

LMP

Land Management Project



BUILDING CAPACITY THROUGH COMMUNICATION:

BOOK 1

Municipal-Aboriginal Partnerships in Land Management



PROJECT OVERVIEW



Indian Taxation Advisory Board



National Aboriginal Land Managers Association



Lands Advisory Board

Canada

Indian and Northern Affairs Canada

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EXECUTIVE SUMMARY

Municipal governments and neighbouring First Nations across Canada are working together to create opportunities, build capacity and improve the quality of life in their communities.

When municipal lands are set apart as reserve, municipal governments are faced with many challenges, including loss of jurisdiction over lands, regional economic development, tax loss compensation, service provision and by-law compatibility. Through improved communications, First Nations and municipal governments can develop new partnerships based on respect for each other's jurisdiction and a common understanding of issues of mutual concern.

In 2003, the Federation of Canadian Municipalities, in partnership with the Indian Taxation Advisory Board, the Lands Advisory Board, the National Aboriginal Land Managers Association and Indian and Northern Affairs Canada, began a project to enhance communication between First Nations and municipal governments on the federal Additions to Reserve (ATR) policy and process, as well as the *First Nations Land Management Act* (FNLMA).

The project centred on the creation of a land management toolkit, which would provide information on the ATR policy and FNLMA, as well as a best practices guide highlighting model agreements and successful partnerships between First Nations and municipal governments.

To develop the toolkit, land management workshops were conducted in different regions across Canada to promote a dialogue between municipal and First Nation governments and to gather feedback from participants for inclusion in the final toolkit. The land management workshops provided an opportunity for First Nation and municipal government officials and land managers to meet, share information and discuss important issues in their communities.

By forming partnerships and pooling assets, municipal governments and First Nations can sustain and make improvements to existing infrastructure and their local economy. Joint initiatives can reduce costs associated with service provision, promote economic development and build capacity for both First Nations and municipal governments.

The Phase 1 land management workshops demonstrated that, while many successful partnerships have been developed between First Nations and municipal governments across Canada, there are still improvements to be made and barriers to overcome in many communities in order to achieve effective municipal-Aboriginal relations.

A lack of effective communication and differing approaches to land management are often identified as the main barriers to municipal-Aboriginal partnerships. In particular, the ATR process and the relationship between First Nations and the federal government is not always well understood.

In addition to the workshops, research and interviews were conducted with various municipal and First Nation officials to gather information on effective municipal-Aboriginal relations and to document successful partnerships on various land management initiatives, including the following examples.

- Regional Municipality of Wood Buffalo and Athabasca Tribal Council, Alberta
- Regional District of Central Okanagan and Westbank First Nation, British Columbia
- Town of The Pas and Opaskwayak Cree Nation, Manitoba
- City of Fredericton and Saint Mary's First Nation, New Brunswick
- Municipality of Temagami, Temagami First Nation and Teme Augama Anishnabai, Ontario
- City of Regina and Nekaneet First Nation, Saskatchewan

Information provided by these communities identifies the reasons for and barriers to successful municipal-Aboriginal partnerships. Despite the challenges, the case studies demonstrate that, with perseverance and commitment from First Nations and municipal governments, mutually beneficial initiatives can be achieved. In all six cases, the foundation for partnership building was built upon regular and open communication, mutual respect and trust, as well as a commitment to working together to build capacity in their communities.

The specific experiences of these communities provide lessons learned in creating opportunities for successful partnerships between First Nations and municipal governments across Canada. Each case study provides advice for other communities contemplating a joint municipal-First Nation initiative.

Many partnerships between First Nations and municipal governments are informal in nature, and are largely undocumented. The case studies presented in this toolkit are designed to promote an awareness of municipal-Aboriginal relationship building and to assist other communities interested in pursuing joint opportunities in land management.

INTRODUCTION

Municipal governments and neighbouring First Nations across Canada are working together to create opportunities, build capacity and improve the quality of life in their communities. While there are many success stories in municipal-Aboriginal relations, there are also numerous communities that have experienced challenges over land-use disputes or other sources of conflict.

First Nations are increasingly acquiring land to build various capacities for self-government, including economic development, community growth and resource management. When lands within a municipality are set apart as reserve, municipal governments are faced with many challenges, including jurisdiction over lands, regional economic development, tax loss compensation, service provision and by-law compatibility.

Through improved communications, First Nations and municipal governments can develop new partnerships based on respect for each other's jurisdiction and a common understanding of issues of mutual concern, and work towards addressing those concerns.

Land Management Toolkit

The project centred on the creation of a land management toolkit to provide information on the ATR policy and process and the FNLMA, as well as a best practices guide highlighting model agreements and successful partnerships between First Nations and municipal governments. The main purpose of the toolkit is to assist First Nations and municipal government officials in developing effective working relationships and successful partnerships to help them build capacity in their community.

The toolkit has been organized into six booklets in order to outline important information on the FNLMA and the ATR policy, as well as the benefits of establishing effective municipal-Aboriginal relations and the lessons learned from six communities that have developed successful partnerships.

1. Project Overview

In 2003, the Federation of Canadian Municipalities (FCM), in partnership with the Indian Taxation Advisory Board (ITAB), the Lands Advisory Board (LAB), the National Aboriginal Land Managers Association (NALMA) and Indian and Northern Affairs Canada (INAC), began a project to enhance communication between First Nations and municipal governments on the federal ATR policy and the FNLMA.

Land management workshops were conducted in different regions across Canada to promote a dialogue

between municipal and First Nation governments and to gather feedback from participants. The land management workshops provided an opportunity for First Nation and municipal government officials as well as land managers to meet, share information and discuss important issues in their communities.

2. First Nations Land Management Act

The FNLMA has changed the nature of land management in local communities. This legislation ratified the provisions under the *Framework Agreement on First Nation Land Management*, which was signed by 14 First Nations and the Minister of Indian Affairs and Northern Development in 1996. The Framework Agreement is a First Nations-led initiative with the objective to assume control over the management of their lands and resources. Under the FNLMA, First Nations can create laws and establish a governance structure through the development of a Land Code.

For municipal governments, the coordination of land use planning processes, jurisdictional clarity and law/by-law compatibility with an adjacent on-reserve community are important for the effective management and sustainable use of lands within the municipality. Further, where a reserve is located near or within an urban area, the proximity and density of development increases the potential for conflict if the First Nation's laws and municipality's by-laws and land use planning processes are significantly different. Government-to-government cooperation leads to improved capacity and economic prosperity for the entire community.

