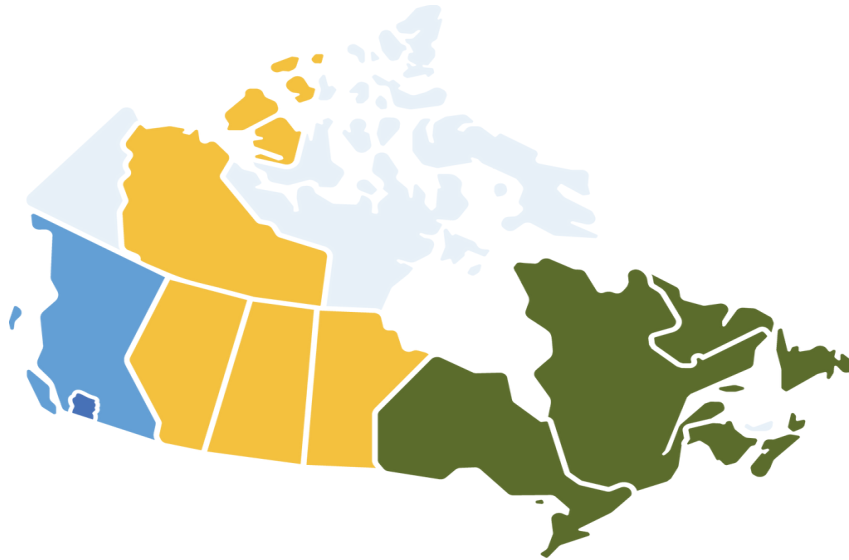


Additions to Reserve

Interim Changes & Proposed New ATR Policy

February 20, 2025

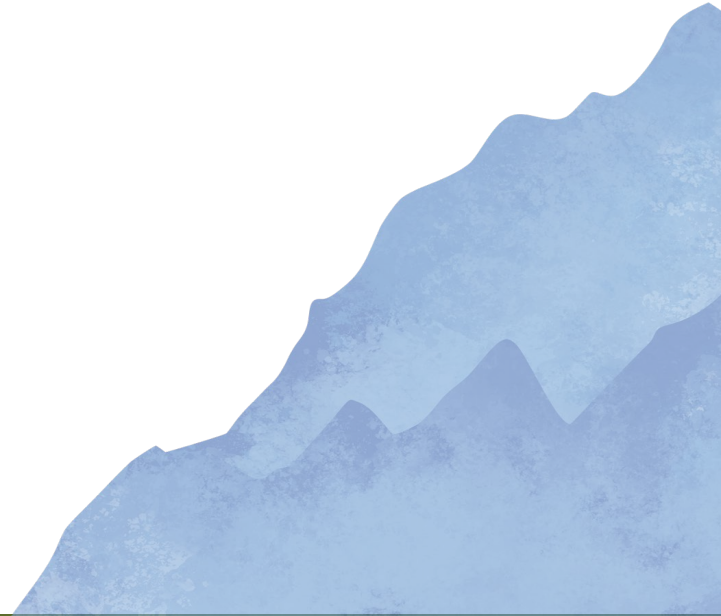
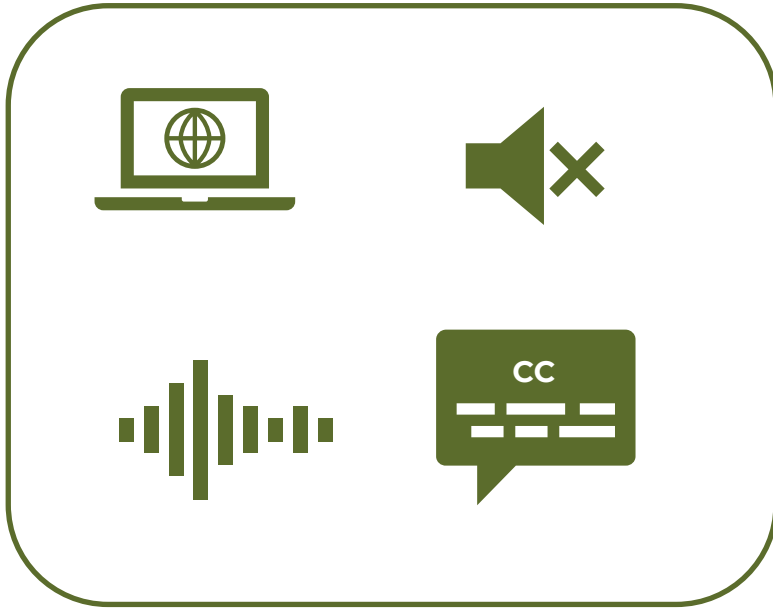
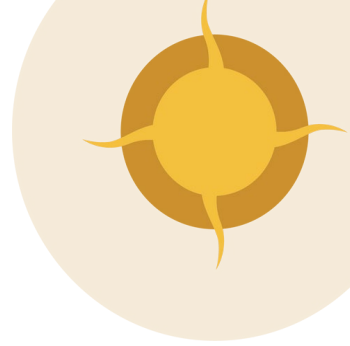




