot resolve issues between them, and where the First Nation and the Regional Director General (RDG) want to proceed, the proposal is forwarded to the Deputy Minister or Minister. If the First Nation is prepared to enter into agreement on municipal issues, and the RDG deems the municipality unwilling to respond in good faith, the proposal may proceed.³⁶ Third party interests must also be addressed at this stage.³⁷

When all of these steps have been addressed, a regional ATR committee reviews the proposal to make sure that the requirements of the ATR policy have been met. If the requirements have been met, the committee will recommend the proposal to the Deputy Minister of INAC.³⁸

The third phase involves federal approval of the proposal. The Deputy Minister of INAC will either grant an Agreement in Principle or reject the proposal. The Agreement In Principle may have conditions attached that need to be met before the proposal can go to the next step. Once the conditions have been met, the land is purchased, and administration and control is transferred to the INAC regional office, which ensures that a proper title search and transfer documents are completed. When this is completed, the INAC regional office prepares a package for submission for review by headquarters. The Lands and Trust Services branch of INAC headquarters reviews the package and, if all requirements have been met, forwards the submission to the Minister of INAC for final approval. A First Nation must pay taxes on the lands held in trust until they are granted reserve status. Because of this, it is very important that all of the documentation is in order so that final approval is not delayed. Once final approval is received, the INAC regional office prepares a submission requesting that the lands be granted reserve status through either an order-in-council or an order from the Minister of INAC according to the claims implementation acts (in provinces that have these acts). The order will be registered in the Indian Lands Registry at INAC and First Nations and any affected parties will be notified.

As the number of steps suggests, the ATR process can be a lengthy one. Delays can be experienced at any step in the process. Some of the common causes of delays include environmental assessment processes, obtaining good title to the land, and negotiating agreements with municipalities about by-law standardization, service agreements, and tax loss compensation. Where there are contentious issues, as have been experienced in a number of urban situations, the delays can be even longer.

4.2 Treaty Land Entitlement Agreements in Saskatchewan and Manitoba

Treaty Land Entitlement Framework Agreements (TLEFA) are provincial protocols developed by federal, provincial and First Nations governments in Manitoba and Saskatchewan. Many First

Nations in these provinces did not receive the entire allotment of land owed to them under treaty provisions. The objective of the TLEFA's is to create a framework to fulfill these treaty commitments.³⁹ These applications represent a particular case of "legal obligation" under the ATR, and where provisions of the provincial protocols are different from ATR provisions, the former take precedence. While there are similarities in the Manitoba and Saskatchewan agreements, there are also differences. The following sections summarize some aspects of the agreements in each province. First Nations participating in the entitlement process should obtain copies of either the *Saskatchewan Treaty Land Entitlement Framework Agreement* (STLEFA) or the *Manitoba Treaty Land Entitlement Framework Agreement* (MTLEFA).⁴⁰

Saskatchewan Treaty Land Entitlement Framework Agreement

The *Saskatchewan Treaty Land Entitlement Framework Agreement* (STLEFA) was signed by federal, provincial, and 26 First Nations governments in 1992. Since then, additional agreements have been negotiated with individual First Nations bringing the total number of Saskatchewan First Nations with TLE claim settlements to 29. According to the STLEFA, land transfers must occur on a "willing seller, willing buyer" basis for private, federal or provincial/territorial Crown lands. Once a First Nation has purchased land that it proposes to change to reserve land, it is held in "fee simple" until it is transferred to Canada and set apart as a reserve. Until the land is given reserve status, all provincial laws and municipal by-laws, including municipal taxation, apply. However, if the conversion to reserve has not been completed within 75 days, the STLEFA stipulates that the federal government will take over payment of property taxes and continue paying until the land has been converted. The STLEFA also regulates environmental assessment and the way third party interests are to be dealt with.

The STLEFA recognized that some First Nations would use their land entitlements to gain access to urban economies. As a result, there are a number of specific clauses related to negotiations with municipalities. Under the STLEFA, an agreement is required between the First Nation and the municipality, addressing tax loss compensation, municipal service provision, by-law application and enforcement, and creating a dispute resolution mechanism for resolving matters of disagreement. The STLEFA ensures that a municipality does not have the power to veto the reserve creation process by refusing to negotiate or by stalling the process. Five months after a First Nation requests negotiations with a municipality, where it has been determined by arbitration that the First Nation is prepared to enter into a reasonable agreement with the municipality and has made efforts to do so, Canada can grant reserve status to the land selected by the First Nation.