3. Additions To Reserve Policy

Land management in local communities has also been shaped by the federal ATR policy. The ATR policy was developed by INAC to govern the expansion of reserve lands. Under the ATR policy, an ATR is a proposal for land acquired through treaty settlement or land claim, legal purchase, court order or other process to be set apart as reserve for the use and benefit of a particular First Nation.

When applying for the expansion of an existing reserve or for the creation of a new reserve, First Nations must address all third-party interests in the parcel of land and enter into consultations with a neighbouring municipality. When lands within or adjacent to a municipality become reserve, municipal governments are faced with many issues including loss of municipal property tax revenue, service provision and by-law compatibility. Through effective negotiation and open communication, First



Nations and municipal governments can cooperate to address municipal tax loss compensation, develop service delivery agreements and dispute resolution mechanisms and ensure by-law compatibility. Further, a partnership between both communities on service delivery can produce savings through economies of scale, provide overall improved community livability and establish a foundation for prosperity in the entire area.

4. Establishing Municipal-Aboriginal Relationships

By forming partnerships and pooling assets, municipal governments and First Nations can sustain and make improvements to existing infrastructure and their local economy. Joint initiatives can reduce costs associated with service provision, promote economic development and build capacity for both First Nations and municipal governments.

While many successful partnerships developed have been between First Nations and municipal governments across Canada, there are still improvements to be made and barriers to overcome in many communities in order to achieve effective municipal-Aboriginal relations. A lack of effective communication and different approaches to land management are often identified as the main barriers to municipal-Aboriginal partnerships. In particular, the relationship between First Nations and the federal government is not always well understood.

Through improved information-sharing and regular communication between First Nations and municipal governments, relationships can be developed that are based on mutual understanding, respect and trust. By organizing informal meetings, information sessions and community-to-community forums, First Nations and municipal governments can build effective working relationships that result in joint ventures to deliver benefits to the entire community.

5. Case Studies

Identifying partnership opportunities and areas of mutual concern is an important component of effective municipal-Aboriginal relations. Further, sharing success stories and lessons learned from communities that have developed partnerships and negotiated service agreements will provide essential information for other communities.

Many partnerships between First Nations and municipal governments are informal in nature and are largely undocumented. The case studies presented in this toolkit are designed to promote an awareness of municipal-Aboriginal relationship building and to assist other communities interested in pursuing joint opportunities in land management.

As land management issues vary from region to region across the country, a “one-size-fits-all” approach to effective municipal-Aboriginal partnerships is inappropriate. Six case studies have been presented in this toolkit to highlight successes, challenges and lessons learned from communities in different regions of the country. In this way, both First Nations and municipal governments can see what worked well for others and develop partnerships specific to the land management issues within their community.

A Glossary of Terms is also included to clarify the meaning, definition and context for much of the terminology used in this toolkit.

A list of works cited is also included to properly reference the sources from which facts and phrases were employed for the purposes of this toolkit. Further, a list of suggested resources for further reading is provided so that readers can readily obtain more detailed information than is provided in the toolkit.

PROJECT PARTNERS

The partners on the Land Management Project include representatives from those organizations that have a direct interest in land management and relationship-building between First Nations and municipal governments. These include the following.

FEDERATION OF CANADIAN MUNICIPALITIES

FCM has been the national voice of municipal government since 1901. FCM is dedicated to improving the quality of life in all communities by promoting strong, effective and accountable municipal government.

FCM represents the interests of all member municipalities on policy and program matters within federal jurisdiction. Members include Canada’s largest cities, small urban and rural communities and the 18 major provincial and territorial municipal associations.

INDIAN AND NORTHERN AFFAIRS CANADA

INAC has primary, but not exclusive, responsibility for meeting the federal government’s constitutional, treaty, political and legal responsibilities to First Nations, Inuit and Northerners.

The mandate of INAC is to improve the lives of Aboriginal people through economic development, strengthened First Nation governance, education and modernized social programs in partnership with Aboriginal people, other orders of government and non-governmental organizations.



INDIAN TAXATION ADVISORY BOARD

The mandate of ITAB is to work with First Nations, the Government of Canada, the provinces and territories, municipal governments and local authorities to ensure cooperation and understanding in the area of property taxation on reserve.

ITAB continues to work with both the public and private sectors to develop other tools that First Nations can use to generate independent sources of revenue. These include the licensing of businesses on reserve, the ability to raise capital through public debt financing and accessing grants-in-lieu of taxation from public utilities located on reserve.

LANDS ADVISORY BOARD

LAB was mandated by signatory First Nations and the Government of Canada, pursuant to the *Framework Agreement on First Nations Lands Management*, to support First Nation control of reserve land and resource management.

LAB assists First Nations who have signed on to the Framework Agreement in implementing their own land management regimes, including developing model land codes, laws, documents, agreements and management systems.

NATIONAL ABORIGINAL LAND MANAGERS ASSOCIATION

The central purpose of NALMA is to actively network towards the enhancement of professional development and technical expertise in the functions of land management while incorporating First Nation values and beliefs in land management.

The objective of NALMA is to provide a comfortable working environment for all First Nation land managers to network with each other on land-related issues and, at the same time, to create a system that will assist First Nations in various land management functions.

FUTURE OF THE LAND MANAGEMENT PROJECT

RECOMMENDATIONS

All participants at the land management workshops held as part of Phase 1 of the Land Management Project were encouraged to provide feedback and recommendations for the toolkit and the project in general, as well as for future work in municipal-Aboriginal relations. Significant suggestions for action were made.

1. Clarify the rationale behind tax loss compensation in the toolkit.
2. There is a strong need for nation wide education and understanding of the issues.
3. Reform the Additions to Reserve policy and process; it is too lengthy and complex.
4. Toolkit should provide a checklist of items to guide protocol, service and tax loss compensation agreements.
5. Toolkit should include a guide for dispute resolution.
6. Encourage First Nations and local governments to organize joint council sessions with political and technical representatives.
7. Expand First Nation and municipal government relationships to include federal, provincial and territorial agreements, as well as private sector corporations.
8. Identify different issues facing rural and urban on-reserve communities.
9. Need for renewed emphasis on environmental issues facing First Nations and municipal governments and for cooperation for sustainable land use.
10. The media should be used as a resource for sharing information among First Nations and municipal governments and to gain support for partnerships.