Welcome



Administrative Tools



Webinar Objectives

- Review the mandate from land code First Nations to explore significant changes to the Additions to Reserve (ATR) process
- Review Interim ATR changes announced by Canada in 2024
- Brief update on Lands Advisory Board proposal for a new ATR process for land code First Nations

Today's Speaker



Andrew Beynon

Director, Land Code Governance

Introduction

- The Lands Advisory Board has a mandate from leadership to explore significant reforms of the Additions to Reserve (ATR) process (2022, 2023, 2024)
- In 2024, the LAB proposed that nine steps imposed by Canada under the ATR process should be eliminated – a first step in speeding up the ATR process
- Canada asked the Resource Centre to engage the AFN, NALMA, CIRNA, and ISC on our proposal to eliminate nine elements of the ATR process - to make the changes available to all First Nations, including those without land codes
- In December of 2024, the Minister of CIRNA announced nine changes to ATR policy, which are described as “Interim Changes” that are now available to all First Nations
- The LAB, AFN, and NALMA all made it clear that more significant changes are needed beyond the Interim Changes

Interim Changes to ATR Policy – Environment

Land Code First Nations have options - request ATRs only for uncontaminated lands.....or if desired ATR lands are contaminated, the following applies:

- Eliminated old requirement to satisfy Canada that the environmental condition of lands meet federal standards **PRIOR** to an ATR
- ATR can move forward **PRIOR** to environmental cleanup if the First Nation or a third party has committed to the cost of cleanup in future
- Canada has to be satisfied with the financial commitment to future cleanup
- First Nation remains eligible for **FUTURE** federal environmental cleanup funding even if there is an up front financial commitment from others **PRIOR** to an ATR

Interim Changes to ATR Policy – Environmental Site Assessment

Environmental Site Assessments (ESAs) of ATR lands are required in an effort to determine whether there are contamination risks

- Eliminated old requirement to agree with Canada on the approach to ESAs
- Policy now says ESAs in accordance with common standards (CSA) will be accepted
- Policy also says the ESA should be suitable for the intended future use of ATR lands.....but Canada no longer requires First Nations justify the proposed use of lands
- Eliminated old requirement to update ESAs every five years.....hopefully in future ATRs won't require half a decade or more to complete!
- An updated ESA may be required if the First Nation believes that there has been a change of environmental conditions over time

Interim Changes to ATR Policy – Municipal Services

Land Code First Nations have options – if you want all service agreements finalized prior to an ATR, go ahead.....but now there is flexibility to work out services after an ATR:

- *Canada will consider an ATR where:*
 - a) The First Nation has a Services agreement;*
 - b) Service agreement negotiations are at an advanced stage;*
 - c) There is no immediate need for Services;*
 - d) There is an operational and funding plan to put Services in place; or*
 - e) The First Nation will be providing Services.*
- *Services are defined to mean fire and other emergency response, as well as water, wastewater, and solid waste*
- *There is no municipal veto*

Interim Changes to ATR Policy – Other Matters

- *Eliminated old requirement to establish the need for an ATR and why existing lands are insufficient*
- *Old categories for ATRs are all gone.....but the Policy still requires that a First Nation identify whether the ATR would satisfy a legal obligation*
- *A shorter ATR application form has been developed*
- *Unhelpful dispute resolution provisions have been cut back.....Canada may agree to reserve creation where disputes with provinces and others are unresolved, if dispute resolution options have been explored*

Interim Changes to ATR Policy – Other Matters (continued)

- *Old policy requirement blocking “improvements” when an ATR proposal is considered by Canada eliminated.....text now says a First Nation “MAY” wish to discuss improvements with ISC and “SHOULD” discuss Indian Act requirements such as designations.....this has little relevance any more to land code First Nations*
- *Simplified Policy text for Canada’s internal consultations with other federal departments*
- *joint reserve proposals simplified “...will be considered where First Nations governance and management of a Joint Reserve have been addressed”.*

Canada's "Implementation Guidelines" for the Interim ATR Changes

- ISC wants to develop "Implementation Guidelines" to assist regional offices in assessing ATR proposals, especially risks and possible funding implications for Canada and First Nations
- As of mid February 2025, work is continuing on the "Implementation Guidelines"
- Our strong recommendation for land code First Nations is to proceed with any ATR proposals that are ready, because the Interim Changes are clear and in force

RC's Principles for the Guidelines:

- The Guidelines must be consistent with the ATR policy interim changes.
- Guidance on risks should consider the risks to Canada in approving ATRs, balanced with the risks to First Nations in not proceeding.
- Some of the ATR policy interim changes may not need any implementation guidance
- The Guidelines should support the objective of reducing ATR delays