Manitoba Treaty Land Entitlement Framework Agreement

The *Manitoba Treaty Land Entitlement Framework Agreement* (MTLEFA) was signed by federal, provincial, and 20 First Nations governments in 1997. Similar to Saskatchewan, land transfers must occur on a "willing seller, willing buyer" basis. Generally, under the MTLEFA, a First Nation must select land that is part of its treaty area or traditional territory, although First Nations can select land outside these territories where they can establish a reasonable social economic or development objectives for the land selection, and where the province agrees with the selection. This stipulation creates additional challenges for First Nations located away from

the province's main cities who might wish to create an urban reserve. Another challenge is created by the stipulation that the area of land to be selected must be greater than 1,000 acres. If First Nations select land areas smaller than 1,000 acres, they must be able to make a good argument that the selection is in "reasonable proximity" to the existing reserve. Pankratz and Hart note that there is a need to define "reasonable" under these circumstances.⁴¹

Like the Saskatchewan process, once a First Nation has purchased land that it proposes to change to reserve land, it is held in "fee simple" until it is transferred to Canada and set apart as a reserve. Until the land is given reserve status, all provincial laws and municipal by-laws, including municipal taxation, apply. There are no clauses in the MTLEFA that require an agreement between the First Nation and the municipality before the proposal for granting reserve status can go ahead, and there is no provision allowing Canada to grant reserve status to the land selected by the First Nation when a municipality has not negotiated in a timely or reasonable fashion. Pankratz and Hart point out that there is less urgency for Manitoba municipalities to negotiate an agreement with First Nations in part because there is no clause that allows the federal government to create a reserve if the municipality has not made an effort to respond within a reasonable time. The MTLEFA also regulates environmental assessments and the way third party interests are to be dealt with.⁴² One notable difference between the Saskatchewan and Manitoba frameworks is that in Manitoba, a municipality can apply for compensation from the provincial government where it suffers a tax loss that has not been offset by the revenue earned through a service agreement.

4.3. Urban Treaty Settlement Lands (TSL) in BC

In British Columbia, treaties are currently being negotiated with many First Nations. When concluded, each treaty will include the transfer of title over land to the First Nation.⁴³ When the treaty has been ratified, Treaty Settlement Land (TSL) will fall under the jurisdiction of First Nations rather than local governments. While land within municipal boundaries is a small portion of the total TSL in BC, these parcels of land have been identified as potential TSL in all of the negotiation tables.⁴⁴

Early in the treaty negotiations process, local governments expressed concerns that issues of concern to them were not adequately addressed.⁴⁵ Provincial and federal governments are represented at the negotiations tables with First Nations, but local governments are not. More recently, the province negotiated a Memorandum of Understanding (MOU) with the Union of British Columbia Municipalities that ensures that affected local governments receive information about treaty negotiations, be able to attend negotiations, and choose their level of participation. Where the local government and the First Nation agree, the provincial government will establish a side table or working group for the First Nations and the local government to negotiate local government issues.⁴⁶ While treaties must address how First Nations governments will co-exist with other levels of government, including municipalities, the mechanisms through which this will occur and the detail of agreement can vary widely because of the wide variety of First Nations situations. For example, TSL land covered by the Nisga'a Treaty included very little urban land, while for other First Nations, urban lands will comprise a significant proportion of TSL. First Nations government structures will also vary; for example Sechelt is currently

structured as a municipality and is governed by the BC Municipal Act, while other First Nations will negotiate different powers and jurisdiction over land use and planning.⁴⁷

The concerns of municipalities in BC about urban reserves match those of municipalities in other provinces with respect to taxation, bylaw compatibility, service agreements, and dispute resolution. However there are a number of distinguishing characteristics in the BC situation. Unlike most urban reserves created to date under the ATR or TLEFA's, the focus of TSL areas may be residential rather economic development, requiring different kinds of service, taxation and by-law agreements. Associated with this is the fact that residents in these areas may not all be band members, requiring consideration of how they will be represented in decision-making about development on these areas. Finally, planning for the future use of urban reserves established under the BC treaty negotiations process may not be as detailed as it is for urban reserves negotiated through ATR or TLEFA processes. The latter require First Nations to have carefully considered the use of reserve lands and to engage in substantive negotiations with municipalities before areas of land are granted reserve status. In the BC case, First Nations will almost certainly be faced with many challenges in implementing treaties, and plans for the development of urban reserve lands may lie in the future. This can create considerable uncertainty for BC municipalities since they may not be sure about future land use, service agreements, or taxation regimes on a particular reserve area within the urban area.

There are a number of studies that provide guidance and options for negotiations about TSL's for First Nations and municipalities in British Columbia. Peter Adams' paper prepared in 1991 for the Union of British Columbia Municipalities, the British Columbia Ministries of Aboriginal and Municipal Affairs documents concerns (land-use planning, taxation, service agreements, intergovernmental relations, representation of non-members) that municipalities may have with urban reserves and describes different approaches for addressing these concerns.⁴⁸ His 2005 paper for the same groups addressed the fiscal impacts on local governments of treaty settlement lands. Most recently, the BC Treaty Commission published a report on best practices for intergovernmental relations and planning, based on the experience of the Sliammon First Nations and the City of Powell River.⁴⁹ These studies may provide useful information for First Nations selecting urban lands which they intend to establish as reserves, as part of their treaty negotiations.