All recommendations and feedback received from workshop participants will continue to inform and shape future work on municipal-Aboriginal relations under the Land Management Project.

PHASE II

Due to the overwhelming support for the municipal-Aboriginal land management workshops, FCM has submitted a proposal for additional funding to INAC in order to conduct additional workshops.

If accepted, Phase II of the Land Management Project will provide additional land management workshops across Canada between April 2005 and March 2006 and will involve the development of a resource guide on effective relationship-building between First Nations and municipal governments, with practical dispute resolution techniques and best practices.

Information on upcoming workshops is available at www.fcm.ca or by contacting the FCM Land Management Project Coordinator.

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BUILDING CAPACITY THROUGH COMMUNICATION:

BOOK 2

Municipal-Aboriginal Partnerships in Land Management



FIRST NATIONS LAND MANAGEMENT ACT



Indian Taxation Advisory Board



National Aboriginal Land Managers Association



Lands Advisory Board



Indian and Northern Affairs Canada

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FIRST NATIONS LAND MANAGEMENT ACT

A. Overview

On February 12, 1996, 13 First Nations and the Minister of Indian Affairs and Northern Development signed the *Framework Agreement on First Nations Land Management* (Framework Agreement). One additional First Nation was added in December 1997, bringing the total number of signatory nations to 14.

- Nipissing
- Opaskwayak Cree
- Lheidli T'enneh
- Westbank
- Scugog Island
- Muskoday
- Musqueam
- Georgina Island
- Mnjikaning
- Cowessess
- Siksika
- Squamish
- N'Quatqua
- St. Mary's

On June 18, 1999, Canada ratified the Framework Agreement by enacting the *First Nations Land Management Act* (FNLMA). Four years later, on March 30, 2003, this self-government initiative was expanded to enable additional interested First Nations to become signatories to the Framework Agreement.

The Framework Agreement is a First Nations-led initiative to assume control over the management of their lands and resources, which sets out the principal components of a new land management process but does not affect treaty or other constitutional rights of First Nations in Canada.

The option to regain control of their lands can only be made with the consent of the First Nations community, and federal administration of reserve lands under the *Indian Act* will cease only when each First Nation takes control of its lands and resources under the Framework Agreement.

To assume control over its lands, First Nations under the Framework Agreement will develop a Land Code, complete a community ratification process and enter into an Individual Agreement with the Government of Canada.¹ The specific steps that a First Nation must follow are outlined in the Framework Agreement.

LAND CODE DEVELOPMENT

Under the Framework Agreement, a Land Code drafted and approved by the community will become the basic land law of the First Nation and will replace the land management provisions of the *Indian Act*. The Minister of Indian Affairs and Northern Development will no longer be involved in the management of the First Nation's reserve lands, and the Land Code does not require the approval of the Government of Canada.²

A Land Code is drafted by each First Nation under the Framework Agreement and provides for the following:

- Identifies the reserve lands to be managed by the First Nation;
- Sets out the general rules and procedures for the use and occupation of these lands by First Nation members;
- Provides financial accountability for revenues from the lands (except oil and gas revenues, which remain under federal law);
- Outlines the procedures for drafting and publishing First Nation laws;
- Lists conflict of interest rules;
- Provides a community process to develop rules and procedures applicable to land upon the breakdown of a marriage;
- Identifies a dispute resolution process;
- Sets out procedures by which the First Nation can grant interests in its reserve land or acquire lands for community purposes;
- Allows the delegation of land management responsibilities; and
- Sets out the procedure for amending the Land Code.

A fully developed Land Code that is ratified by the community provides a legislative framework that will guide the First Nation in governing and managing its reserve lands.

COMMUNITY RATIFICATION PROCESS

The Land Code and the Individual Agreement must be ratified by the members of the First Nation in order to assume control over their lands. All members of the First Nation who are at least 18 years of age, whether living on- or off-reserve, have the right to vote on the Land Code and the Individual Agreement.



The procedure for the community ratification process is developed by the community in accordance with the Framework Agreement. An independent person jointly appointed by the First Nation and Canada, called a Verifier, will confirm that the community ratification process and Land Code are consistent with the Framework Agreement.

INDIVIDUAL AGREEMENT

An Individual Agreement is negotiated between each First Nation community and the Minister of Indian and Northern Affairs Canada to set out the following:

- The reserve lands to be managed by the First Nation;
- The specifics of the transfer of the administration of land from Canada to the First Nation; and
- The operational funding to be provided by Canada to the First Nation for land management.

If the community ratifies the Land Code and Individual Agreement, control over First Nation land and resources is transferred from under the *Indian Act* to the First Nation's land laws and administration.

Reserve lands under the *Indian Act* are held by Her Majesty and set apart for the use and benefit of a First Nation, and this will not change under the Framework Agreement. These lands remain a federal responsibility under section 91(24) of the *Constitution Act*, 1867.

LEGAL STATUS AND POWERS OF FIRST NATIONS

The Framework Agreement provides the signatory First Nations with the legal status and law-making powers needed to manage and govern their lands and resources.

A First Nation managing its lands under a Land Code will have the power to make laws with respect to the development, conservation, protection, management, use and possession of its land. The Land Code does not authorize laws relating to the taxation of real or personal property.

THIRD-PARTY INTERESTS

Interests in First Nation land held by third parties, or by Canada, will continue according to the terms and conditions under a Land Code. No new interests or licences may be acquired or granted except in accordance with the Land Code.

ACCOUNTABILITY

As part of the Land Code, accountability measures will be enacted for a First Nation to report to its members and to be accountable for its management of lands, resources and revenues. These provisions will ensure that governance of the reserve lands will be responsible and that the First Nation's chief and council remain accountable to all members of the community.

CHANGES IN MATRIMONIAL LAW

Under the Framework Agreement, First Nations are able to address the rights of spouses to interests in First Nation land if their marriage breaks down. This is not currently addressed under the *Indian Act*, which opens the possibility of a non-member spouse losing all rights to land in the event of a divorce.