The Need to Replace the Current ATR Process

- The current ATR process is broken..... we are exploring **replacing both the policy and the process**
- **The ATR Policy is broken because it does not respect self-government, and causes years of delay, which in turn results in missed economic opportunities**
- Land code First Nations have governance authority over existing and future First Nation Lands without interference from Canada.....this includes decision making and setting deadlines
- The current ATR policy does not respect self-government because land code First Nations have no control over decision making and deadlines for ATRs
- **Delays are the biggest problem.....** Land Code First Nations want to move at the speed of business on housing, infrastructure, economic development and protection of lands..... the current ATR process does not even move at the speed of government

New First Nation Land Policy - Successful Self-Government

- **Land code First Nations have a track record of successful self-government** combining governance, land ownership, and economic development
- **Land Code First Nations have the same track record on ATR lands.....because of self-government, not Canada's risk averse ATR process**
- **Canada should support self-government ATR requests absent valid reasons to object.** The current process assumes a need to manage risks and liabilities that do not apply to land code First Nations
- **ATRs should reflect self-government efficiencies.** Canada's existing ATR process creates years of delays for ALL First Nations. A faster ATR process is needed for land code First Nations, to move at the speed of business under land codes.
- **Reasonable limitations on federal liability.** We will consider reasonable measures to confirm that Canada is not liable for ATRs.....we reject unreasonable measures

A New First Nation Land Policy Supporting Successful Self-Government

- **Our New Registry Could Assist with ATRs, with reduced reliance on federal bureaucracy.** The new First Nations Land Governance Registry is built with technology and expertise ideal for high-speed ATRs: electronic document and process tracking, mapping, surveys, and registration of all interests affecting land.
- **Rely on the new Registry to deliver ATR service and deliver on deadlines.** The new Registry will constantly examine ways to reduce delays for all registry functions, including ATRs
- **Engage provinces and municipalities where they support ATRs.** Fast ATRs, particularly in urban areas, should be prioritized when provincial and municipal partners are committed to successful implementation. (tax loss compensation if any needs more study)
- **Support ATRs even if municipalities oppose, except under narrow conditions.** Further work is needed on those conditions but could be for example when a municipal expropriation for public purposes is underway

Framework Agreement Amendments for a New First Nation Land Policy

- **Option for First Nation title to ATR lands**, with no delay due to transfers to Canada. These ATR lands would be 91(24) lands with all FA protections, law making, and governance
- **Option to rely on legal description of lands for Ministerial Orders** - no obligation for updated Canada land surveys prior to an ATR.
- **Electronic ATR process built into the new Registry.** Where a First Nation opts for title held by the First Nation, the registry can commit to fixed deadlines for an ATR decision. Where title is transferred to Canada, the Registry will still be used but cannot be responsible for the timing of Canada's title transfers.
- **Efficiency in Consultations**, e.g. the Framework Agreement to describe circumstances under which province led consultation processes can be relied on by Canada.
- **Framework Agreement should clarify authority for “conditional” ATRs.**

Framework Agreement Amendments for a New First Nation Land Policy

- **Explore a new option for temporary “withdrawal” of lands, triggered only when agreed upon by both the First Nation and Canada**, pending resolution of parcel boundaries. This may require agreement with provinces, but would prevent mining and other land acquisitions while final selections are made in an agreed area, with incentives or time limits to avoid detrimental delays.
- **Option to carry over existing third-party interests.** Work with provinces and utilities to avoid unnecessary replacement and renegotiation of existing third-party interests where a First Nation has no concerns. The Framework Agreement may need to specify that some statutory powers of the provincial Crown (such as rights to resume lands for public purposes) may no longer apply.
- **Explore delegation of Minister’s authority to an ATR Service**, similar to the evolution of First Nation authority away from the Minister deciding on by-laws. This would require a streamlined governance model, not a delayed federal appointment process.

Moving Forward on a New First Nation Land Policy

- Lands Advisory Board will proceed only with support of land code First Nations
- Will be discussed with leadership at Pre-AGM Meetings in June and July
- Draft language to propose to Canada for FA amendments will hopefully be ready for AGM
- Canada will not agree to any FA amendments until after the federal election.....so these changes unlikely until late 2025 or start of 2026 at the earliest

Questions & Discussion



Moving Forward

Maintain Momentum

Pre AGM Meetings- June/July 2025

LAB AGM - August 2025



FNLGR Open House



Project by LAB, RC, LTSA



First Nation Land Governance Registry (FNLGR)

LAST OF THE SERIES

OPEN HOUSE - East Region

February 26-27, 2025

First Nation Land Governance Registry (FNLGR) – Open House (East Region)
Feb 26, 2025 - Feb 27, 2025

Thank You



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Training, Mentorship &
Professional Development