5. Working with Municipalities

Various stakeholders need to be included in the process of developing urban reserves. These stakeholders include the First Nation membership which needs to support the Band Council Resolution and the subsequent negotiation process, the federal government which has a substantial facilitation and decision-making role, provincial governments interested in the impact of reserve creation on elements under its jurisdiction,⁵⁰ municipal governments, and the general public. Some stakeholders are legally required to be part of the discussions and other stakeholders can be brought into the conversation at the discretion of the parties involved. The municipal relationship appears to be one most complex to navigate during the process of creating an urban reserve; as a result, this section focuses on negotiations with municipalities.⁵¹

When a piece of urban land acquires reserve status there are a number of implications for municipalities. The shift in jurisdiction over land from municipal to First Nations governance and the removal of that land from the municipal taxation roll means that municipalities may have concerns about about tax loss compensation, bylaw compatibility, the provision of municipal services, and dispute resolution. In 1995, John Les, major of Chilliwack and second Vice President of the Federation of Canadian Municipalities, presented the perspective of municipalities when he commented that:

The advent of aboriginal self-government creating autonomous territories within or adjacent to municipal boundaries raises a number of concerns. Services standards, development priorities or regulatory objectives may not be shared, the municipal tax base may be compromised, and the potential need to supply unique services to particular groups within the municipal area may impact on municipal administration and finances.⁵²

Because of the impacts a change in land tenure has on municipalities, the ATR policy, provincial TLEFA's, and the BC treaty process address negotiation with municipalities. There are a number of resources available to First Nations involved in these negotiations. The Manitoba *Reference Manual for Municipal Development and Services Agreements* provides useful guidelines for agreements about bylaw compatibility, purchasing services from the municipality, and addressing dispute resolution.⁵³ Issues associated with developing a service agreement is found in Appendix B in this paper, while approaches to dispute resolution are summarized in Appendix C.

Municipal lands that acquire reserve status may represent a tax loss for municipalities. Where compensation is requested, First Nations must negotiate and pay for a one time tax loss adjustment. Tax loss compensation is not required in all cases, and some municipalities do not request it, especially where lost revenue is addressed in a service agreement, or where there is no significant tax loss associated with the change in land tenure. While there is no national standard for negotiating municipal tax loss compensation, the Indian Taxation Advisory board has computer software that can support First Nation's analysis in these areas. First Nations should work with INAC regional advisors and seek legal advice with respect to tax loss compensation agreements. The following represent some guidelines in determining reasonable compensation.⁵⁴

1. the gross amount of taxes currently assessed on the land to be set aside as a reserve, limited to the municipal share of annual taxes, excluding school and hospital taxes
2. any funds the municipality is receiving in provincial equalization payments
3. any savings which will result from a reduced delivery of services following the granting of reserve status
4. the relative size of the loss in relation to the total tax revenues of the municipality

In addition, the Federation of Canadian Municipalities' "toolkit" suggests the following elements.⁵⁵

1. any increased municipal revenues resulting from service agreements negotiated with the First Nation if the land receives reserve status

2. whether the municipal tax base was receding or expanding at the time of the proposed addition to reserve
3. whether a phased-in approach or transition period is appropriate to avoid any undue financial strain on the municipality
4. whether additional municipal services will be required on the new reserve land

The Manitoba *Manual* identifies areas in which reserves and municipalities may wish to harmonize by-laws, and also identifies mechanisms for doing so.⁵⁶ Some of the main points are summarized below; additional details concerning by-law compatibility issues to be addressed and mechanisms for addressing them are contained in the *Manual*. Areas in which First Nations and municipalities may wish to develop bylaw compatibility include:

1. land use and zoning standards for use of land (what activities are allowed on particular pieces of land)
2. land development standards: lot sizes, width of streets and sidewalks, servicing standards such as size of water and sewer pipes
3. building and safety standards: quality of construction, fire safety, permits, inspection (how buildings must be built to safeguard the occupants and neighbours)
4. animal control
5. public utilities: connection to water and sewer, design specification
6. health and safety: ambulance, fire and policing, environmental standards, building inspections
7. traffic regulation: speed, parking, signs
8. business licensing and operation: fees, permits, store hours
9. property maintenance and upkeep, including weed control

Methods of developing compatible bylaws include:

1. a joint bylaw committee made up of representatives of each council and an independent person jointly agreed upon by both parties to act as chair
2. the development of a comprehensive land use and development plan for both the municipality and the reserve, with each party enacting bylaws to enact the plan
3. a notification plan where each party sends a copy of any proposed bylaw to the other party for comment prior to it being adopted.