PROTECTION OF FIRST NATION LAND

Preserving the quantity and quality of existing First Nation lands is a fundamental principle of the Framework Agreement. Some aspects of this principle are summarized below.

Taxation and Seizure

The exemption of reserve lands and personal property situated on reserve to taxation and seizure will continue under the relevant provisions of the *Indian Act*.

Environmental Protection

A First Nation has the power to make environmental laws relating to conservation and protection of reserve lands. Environmental Management Agreements will be negotiated between the Minister of the Environment and each First Nation under the Framework Agreement.

Voluntary Exchange of Lands

A First Nation may decide that it is advantageous to exchange some of its First Nation land for other lands. Provision can be made in its Land Code for a procedure to negotiate and approve exchanges of land with other parties. It is important to note that an exchange of land cannot occur without the consent of the First Nation community.



Expropriation

Under the Framework Agreement, there can be no expropriation of First Nation land by a provincial or municipal government or agency.

The Government of Canada's power to expropriate First Nation reserve land is restricted. This power can be exercised only by order of the Governor in Council and only when the expropriation is justified and necessary for a federal public purpose that serves the national interest. Compensation must include provision for equivalent lands so that the reserve land base of the First Nation is not diminished.

Enforcement

Under the FNLMA, First Nations have the authority to enforce their land and environmental laws and may enter into further agreements with other jurisdictions to assist in such enforcement. A First Nation can appoint its own justice of the peace to try offences created under a Land Code or a First Nation law and its own prosecutor. First Nation laws may make provisions for search and seizure, fines, imprisonment, restitution, community service or alternate means for achieving compliance with its laws.

CONTINUING FEDERAL RESPONSIBILITY

Canada will remain liable for and will indemnify a First Nation for losses suffered as a result of any act or omission by Canada or its agents, that occurred before the Land Code comes into effect. After that date, the First Nation is responsible for its own acts or omissions in managing its lands.

DISPUTE RESOLUTION

The First Nation will establish its own dispute resolution processes in relation to its lands and resources. These can include mediation, neutral evaluation and arbitration. In the case of a disagreement between a First Nation and the Government of Canada on the meaning or implementation of the Framework Agreement, there are provisions in the Agreement to resolve the dispute outside the courts.

LANDS ADVISORY BOARD

The signatory First Nations to the Framework Agreement established a Lands Advisory Board (LAB) to assist them in implementing their own land management regimes. LAB members now include the chiefs of those First Nations that have ratified the Framework Agreement. In turn, LAB established a First Nations Land Management Resource Centre to provide technical assistance to First Nations under the Framework Agreement.

The Resource Centre is a national First Nations organization that has been mandated to support First Nation control of reserve land and resource management. As part of its role, the Resource Centre has undertaken the development of greater planning capacity and systems for effective community-based planning and First Nation land management.

PARTICIPATING FIRST NATIONS

When the Framework Agreement was ratified in 1999, 14 First Nations were signatory to the Framework Agreement. In March 2003, this initiative was opened up to other First Nations interested in developing a Land Code and assuming control over the management of their reserve lands. First Nations are expected to take approximately two years to complete the developmental process, allowing for a "rolling 30" First Nations to participate in the process.³

After signing the Framework Agreement, each First Nation must work towards the development of a Land Code to govern its lands. A list of those First Nations that have signed on to the Framework Agreement and have ratified or are developing a Land Code is available as Annex A.



B. Implications for First Nations

The Framework Agreement and the FNLMA recognize the inherent authority of signatory First Nations to develop and implement laws in order to make decisions with respect to their own lands. The Framework Agreement and FNLMA give First Nations increased autonomy in land management and recognizes their rights and capacity to govern and manage their own lands.

NEW LAND MANAGEMENT REGIME

The FNLMA allows for a new land management regime that improves some of the limitations inherent in the existing land management provisions of the *Indian Act*. In particular, the Framework Agreement

1. Provides First Nations with a wide range of land-related law-making powers and ensures proper enforcement mechanisms are available;
2. Allows land-related decisions to be made at the community level without the involvement of the Minister of Indian Affairs;
3. Allows First Nations to receive, retain and manage revenue money flowing from reserve land transactions;
4. Withdraws the opportunity for provincial or municipal governments to expropriate reserve land through the expropriation provisions in S. 35 of the *Indian Act*;
5. Limits federal expropriation powers;
6. Requires accountability to the membership and conflict of interest rules;
7. Provides for alternative dispute resolution mechanisms;
8. Enables First Nations to develop environmental assessment and protection plans; and
9. Provides for rules and procedures relating to matrimonial real property.

Under the Framework Agreement, the legal status and capacity of First Nations to assume responsibility for managing their reserve lands is clearly defined and Aboriginal and treaty rights are protected. The Framework Agreement is not a treaty and involves no future loss or reduction of reserve lands.

COMMUNITY PARTICIPATION

First Nations governance structures are often community-oriented, and the participation of all community members in decision-making processes is an integral component of First Nations culture. As such, a community ratification process must occur before a Land Code can be adopted and implemented.

Community participation and ratification is also required for various provisions in the Land Code. For example, local dispute resolution and matrimonial property laws are to be developed by the community, in consultation with the First Nations Council.

DEVELOPMENTAL FUNDING

As developmental First Nation communities enter the land management process, they receive funds to develop Land Codes and community approval processes for their Land Codes and to negotiate the Individual Agreements. This funding is provided to First Nations through the First Nations Land Management Resource Centre, in accordance with the Framework Agreement.

Operational First Nations receive funding to manage their lands and resources and to develop their internal capacity.

ESTABLISHING RELATIONSHIPS

The land management provisions in the Framework Agreement give First Nations the authority to develop governance structures and administration with respect to control over their reserve land. First Nations with a Land Code will have the means and opportunity to establish professional relationships with other orders of government, private sector corporations and other professional organizations with respect to land management. For instance, at the request of signatory First Nations, the First Nations Land Management Resource Centre signed a Memorandum of Understanding with the Canadian Institute of Planners in order to work together to build capacity in First Nation communities through effective land use planning.

The Framework Agreement has brought First Nations to work in partnership with the Federation of Canadian Municipalities in developing government-to-government partnerships and reciprocal protocols with municipal governments across the country. By pooling resources and working together on joint ventures in economic development, both First Nations and municipal governments promote economic prosperity in their communities. For more information on these types of partnerships, please see FCM's *Partnerships in Practice* report.



