ADDITIONS TO RESERVE:
SHORT-TERM REFORMS

While important discussions to overhaul the Additions to Reserve (ATR) policy are under way between the Lands Advisory Board and departmental officials, the federal government can demonstrate progress in the short term by eliminating certain cumbersome requirements under the current ATR policy. Many of these policy requirements might make sense where Canada continues to be responsible for land management under the *Indian Act*, but do not make sense where this responsibility has been transferred to land code First Nations.

Even if all these provisions are eliminated from the current ATR policy, land code First Nations will remain responsible for developing a convincing rationale for proposed ATRs, and Indigenous Services Canada (ISC) will retain the ability to offer confidential advice to the Minister on the merits or risks of a proposed ATR. The Minister will retain final decision-making authority on whether to approve or reject an ATR or require additional work before an ATR proposal will be considered.

The current ATR process does not establish deadlines for getting work done. If these short-term changes are made, we also recommend establishing timeframes within which files are expected to be completed, which will benefit all parties.

1. DROP THE REQUIREMENT FOR CANADA TO ASSESS WHETHER THE ENVIRONMENTAL CONDITION OF LAND MEETS FEDERAL REQUIREMENTS (PRINCIPLE 8(F) OF DIRECTIVE 10-1).

***Rationale**:*
Under the *Framework Agreement on First Nation Land Management*, Land Code First Nations are responsible for environmental governance on reserve (not Canada). Land code First Nations proposing an ATR should merely be required to explain what environmental assessment or testing they have done and advise the Minister on any significant environmental governance issues of which they are aware. Federal officials would no longer undertake this work.

Federal Concerns:
Officials may argue environmental assessments are required by Canada to decide whether to support proposed ATRs, and to assess potential environmental cleanup costs. We have proposed language in ATRs to confirm that Canada will only be liable for environmental issues that Canada would be liable for off reserve (contamination caused by Canada). Land Code First Nations would be eligible for federal environmental cleanup funds but with no guarantee of qualifying for programming.

2. DROP THE NARROW CATEGORIES FOR ATRS (SECTION 9.0 OF DIRECTIVE 10-1).

***Rationale**:*
Land code First Nations may have multiple objectives for ATRs. This would simplify the process, eliminating the different considerations for each category of ATR under the current process.

Federal Concerns:
We expect only minor concerns about editing and selecting the right text for elimination.

3. DROP THE REQUIREMENT FOR FIRST NATIONS TO SUBMIT 20-PAGE APPLICATIONS, AND ISC'S OBLIGATION TO DEVELOP LETTERS OF SUPPORT BEFORE THE MINISTER CAN CONSIDER AN ATR (SECTION 11.0 OF DIRECTIVE 10-1).

***Rationale**:*
Reduce delays by focusing on the end product: joint drafting of the proposal to the Minister. Canada can still provide its confidential advice to the Minister with a final ATR proposal, but currently there is too much unnecessary paperwork, especially for straightforward ATRs.

Federal Concerns:
We expect that federal officials will be reluctant to drop the current standardized process at the risk of having to negotiate how to draft a joint proposal to the Minister. We are prepared to work on a template provided that the emphasis is on land code First Nations explaining the rationale for an ATR.

4. DROP THE REQUIREMENT TO PROVE A COMMUNITY "NEED" AND THAT EXISTING RESERVES ARE "NOT SUITABLE" (SECTION 12.4 OF DIRECTIVE 10-1).

Rationale:
This policy statement does not fit in an era of reconciliation which should support new opportunities, particularly on lands near other economic activity rather than confine First Nations to struggle on what are in many cases marginal lands. Proving that existing lands are unsuitable wastes resources on analysis of the relative costs of re-development compared to available new opportunities.

***Federal Concerns**:*
We do not anticipate concerns regarding this improvement.

5. **DROP THE DISPUTE RESOLUTION PROVISIONS OF THE POLICY FOR DISPUTES BETWEEN FIRST NATIONS AND LOCAL GOVERNMENTS AS WELL AS PROVINCES, TERRITORIES, AND THIRD PARTIES** (SECTION 15 OF DIRECTIVE 10-1).