The implications of urban reserves for municipalities have created a continuum of relationships, from negative to positive, between First Nations and municipal governments. Based on interviews and a review of the existing literature, Garcea⁵⁷ summarized the factors explaining positive relationships.

1. Shared attitudes that both the municipality and the First Nations are involved in the same community. The relationship is interdependent and symbiotic;
2. Shared set of goals to develop the local economy and community;
3. A high degree of familiarity and trust; and
4. Ongoing formal and informal meetings and communications to discuss matters of mutual interest and concern.

In addition, Theresa Dust, a lawyer involved in negotiations about urban reserves in Saskatchewan, noted that for each side, recognizing each other's jurisdiction was key.

In order for negotiations to work, both sides must come to the table, and both sides must be willing to make some compromise, or at least meet each other part way. It is our experience that at some point in these negotiations each side faces a fundamental reality and each side makes a key compromise. From the municipality's side, the key is the recognition of and respect for the fact of Aboriginal jurisdiction and an acceptance of a loss of control...From the First Nation's side, the key is the recognition of and respect for local governments as the legitimate elected leadership of the non-Aboriginal community and the acceptance by the First Nations that they cannot exist and operate in isolation from this local community.⁵⁸

The following "best practices" for negotiating with municipalities builds on available sources and interviews undertaken for this study.

1. Well defined the First Nations' interests: As part of good planning practice and in order to respond to various municipal concerns, First Nations need to have a clear plan about the objectives for a particular piece of land. The Muskeg Lake Cree Nation's groundbreaking negotiations with the City of Saskatoon were supported by clear and well developed goals for the urban reserve.⁵⁹ While the *Manitoba Reference Manual* suggests that "it would be best if the Municipality's representatives could obtain some instruction" on "what is important to First Nations people in terms of their use of the land", the responsibility for this education often falls to First Nations.⁶⁰ However, Pankratz and Hart found that where municipalities had information about the ATR and/or TLE process and about the objectives of the First Nations, they were often very accommodating.⁶¹
2. Understanding of municipal government's interests: City of Regina planner Terry Mountjoy pointed out that it is important for First Nations people to be familiar with municipal concerns and how these relate to First Nations objectives.

[R]ecently [a local] First Nation brought forward a proposal regarding our casino-location decision. They argued job creation, crime, and general Aboriginal development issues but could not answer any of the city's questions about such issues as the impact on assessment, increase of tax base, and the loss of taxes, and they failed to know about our relationship with the Exhibition Association. If the situation had been reversed, the city would, no doubt, have been equally wide of the mark.⁶²

3. Building a relationship of mutual trust and respect: The BC Treaty Commission's report on best practices based on the relationship between the Sliammon First Nation and the City of Powell River noted that their success was due, in part, to genuine interest in and dedication to building a respectful, trusting relationship.⁶³ The Federation of Canadian Municipality's "toolkit" notes that establishing effective and mutually beneficial working relationships involves a significant amount of time and effort.⁶⁴ The "toolkit" suggests that meetings begin informally (for example hosting lunch or supper meetings), and that reciprocal site visits are important in order to promote understanding. Community-to-community forums may also provide an opportunity to identify mutual interests, goals and objectives.

4. Maintaining the relationship: After initial meetings, it is important for both parties to engage in regular meetings. The Manitoba *Manual* suggests face-to-face meetings are most productive because many of the negotiations between First Nations and municipalities will be complex.⁶⁵ It notes that while some meetings will take place between the whole First Nations Band Council and the Municipal Council, it may be more productive for each government to appoint a negotiating team. The Federation of Canadian Municipalities emphasizes the importance of involving staff members so that the relationships continue beyond the political office term of a mayor, chief or council.⁶⁶ This is especially important because negotiations and development can be lengthy. For example, the negotiations between the Muskeg Lake Cree Nation and the City of Saskatoon took close to a decade.⁶⁷ The BC Treaty Commission's report also emphasizes regular meetings.⁶⁸

5. Draw on the expertise of professionals and find the right ones for the long term: Given the limited capacity and experience of many First Nations and municipalities on these issues, it is particularly important to draw on expertise in a wide variety of areas. In addition to individuals in regional and national INAC offices, as well as in other federal government departments, the parties will need to draw on local experts in a variety of fields. For instance during the first negotiations that resulted in an urban reserve in Saskatchewan, the First Nation employed knowledgeable and reputable lawyers, financial advisers and taxation experts within the community.⁶⁹ The BC Treaty Commission report suggests that it may be important to engage facilitators for parts of the negotiation process.⁷⁰