C. Implications for Municipal Governments

As Land Codes are developed under the Framework Agreement, municipal governments are faced with many challenges, including the coordination of land use planning processes, jurisdictional clarity and by-law compatibility. There are also numerous opportunities for municipal governments in partnering with an adjacent on-reserve community on initiatives that promote sustainable use of land within the municipality. Government-to-government cooperation leads to improved capacity and economic prosperity for the entire community.

BY-LAW COMPATIBILITY

Through the development of a Land Code, First Nations have the authority to govern their own lands through community-based law-making processes. First Nations can continue to pass non-land-related by-laws under the *Indian Act*.

First Nations under the Framework Agreement are not required to make laws that are compatible with neighbouring local governments; however, both parties can benefit from a cooperative approach. Compatibility does not imply that the by-laws of a local government and a First Nation must be the same. By-laws and related laws are compatible if they have goals and objectives that are similar and are acceptable to both the municipal government and the First Nation.

Where a reserve is located near or within an urban area, the proximity and density of development increases the potential for conflict if the First Nation and municipal by-laws are significantly different. Ensuring compatible legal regimes and enforcement practices often leads to greater economic development successes when the two communities work together on various planning objectives.

JURISDICTIONAL CLARITY

Through the development of new governance structures and land use planning processes under the Framework Agreement, there may be confusion about the roles and responsibilities of First Nations and municipal governments with respect to land management within the community.

Under the Framework Agreement and FNLMA, there is no change to the title of reserve lands. For greater certainty, they will continue to be protected under section 91.24 of the Constitution as lands reserved for Indians. Under the Framework Agreement, First Nations now have complete jurisdiction over the governance and management of their lands

A First Nation is governed by an elected chief and council and in many respects resembles a municipal

government structure. First Nations may develop laws, manage social programs, promote economic development and impose taxes on interests in reserve lands.

An effective government-to-government relationship between a First Nation and a neighbouring municipality will help clarify areas of jurisdiction and promote a cooperative approach to land management. For example, the Village of Anmore in British Columbia has produced an “Inventory of Interests” document to clarify land management and jurisdictional issues in negotiations with the Tsleil-Waututh First Nation.

LAND USE PLANNING

Through the development of a Land Code, First Nations can develop their own laws, land use plans and governance structures. When land is approved for reserve status, all municipal land use planning restrictions pertaining to that parcel of land will no longer apply. As such, municipal governments may be faced with incompatible land use processes with an adjacent on-reserve community, for example, a residential development in close proximity to an industrial waste plant or factory.

Land is a source of cultural and spiritual value as well as the key to economic self-sufficiency, making control over land use important to both First Nations and local governments. The joint development of municipal land use plans with neighbouring First Nations will help ensure compatibility for adjacent land use planning and promote the sustainable use of land and resources.

ECONOMIC DEVELOPMENT

Increasing economic development and encouraging business investment in the community is a top priority for many municipal councils across Canada. When lands within a municipality become reserve, a local government may view the acquisition as a loss of development opportunities or property tax revenues for the community.

First Nations that develop their own Land Codes are also likely to seek further development and increasing economic activity on their lands. In this sense, municipal governments can still achieve their economic development objectives through partnership with an on-reserve community.

Working together on economic development provides opportunities for mutually beneficial partnerships, joint capacity building, employment opportunities and community economic sustainability. By pooling assets and sharing resources, First Nations and municipal governments can develop partnerships that lead to improved capacity and economic prosperity for the entire community.

ANNEX A

FIRST NATIONS WITH RATIFIED OR DEVELOPMENTAL LAND CODES

PROVINCE	FIRST NATION	LAND CODE STATUS
Alberta	Siksika	Developmental
British Columbia	Beecher Bay	Ratified
	Kitselas	Developmental
	Leq'a:mel	Developmental
	Lheidli T'enneh	Ratified
	Musqueam	Developmental
	N'Quatqua	Developmental
	Osoyoos	Developmental
	Skeetchestn	Developmental
	Skway	Developmental
	Sliammon	Ratified
	Songhees	Developmental
	Squamish	Developmental
	T'Sou-ke	Developmental
	Ts'kw'aylaxw (Pavilion)	Ratified
	Tsawout	Developmental
Tsawwassen	Ratified	
Tsekani (McLeod Lake)	Ratified	
Manitoba	Opaskwayak Cree	Ratified
	Swan Lake	Developmental
New Brunswick	Kingsclear	Developmental
	Saint Mary's	Developmental
Ontario	Chippewas of Georgina Island	Ratified
	Chippewas of Kettle and Stoney	Developmental
	Dokis	Developmental
	Dokis	Developmental
	Garden River	Developmental
	Mississauga	Developmental
	Mississaugas of Scugog Island	Ratified
	Mnjikaning	Developmental
	Moose Deer Point	Developmental
	Nipissing	Ratified
Whitefish Lake	Developmental	
Saskatchewan	Cowessess	Developmental
	Flying Dust	Developmental
	Kinistin	Ratified
	Muskoday	Ratified
	Whitecap Dakota Sioux	Ratified

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BUILDING CAPACITY THROUGH COMMUNICATION:

BOOK 3

Municipal-Aboriginal Partnerships in Land Management



ADDITIONS TO RESERVE POLICY



Indian Taxation Advisory Board



National Aboriginal Land Managers Association



Lands Advisory Board



Indian and Northern Affairs Canada

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ADDITIONS TO RESERVE POLICY

A. Overview

Land management in local communities has also been shaped by the federal Additions to Reserve (ATR) policy, developed by Indian and Northern Affairs Canada (INAC) in 1987, to govern the expansion of existing reserve lands. Under the ATR policy, an ATR is a proposal for the granting of reserve status to land that a First Nation has acquired or is entitled to receive through treaty settlement or land claim, legal purchase, court order or other process.*

The policy was later reviewed in partnership with the Assembly of First Nations, and a clarified version of the policy was released in 2001.

Policy Categories

Under the ATR policy, an ATR is a proposal for the granting of reserve status to land under one of the following categories: legal obligation, community additions or new reserve/other.

A fully developed Land Code that is ratified by the community provides the legislative framework that will guide the First Nation in governing and managing its reserve lands.