***Rationale*:**
Municipalities have no real incentive to solve issues through dispute resolution and for some, this requirement has been used to veto proposals through endless delays. The ATR process does not provide a good dispute resolution tool. Land code First Nations (not Canada) are responsible for these relationships before and after ATRs and know how to resolve disputes without a federal dispute resolution process. Any ATR proposal to the Minister should describe the degree of support from other governments and the rationale for proceeding if there is opposition or any unresolved issue with other governments.

Federal Concerns:
Federal officials might suggest that new dispute resolution provisions should be developed rather than drop the provisions entirely. However, we recommend against this because Canada should not try to determine how First Nations and their neighbours solve issues, especially under land code.

6. **DROP THE RESTRICTIONS ON IMPROVEMENTS TO PROPOSED RESERVE LANDS** (SECTION 3.0 OF ANNEX A TO DIRECTIVE 10-1).

***Rationale*:**
The ATR policy blocks work on improvements while an ATR is pending. This might make sense for federal control under the *Indian Act*, but this barrier makes less sense for land codes, especially as the current ATR process may take decades to complete.

Federal Concerns:
Some federal officials might be concerned about ATR proposals providing outdated information or missing information about improvements constructed on lands. The ATR process should be flexible enough to update information within an ATR proposal rather than block construction of helpful improvements.

7. **ELIMINATE THE 3-MONTH PERIOD FOR OTHER FEDERAL DEPARTMENTS AND AGENCIES TO ASSESS RESERVE CREATION PROPOSALS (SECTION 4.1 OF ANNEX A TO DIRECTIVE 10-1) AND FOR PROVINCES OR TERRITORIES TO EXPRESS VIEWS TO ISC ON A PROPOSED ATR** (SECTION 8 OF ANNEX A TO DIRECTIVE 10-1)**.**

***Rationale*:**
This process requirement is too rigid, especially for small ATRs that arise out of provincial negotiations.

Federal Concerns:
Federal officials might advise that this change should only be made after consultations within the federal government including central agencies. We disagree: there should be a quick way to inform other federal departments of a helpful change in accordance with this government's commitment to redesign the ATR process. The 3-month period for provinces and territories to express views should be dropped for uncontroversial ATRs and be replaced by a notice to the provinces. We do not expect concerns from provinces if the "uncontroversial" category is clear and the message is to avoid wasting provincial resources.

8. DROP THE REQUIREMENT TO COMPLETE MUNICIPAL SERVICE AGREEMENTS IN ADVANCE OF AN ATR (SECTION 9.0 OF ANNEX A TO DIRECTIVE 10-1).

***Rationale*:**
Many land code First Nations already have sophisticated municipal service and taxation agreements in place. The ATR policy should not dictate how and when land code First Nations decide how best to deal with service, infrastructure, and emergency response. All these issues are within land code First Nation authority under the Framework Agreement. In some cases, it may be preferable to have the option of negotiating these arrangements after a Ministerial Order is completed (creates a level playing field in negotiations amongst neighbouring jurisdictions).

Federal Concerns:
Federal officials may suggest that Canada could be criticized for allowing ATR proposals to move forward without knowing whether important services will be provided. They may also express the concern that First Nations might come forward post ATR seeking extra funding for unresolved service issues. We do not agree with these concerns, and it should be sufficient for land code First Nations to have the onus of explaining in an ATR proposal how service issues will be resolved.

9. DROP THE EXTRA REQUIREMENTS IMPOSED BY THE POLICY FOR JOINTLY HELD ATRS (SECTION 7 OF ANNEX B OF DIRECTIVE 10-1).

***Rationale*:**
Jointly held ATRs should be encouraged because of the potential for efficiency and increased economic activity, not discouraged. Canada's First Nation Land Management policy is supportive, but the ATR policy is the opposite, requiring complex agreements and indemnities.

***Federal Concerns**:*
Federal officials will be concerned about the potential for jointly held land to be ungovernable, particularly where lands are held for a large number of First Nations. First Nations are responsible for explaining to the Minister how these risks will be minimized, and land code First Nations will be responsible for solving any problems (not Canada).