6. Draw on the expertise of First Nations, municipalities and various government agencies that have participated in successful negotiations: Adams⁷¹ notes that some of the issues that have emerged in negotiations stem from the fact that both First Nations and municipalities lack experience in these matters, and that both parties lack capacity for these negotiations. Consulting with parties that have been successful may help to mitigate the lack of experience and capacity. There is an increasing number of examples of cooperative relationships between First Nations and urban municipalities that can be studied.⁷² In 2005, for example, Saskatchewan First Nation attempting to establish an urban reserve in Prince Albert hosted a workshop where they invited experts who had successfully worked through the process to come in and share their knowledge.⁷³

7. Be creative in seeking innovative solutions: The BC Treaty Commission report on Sliammon First Nations/Powell River best practices notes that there was no blueprint for their working arrangements.

A lot of this is new. We do not have a long history in British Columbia of intergovernmental relations between First Nations and local governments. There are new challenges that arise every day. There is almost always a way forward, but that path may not have a precedent. Don't be afraid to be creative. Try to develop a respectful atmosphere where everyone can brainstorm and explore options. In our experience, there is almost always a solution to be found by working together.⁷⁴

6. Conclusion

While First Nations can obtain benefits from development in urban areas through a number of avenues, the establishment of urban reserves may be an attractive option. While the urban reserves in Saskatchewan are the most well known, First Nations across Canada have the

opportunity to acquire urban reserve land through the federal *Additions To Reserves* policy. In BC, urban reserves may also be created through treaty negotiations. While the process of creating an urban reserve may be complex, there is increasing experience and expertise from which First Nations wishing to take this route can benefit. Some of the organizations that can assist First Nations in this process are listed in Appendix D.

Urban reserves can represent an important economic development opportunities for First Nations. They represent access to urban markets with high-income consumers, more skilled labour, and lower transportation than on rural reserves. They also create employment opportunities for First Nations people and allow First Nations to capitalize on both rural and urban economies. They also provide an environment where First Nations' members can interact as entrepreneurs, clients, and public citizens, and a centralized location for the interaction of First Nations government businesses and organizations. Hopefully, as more First Nations investigate the possibility of creating urban reserves, the process will become more familiar to First Nations, governments, and the general public, and urban reserves will become a taken-for-granted part of the urban fabric in Canada.

Appendix A: The *Addition To Reserves* (ATR) Process⁷⁵

1. The ATR process officially begins when the First Nation council submits a Band Council Resolution (BCR) containing the formal proposal seeking the addition to reserve or new reserve. If the proposal involves an addition to reserve, the name and number of the existing reserve should be stated in the BCR. If the proposal involves the creation of a new reserve, the name and number of the new reserve should be identified in the BCR. Naming should be guided by the principles set out by the Geographical Names Board of Canada.
2. Wherever possible, the First Nation should submit any pertinent documentation (that will either facilitate the process or be required) with the BCR. Some examples are conditions of TLE/Specific Claims Settlement Agreements (for a “Legal Obligations” proposal), a community plan showing the demographic need, information that the cost of any proposed development can be met within the First Nation’s existing regional budget allocation (for a “Community Additions” proposal), etc..
3. INAC staff will discuss the applicable ATR policy category with the First Nation, along with the need for supporting documentation which the First Nation has not already provided.
4. Once the policy category and supporting documentation have been identified, all the relevant site-specific requirements should be identified with the First Nation, who together with INAC will determine their respective roles and responsibilities within the process, e.g., with respect to communications planning, environmental site assessments, surveys, community planning requirements, third parties, etc.
5. The First Nation will contact the province, the municipality or other federal government departments/agencies as necessary and, where applicable, initiate discussions to resolve any areas of concern with respect to the proposal. Normally, municipal issues involve the provision of services, land use/zoning harmonization, net loss of municipal tax revenue, dispute resolution, etc. Every effort should be made to complete reasonable arrangements between the municipality and the First Nation bearing in mind that formal agreements are desirable but not necessarily essential. Third-party interests must be identified and dealt with before the proposal can proceed.
6. The regional ATR Committee will review the proposal to ensure that the requirements of the ATR policy have been satisfied. To ensure that the proposal receives speedy consideration, it is important that the First Nation and INAC staff provide all the information required for the committee to make an informed decision. The committee will then recommend the proposal to the Regional Director General (RDG) for Approval-in-Principle (AIP) or rejection.
7. If a proposal is outside the RDG’s AIP authority but the RDG and the First Nation still wish to proceed, the RDG must forward the proposal to be considered by the headquarters ATR Committee and subsequent Deputy Minister AIP or rejection.
8. The RDG (or the Deputy Minister of INAC) will grant an AIP or reject the proposal. The approval may be subject to conditions which must be satisfied before the Minister will recommend the granting of reserve status to the lands under the proposal.
9. It is important that any conditions attached to the approval are capable of being readily satisfied. If it is unlikely that the condition can be met, the proposal should not be sent to the RDG or the Deputy Minister for approval.
10. Any conditions attached to the approval by the RDG or Deputy Minister must be satisfied before the proposal can proceed to the next step. The First Nation will be advised by letter if the proposal has been rejected, approved, or approved with conditions. In the event of a conditional approval, the conditions will be specified in the letter.