1. Legal Obligation

The category for legal obligation involves both additions to existing reserves and creation of new reserves resulting from a treaty or claim settlement agreement, a court order or a legal reversion.

1.1 Treaty or claim settlement agreement

Treaty Land Entitlement (TLE) and Specific Claim settlement agreements having land components provide for the purchase of land on a “willing seller, willing buyer” basis. Land selection areas may be identified in some agreements; however, the Saskatchewan TLE Framework Agreement allows selections anywhere in the province (and, in some cases, outside the province) while Manitoba’s TLE selections are expected to be within the treaty or traditional area of the entitlement First Nation. INAC’s ATR policy applies in all cases.

TLE arises in situations where a First Nation did not receive the full amount of land that it was entitled to under a treaty. Specific claims arise from the alleged non-fulfillment of Indian treaties or the improper administration of lands or other assets under the *Indian Act* and its regulations. Provincial governments are involved in TLE settlements with the federal government and entitlement First Nations. Specific claim settlements are between the federal government and individual First Nations. TLE and Specific Claim settlements account for the majority of ATRs.

1.2 Court Order

Although uncommon, INAC may have to process an ATR proposal under the direction of a court order. INAC regional offices must consult with the Department of Justice on how to implement a court order and may be directed to grant reserve status to land that is the subject of a legal dispute.

1.3 Legal Reversion

A legal reversion involves the return of land to Canada when it is no longer required for the original purpose for which it was taken. It is important to note that legal reversions do not specify returning the land to reserve status, but simply that the land will be returned to Canada. To return the land to reserve status, an ATR proposal must be prepared and all requirements of the ATR policy met. Land reversions usually involve railways and roads that are no longer being used for their original purposes.

2. Community Additions

This category involves additions to existing reserves resulting from community growth, geographic enhancements, or the return of unsold surrendered land.

2.1 Normal Community Growth

A community growth proposal to expand an existing reserve land base usually occurs when there is not enough land available to satisfy an on-reserve community’s short- or long-term requirements. A proposal under this category for community growth usually involves land for housing, schools, recreational areas and community economic projects.

* If a First Nation is interested in applying for an addition to reserve, it is recommended that it obtain a copy of the federal government’s ATR policy as part of the Land Management Manual. Copies are available from INAC offices in each region of Canada and on its website.

2.2 Geographic Enhancements

Geographic enhancements involve ATR proposals that are small adjustments to roads, right-of-ways or geographic in-filling, where the addition would enhance the physical integrity of the reserve. The most common ATRs in this category involve road right-of-way corrections.

2.3 Return of Unsold Surrendered Land

This category involves ATR proposals for returning unsold surrendered lands to reserve status as an addition to an existing reserve. If the lands are to be set aside as a new reserve, the proposal would be considered under the new reserves/other category.

3. New Reserves / Other

This category includes the creation of new reserves resulting from the following: a social or commercial need that cannot be addressed under a form of land holding other than reserve land; provincial land offerings or the return of unsold surrendered land; or a requirement for landless First Nations communities or relocation of a community. It also includes the creation of new reserves or additions to an existing reserve for proposals that are beyond the commitment set out in a legal agreement, and community additions with unresolved questions of community need.

3.1 Social or Commercial Need

This category includes all ATR proposals for the creation of new reserves for social or commercial purposes, such as residential or institutional expansion. The ATR policy requires to a First Nation to demonstrate that the benefits of the proposal cannot be achieved through other forms of land tenure.

3.2 Provincial Land Offerings or Unsold Surrendered Land

This category involves the establishment of new reserves resulting from provincial land offerings or unsold surrendered land that is not within the service area of an existing reserve. The benefits of the proposal are weighed against the federal cost implications and other site-specific criteria.

3.3 Landless First Nations or Relocation of Communities

This category includes all ATR proposals for the establishment of new reserves for landless First Nations or to relocate existing communities outside existing reserve boundaries. For instance, a new reserve can be created based on emergency situations (e.g., a natural disaster) that necessitate the relocation of an on-reserve community from its existing reserve site.

3.4 Legal Obligation (Beyond Commitment in Agreement)

This category addresses those ATR proposals that involve legal obligations that go beyond the commitment of Canada in the relevant legal agreement (in terms of funding, land selection, etc.).

3.5 Unresolved Questions of Community Need

This category includes proposals for community additions with unresolved questions of community need, funding sources, etc.

Treaty Land Entitlement Framework Agreements

TLE is the process through which the federal and provincial governments fulfill treaty commitments of land made to First Nations. Both Saskatchewan and Manitoba have signed and implemented framework agreements between the Government of Canada, the provincial government and entitlement First Nations.

Both the Saskatchewan and Manitoba TLE Framework Agreements were signed in recognition of treaty obligations to entitlement First Nations. Further, the agreements represent a spirit of cooperation and recognition that municipal interests must be addressed and municipal service agreements must be negotiated to achieve an amicable relationship with adjacent communities.

SASKATCHEWAN

In Saskatchewan, almost all ATRs are the result of TLE and Specific Claims settlements. The *Saskatchewan Treaty Land Entitlement Framework Agreement*, signed by 26 First Nations in 1992, sets out the manner in which TLE lands are to be set apart as reserve in Saskatchewan. Under the terms of the agreement, entitlement First Nations will receive approximately \$516 million to buy up to 1.95 million acres of land to add to their reserves.⁴

The TLE agreement specifies that land transfers must occur on a "willing seller, willing buyer" basis on private, federal or provincial/territorial Crown lands. In order to facilitate the process and to ensure that various interests are satisfied, the Government of Saskatchewan initiated mediation assistance to entitlement First Nations in 1995. The provincial government is hopeful that this assistance will contribute to the resolution of issues and the establishment of harmonious relations between First Nations and their neighbouring communities.

Once a First Nation has purchased private land, it is held in "fee simple" until it is transferred to Canada and set apart as reserve through an order from the Governor in Council or the Minister of INAC. During this period, the land is subject to all provincial laws and municipal by-laws, including taxation.

When the Saskatchewan Framework Agreement was negotiated, the parties recognized that the vast majority of land to be purchased by entitlement First Nations was

likely to be in rural municipalities. Reserve lands are not subject to taxation by local governments or local school divisions, and it was agreed that two separate tax loss compensation funds should be established to help offset the anticipated loss of tax revenues.