11. After the conditions have been met, the First Nation or INAC regional office can proceed with the acquisition of the lands.
12. Regional INAC staff will prepare the Order in Council (OIC) recommendation and submission requesting that the lands be granted reserve status, or the Ministerial Order granting reserve status.
13. The OIC submission or the Ministerial Order is sent to the Minister who recommends its approval to the Privy Council, or signs the Ministerial Order.
14. The Privy Council either rejects or approves the OIC submission.
15. If the Ministerial Order or OIC submission has been approved, the Ministerial Order or OIC is registered in INAC's Indian Lands Registry. Regional Lands staff should arrange for the registration of all related land title documents in the Indian Land Registry to be attached to, or accompany, the registration of the Ministerial Order or OIC.
16. The First Nation and other relevant parties are notified of the granting of reserve status and are provided with the registration particulars as required.

Appendix B: Issues to Consider in Developing Service Agreements with Municipalities⁷⁶

Issues that the parties may wish to consider and address in a Municipal Development Services Agreement include:

1. the services that the First Nations would like to purchase from the municipality
2. the services that the municipality is able and willing to supply to the First Nation
3. the level of services that will be supplied by the municipality
4. the basis for the charges for the services
5. the charges for the services
6. the manner in which the First Nation will be billed for the services
7. payment due dates
8. prepayment discounts and whether they will be offered at the same rate as for municipal residents
9. late or non-payment penalties
10. the responsibility for collection of payment
11. fees for administration, legal costs, disconnection and reconnection if services are suspended for non-payment
12. access by municipality to reserve to install, maintain and operate the services
13. access for emergency services such as fire services
14. failure by municipality to provide services as agreed
15. upgrading, improvement, replacement or major repairs respecting services, including
 - 15.1. integration of services, such as road maintenance and drainage
 - 15.2. capital cost of service enhancement or upgrade, including cost sharing
 - 15.3. impacts of a major development on the reserve which will have a significant effect on municipal services
 - 15.4. engineering studies relating to services, including who is responsible for the cost.

Appendix C: Dispute Resolution Options⁷⁷

The *Manitoba Manual* notes that agreements between First Nations and municipalities often contain ambiguous provisions, and that situations may arise that were not contemplated when agreements negotiated. For urban reserves, First Nations and municipalities will need to build long term relationships, and this will likely require mechanisms to resolve disputes. Disagreements may be resolved through several processes.

1. Conciliation: the parties try to work out the issues by themselves, for example through a joint meeting of the municipal and the First Nation councils. They may also involve a third party who could be identified in the original agreement, who may be appointed by a judge of the Court of Queen's Bench, or who could be jointly selected from a list of suitable individuals
2. Mediation: a third party assists in working out a solution, a decision is reached by consensus, and it may or not be binding, depending on the terms of the mediation
3. Arbitration: the matter in dispute is referred to a third party, which decides on a settlement. The decision is usually binding.

First Nations and municipalities may also use a combination of these approaches.

The Federation of Canadian Municipalities' "toolkit" on First Nations-Municipal relationships has some additional suggestions concerning dispute resolution.⁷⁸ The toolkit suggests that informal communication should precede formal dispute resolution proceedings because it may be possible to resolve disagreements more quickly and less expensively this way. If none of the three approaches to dispute resolution resolve the issue, then litigation is a last resort. The disadvantages of this route include its lengthy time frames, the high costs, the fact that both First Nations and municipalities lose negotiation flexibility, and the likelihood that possibilities for future cooperative relationships will be lessened.

Appendix D: Further Resources

Aboriginal Leadership and Management Development, The Banff Centre

Programs include: Aboriginal Board Governance Development; Aboriginal Leadership and Management Development; Best Practices in Aboriginal Business and Economic Development; Negotiation Skills Training

Aboriginal Leadership and Management Development

The Banff Centre

Phone: (888) 255-6327

leadership@banffcentre.ca

www.banffcentre.ca

Communications

Communications Toolkit for First Nations on Additions to Reserve.

INAC has developed a detailed communications plan for all stages of implementation.