RURAL MUNICIPAL COMPENSATION FUND

Under the Rural Municipal Compensation Fund, the Government of Canada and the Government of Saskatchewan are required to pay (within 90 days of the date upon which taxable land within a rural municipality has been set apart as reserve) to the fund a sum that is equivalent to 90 per cent of 25 times the municipal taxes that had been levied on the land in the previous calendar year.⁵

The rate of compensation of 25 times the annual municipal property taxes was reached through negotiation between the Saskatchewan Association of Rural Municipalities (SARM), the Government of Canada and the Government of Saskatchewan. The maximum amount payable to the fund is \$25 million. Administration of the fund is managed by SARM, which also assists the federal and provincial governments in calculating the tax loss on a parcel of land.

The purpose of this fund is to ensure that rural municipalities will be in a position to continue to maintain roads within their municipality, despite the loss of tax revenues related to the property that has become a reserve.

RURAL SCHOOL DIVISION COMPENSATION FUND

Under the Rural School Division Compensation Fund, the Government of Canada and the Government of Saskatchewan will pay (again, within 90 days of the date upon which taxable land within a rural municipality has been set apart as reserve) to the School Division Fund a sum that is equivalent to 70 percent of 25 times the school taxes that had been levied on the land in the previous calendar year.⁶

Similar to the Rural Municipal Compensation Fund, the maximum obligation of the two governments to the School Division Fund is \$25 Million (Canada 70 per cent, Saskatchewan 30 per cent).⁷ The fund is administered by the Government of Saskatchewan.

AGREEMENTS PRIOR TO RESERVE CREATION

The Saskatchewan Framework Agreement provides that before Canada establishes an entitlement reserve, an agreement is *required* between the First Nation and the affected municipality regarding tax loss compensation, municipal service provision, any payments in lieu to the municipality, by-law application and enforcement and an appropriate dispute resolution mechanism for resolving matters of mutual concern.

The Saskatchewan Framework Agreement also provides that, should an agreement or agreements not be concluded within five months following a request by the entitlement First Nation, Canada may set apart land as reserve where it has been determined that the First Nation is prepared to enter into a reasonable and adequate agreement with the municipality, but the other party has been unwilling to respond to the request reasonably and in good faith.

MANITOBA

Between 1871 and 1910, Canada entered into various treaties with First Nations in Manitoba to set aside a certain amount of land as reserve for First Nations.⁸ For varying reasons, not all First Nations received their full amount of land.

The *Manitoba Treaty Land Entitlement Framework Agreement*, established by the Government of Canada, the Government of Manitoba and 20 First Nations in 1997, provides for the fulfillment of this outstanding treaty obligation. The selected land, upon meeting provincial and federal eligibility, will be converted to reserve status.

Under the Manitoba Framework Agreement, First Nations can select Crown land or, in a case where there is no access to Crown land, they can acquire or purchase private land. The selected lands can occur in rural or urban municipalities or in unorganized territory.

MUNICIPAL TAX LOSS COMPENSATION

Eligible municipalities whose tax revenues have been impacted by the creation of new reserves under the Manitoba Framework Agreement can apply to the provincial government for funding support.

Municipal tax loss compensation is often paid to those municipal governments demonstrating a net loss in municipal tax revenues as a result of conversion of land to reserve status in an amount usually equivalent to five times the annual net tax loss at the time of conversion.⁹

Municipal tax loss compensation can be offered to municipal governments that meet the qualifications as outlined in the Manitoba Framework Agreement. Upon approval by the Province, a one-time payment, usually equivalent to five times the municipal net tax loss, is forwarded to the municipality.

REFERENCE MANUAL FOR MUNICIPAL SERVICES AND DEVELOPMENT AGREEMENTS

As part of the Manitoba Framework Agreement, the provincial government published a Reference Manual for Municipal Services and Development Agreements (MSDAs) that identifies the major issues a municipality may wish to address in a service agreement pursuant to the Manitoba Framework Agreement.

B. Additions to Reserve (ATR) Process

The procedures of the ATR process may vary slightly depending on whether the type of land involved is provincial Crown land, federal land under control of the federal government or land that is privately owned. Annex A illustrates the main procedural tasks for approving an ATR proposal; the main components are listed below.

It is recommended that the interested First Nation and the INAC regional officer meet as soon as possible in the ATR process to discuss and prepare an action plan. They should also consult with each other regularly throughout the process.

Requisite Information

When examining the possibility of submitting an ATR proposal, a First Nation must compile information concerning the parcel of land. A significant amount of important information is required, and the accuracy of this information may influence whether the ATR proposal is approved or rejected.

The First Nation must provide the following information, with appropriate documentation, to INAC.

- Policy category under which it is applying for reserve status for the land (as outlined previously)
- Current and proposed land use and whether the land is in a rural or urban setting
- Legal description of the land, including the registered owner(s) of the land
- Whether mineral rights are to be included and the registered owner(s)
- Any offer(s) of purchase made
- Any agreements in place that apply to the ATR proposal (e.g., a specific claim or treaty entitlement agreement)
- Any third-party interests (e.g., leases, permits, rights of way) affecting the land and agreements required or in place
- Identification of any costs and anticipated source(s) of funding
- Any available environmental information
- Any expected contentious issues
- Initial communications plan to inform the First Nation community of the proposal
- Results of any communications and negotiations with the local community, municipal and provincial governments

Further information may be required, depending on the issues specific to each ATR proposal.

Band Council Resolution

When all the required information has been gathered, the First Nation council must begin the process by formally submitting a request, usually in the form of a Band Council Resolution (BCR) to INAC. The submission of the BCR with the required documentation initiates the ATR process.

Pre-Approval Procedures

Upon receipt of the formal ATR request, INAC will consult with the First Nation to discuss and establish roles and responsibilities for carrying out the remaining steps of the process. In consultation with INAC, the First Nation will ensure the following steps are completed.

- Development of a communications strategy to inform the community at large of the proposal (if the proposal is contentious or urban)**
- Environmental assessment to identify any concerns and remediation required
- Land appraisal to determine fair market value, if required
- Initiation of communication with the province and municipality, if not yet initiated
- Legal survey (if the land has not been surveyed or is not shown on a plan suitable for deposit in the Canada Lands Survey Records)

CONSULTATION

In addition to the considerations outlined above, the ATR policy requires that consultation take place to address the concerns of the relevant provincial government and affected municipal governments.