This strategy includes information ranging from: selecting spokespeople, consulting band members, media, the general public, special interest groups; shaping your message; contacts for others who have successfully negotiated an ATR. Although the focus is on ATR, this is a plan that could be adapted for all developments by First Nations Indian and Northern Affairs Canada.

www.ainc-inac.gc.ca/pr/pub/atr

Relationships with Municipal and Federal Partners

Land Management Toolkit

Developed by the Canadian Federation of Municipalities contains policies, relationship development, cases studies and resources related to the ATR process and the relationship between First Nations and municipal partners. There are community resource guides available to support groups within the negotiations.

<http://www.fcm.ca/english/documents/lmgt.html>

Financial

Indian Taxation Advisory Board (ITAB)

ITAB is a unique institutional relationship between the Minister of Indian Affairs and First Nation governments. ITAB directs the review and analysis of all First Nation property taxation bylaws, provides assistance to First Nations at all stages of bylaw development and implementation, mediates disputes between First Nations and other local governments, and provides other services related to taxation.

ITAB Head Office

321-345 Yellowhead Highway

KAMLOOPS BC

V2H 1H1

Phone: (250) 828-9857

Fax: (250) 828-9858

e-Mail: maureen@itab.ca

Funding Opportunities

Community Economic Development Technical Assistance Program (CEDTAP)

Canada's largest non-profit (non-governmental) granting agency in Community Economic Development (CED). First Nations have received funding in the past years to develop a comprehensive business plan detailing appropriate steps for implementing site location, marketing, operational plan, and a fundraising/sustainability plan.

National Program Coordinator:

Gail Zboch

GailZboch@cedtap.com

(613) 520-2600 # 8680

<http://www.carleton.ca/cedtap/>

National Aboriginal Land Managers Association

NALMA provides a working environment for First Nations Lands Managers to network between each other on land related issues, develops a system to support First Nations interests in various land management functions, and offers a professional certification program.

NALMA Head Office

1024 Mississauga Street

Curve Lake, ON K0L 1R0

Toll-Free: 1-877-234-9813

Phone: 705-657-7660

Fax: 705-657-7177

www.nalma.ca

Professional Development Unit

302 - 345 Yellowhead Hwy

Kamloops, BC V2H 1H1

Toll-Free: 1-877-828-9711

Phone: 250-828-9710

Fax: 250-828-9809

Email: sjules@nalma.ca

Networking, Management Training and Professional Development Opportunities

Canadian Council for the Advancement of Native Development Officers (CANDO)

CANDO is Aboriginal-controlled, community-based and membership driven. It focuses on education and professional development for EDOs working in Aboriginal communities or organizations. The website contains a wealth of information including research, resource guides to develop financial and administration skills, and information about two certification courses: Technician Aboriginal Economic Development (TAED) and Professional Aboriginal Economic Developer (PAED).

Information available online at www.edo.ca

Settling Claims

Indian Claims Commission

An alternative to courts for resolution and disputes over specific claims. The Commission provides inquiries and mediation. Inquiries can occur when the Minister of INAC rejects a First Nation claim or the claim has been accepted but a dispute has arisen over the compensation criteria. Mediation can be arranged at any point during the specific claims process.

Indian Claims Commission

P.O. Box 1750, Station B

Ottawa, ON

K1P 1A2

Telephone: 613-943-2737

Fax: 613-943-0157

TTY: 613-943-3772

www.indianclaims.ca

Endnotes

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- ⁵ Theresa M. Dust, *The Impact of Aboriginal Land Claims and Self-Government on Canadian Municipalities: The Local Government Perspective* (Toronto: Intergovernmental Committee on Urban and Regional Research, 1995a)
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- ⁷ *Indian Act*, R.S.C. 1985.
- First Nations Land Management Act*, S.C. 1999, c.24
- ⁸ First Nations interested in exploring the implications of land management under the *First Nations Land Management Act* are referred to the following resources.
- Federation of Canadian Municipalities, “Book 2: First Nations Lands Management Act” *Land Management Project* (Ottawa: Federation of Canadian Municipalities, 2003) Online. <<http://www.fcm.ca/english/documents/additions.pdf>>
- First Nations Land Management Resource Centre, “The Framework Agreement on First Nation Land Management” Online. <<http://www.fafnlm.com>>
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- ¹² Kathleen Makela, “Legal and Jurisdictional Issues of Urban Reserves in Saskatchewan” in F. Laurie Barron and Joseph Garcea (eds.) *Urban Indian Reserves: Forging New Relationships in Saskatchewan*. (Saskatoon: Purich Publishing, 1999) 86.
- ¹³ Under section 88 of the *Indian Act*, all provincial laws apply to reserve lands except for those already dealt with in the *Act*, or those that contravene the *Act*.
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Canada, Indian and Northern Affairs, “New Bands/New Reserves/New Communities Policy” *Indian and Inuit Affairs Procedures Program Directive 20-2*. Vol. 1, Part 3, Chap 1 (Ottawa: INAC, 1987).

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³⁰ Specific claims arise from the breach of an obligation arising from the Government of Canada’s administration of Indian funds or other assets, illegal and/or fraudulent disposition of Indian land, and failure to provide compensation for reserve lands taken or damaged. Canada, Indian and Northern Affairs Canada, *Specific Claims* (Indian and Northern Affairs Canada, 2002) Online. <http://www.ainc-inac.gc.ca/pr/info/info121_e.html>

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³³ Federation of Canadian Municipalities op cit. 6

³⁴ INAC has developed an extensive “toolkit” to help First Nations plan a communications strategy. Canada, INAC. “Communications Strategy” (Ottawa, no date) Online. <http://ainc-inac.gc.ca/pr/pub/atr/atr01_e.html>

³⁵ Canada, Indian and Northern Affairs, 2002 op cit. s. 6.8.

³⁶ Annex A, section 13; Annex B, section 13; Annex C, section 16-17. The ATR contains no timelines or definitions for “good faith” on the part of municipalities or provincial governments.

³⁷ Canada, Indian and Northern Affairs, 2002 op cit. s. 6.13-6.16.

³⁸ Proposals for rural reserves are forwarded to the Regional Director General (RDG) unless they are contentious, in which case they are also referred to the Deputy Minister.

³⁹ In Alberta, TLE settlements result from agreements with individual communities rather than the broad framework approach taken in Saskatchewan and Manitoba. Because of the variations within these agreements, they are not described in this section.

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⁴³ Most of the land to be transferred is either currently reserve land or land held by the federal or provincial Crown. In rare circumstances, parcels of privately owned land acquired on a willing sell/willing buyer basis will also be transferred.

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⁴⁵ Adams

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⁵³ Federation of Canadian Municipalities, "Book 3: Additions to Reserve Policy" *Land Management Project* (Ottawa: Federation of Canadian Municipalities, 2003) Online.

<<http://www.fcm.ca/english/documents/additions.pdf>>

⁵⁴ Canada, Indian and Northern Affairs, 2002 op cit. Annex A, s. 12.3, Annex B, s. 12, Annex C, s. 16.

⁵⁵ Federation of Canadian Municipalities "Book 3: Additions to Reserves" op cit. 11

⁵⁶ Manitoba. *A Reference Manual for Municipal Development and Service Agreements*. (Manitoba, 2004) Online.

<<http://gov.mb.ca/ana/manual.pdf>>. 43-58

⁵⁷ Garcea op cit. 29

⁵⁸ Theresa M. Dust, "Implementing Self-Government in Cities" in E. J. Peters, ed. *Aboriginal Self-Government in Urban Areas* (Kingston, Ontario: Institute of Intergovernmental Relations, Queen's University, 1995b) 185

⁵⁹ Canada, Indian and Northern Affairs Canada. Saskatchewan Regional Office. *Muskeg Lake Urban Reserve Negotiations: A Precedent for First Nations/Municipal Relations*. (Saskatchewan:INAC, 1996) Online.

<http://www.ainc-inac.gc.ca/pr/pub/ep/effneg_e.html>.

⁶⁰ Manitoba, op cit 7

⁶¹ Pankratz and Hart op cit. 26.

⁶² Terry Mountjoy, Regina Perspectives on Aboriginal Self-Government, in *Aboriginal Self-Government in Urban Areas*, E. J. Peters, ed.,(Kingston, Ontario: Institute of Intergovernmental Relations, Queen's University, 1995) 144

⁶³ BC Treaty Commission, 2007, op cit 23

⁶⁴ Federation of Canadian Municipalities, op cit. "Book 4: Establishing Municipal-Aboriginal Relationships"

⁶⁵ Manitoba, op cit. 7

⁶⁶ Federation of Canadian Municipalities, op cit. "Book 4: Establishing Municipal-Aboriginal Relationships" 4

⁶⁷ Canada, INAC, 1996 op cit.

⁶⁸ BC Treaty Commission, 2007, op cit 27

⁶⁹ Ibid.

⁷⁰ BC Treaty Commission, 2007, op cit. 29

⁷¹ Adams 2005 op cit.

⁷² For some examples, see the following. There are other examples listed on the Indian Affairs website.

Adams 2005 op cit.

Canada, INAC 1996 op cit.

Federation of Canadian Municipalities "Book 5: Case Studies" op cit. 2-7.

Western Economic Diversification op cit.

⁷³ Personal communication, 2005.

⁷⁴ BC Treaty Commission, 2007, op cit. 30-31.

⁷⁵ Canada, Indian and Northern Affairs, 2002 op cit. Annex D.

⁷⁶ Ibid. 27-28

⁷⁷ Ibid.57-66

⁷⁸ Federation of Canadian Municipalities "Book 4: Establishing Municipal-Aboriginal Relationships" op cit. 9-10