The ATR policy provides that formal notice of a proposed ATR must be communicated to municipal governments within whose boundaries the proposed land addition is located. It is recommended that consultation take place as early as possible in the ATR process. The most common issues identified by municipal governments include municipal tax loss compensation, municipal service provision and by-law compatibility.

Written confirmation from the municipal government and provincial government stating that consultation has occurred must be submitted to INAC. If the municipal or provincial governments do not respond to the First Nation within 90 days, the proposal may proceed if the First Nation provides documentation demonstrating that reasonable attempts have been made to consult with them.

** Further information on developing an ATR communications plan is available at www.ainc-inac.gc.ca/pr/pub/atr/atr_o2o5o6_e.pdf

THIRD-PARTY INTERESTS

Under the ATR policy, a First Nation is also responsible for addressing third-party interests in the land proposed for reserve status. These interests may include parties who hold legal interests, rights, permits or leases on the land, other First Nations, the public, private landowners, occupants and owners of land adjacent to the proposed addition, and owners of sub-surface mineral rights or forestry rights who will require subsequent and continuing access across the land, among others.

In cooperation with the INAC regional office, the First Nation reviews all third-party interests to ensure that any concerns relating to the proposed reserve land have been addressed and resolved as appropriate. The First Nation should also work closely with legal counsel to ensure clear title to the land as far as possible.

Regional Additions to Reserve Committees

Regional offices of INAC across Canada have an ATR committee, which may include representatives from Lands and Trust Services (LTS), Corporate Services, Finance/Capital and other programs, as required. This committee analyzes the ATR proposal to ensure that the requirements of the ATR policy are satisfied.

If all requirements have been satisfied, the committee will then forward a recommendation to the Regional Director General (RDG) or other delegated authority for approval. If the proposal is contentious or urban, the recommendation will go to the Deputy Minister of INAC.

Approval Process

APPROVAL-IN-PRINCIPLE

After an ATR proposal has been reviewed by either the RDG or Deputy Minister, it will be rejected or approved-in-principle. The approval-in-principle may be subject to conditions (including environmental concerns) that must be met before the proposal can receive final approval.

TITLE TO LAND

The purchase of the land must be based on a “willing buyer, willing seller” basis. Administration and control of the land must be transferred to INAC, who will work with the appropriate authority or land owners to ensure the proper title search and transfer documents are completed. This ensures that there are no outstanding issues related to ownership and control of the parcel of land.

HEADQUARTERS REVIEW

The INAC regional office will prepare a submission package for review by headquarters. The Lands and Trust Services branch of INAC headquarters reviews the package, and, if all requirements have been met, the submission is forwarded to the Minister of INAC for final approval.

FINAL APPROVAL

The INAC regional office will prepare a submission requesting that the lands be set apart as reserve through either an order-in-council from the Governor General in Council according to Royal Prerogative or an order from the Minister of INAC according to the claims implementation acts (in those provinces that have such an act).

Once approval has been obtained, the order will be registered in the Indian Lands Registry at INAC. The First Nation and any affected third parties will be notified of the land being set apart as reserve.

Length of Additions to Reserve Process

The length of the ATR process will vary depending on a variety of factors, including the environmental condition of the land involved (environmental concerns), whether the land acquisition is contentious or other procedural delays. As with any systematic procedure, an ATR proposal can experience delays at any step in the process.

Although the ATR process involves the implementation of a national policy, each regional office of INAC will have slightly different procedures and requirements for ATR proposals.

For instance, in Ontario, ATRs are implemented by a group within the Lands and Trust Services Branch, whereas, in British Columbia, implementation of the ATR policy is the responsibility of area managers, both in the Funding Services and Lands and Trust Services branches.

In each region of Canada, the INAC regional office will specify the required procedures and steps to follow during the ATR process.

Geographic Characteristics

The ATR policy applies to all creation of or additions to existing reserves within every region of Canada. However, it is important to note the different geographic characteristics of rural, urban and northern reserve communities.

RURAL AND URBAN COMMUNITIES

First Nation communities across Canada exist in both rural and urban settings. A rural First Nation community usually has a small population and low-density development, and there is often individual lot servicing for water and wastewater infrastructure.¹⁹ For example, Duncan's First Nation in Alberta is a small community in a rural setting with relatively sparse development.

First Nations can either be an urban community by themselves or they can be considered urban because they are integrated within a surrounding urban environment. For example, Tsleil-Waututh in British Columbia is surrounded by increasing urban development in the City of Vancouver.

NORTHERN COMMUNITIES

Except for the Hay River Dene Reserve, Northern Aboriginal communities are not classified as reserves under the Indian Act. Reserves operate under federal statutes, whereas Northern communities operate under the various statutes of the Northwest Territories, Yukon and Nunavut.²⁰

Northern communities operate similarly to municipalities, which have their land use planning, infrastructure, education, health and housing needs met as part of the normal operations of local and territorial governments.

C. Implications for First Nations

The ATR policy provides the framework under which First Nations can expand an existing reserve or acquire land for the creation of a new reserve. The ATR process is not a new concept; the number of ATRs is increasing steadily as more First Nations are now able to exercise this option for land use.

Community Growth

For a First Nation experiencing community growth, applying for an ATR is a way to set lands apart as reserve that have been acquired for additional housing or local businesses. For the Mount Currie First Nation in British Columbia, a strong need to upgrade and expand housing conditions led to the creation of a new reserve. Adding to an existing reserve ensures that the community remains together and that services can be sustained on the new land at minimal cost.

Urban reserves also play an important role in community growth for First Nations. Within an urban setting, First Nations have access to greater economic, educational, social and employment opportunities than in rural areas. In this way, an urban reserve can provide benefits to First Nation members living both on-and off-reserve within a municipality.

Economic Development

Economic development opportunities are a priority for many First Nation communities. Development on-reserve generates additional revenues, provides employment opportunities and encourages further investment in a growing community. For many First Nations, self-governance and self-sufficiency are important goals for the on-reserve community, and economic development projects are a part of these objectives.

Many land claim settlements involve financial compensation, and First Nations may wish to use these funds to purchase land for economic development purposes. The creation or expansion of new or existing businesses on reserve land is beneficial for the entire community, providing additional employment opportunities, enhanced services and improved economic conditions.

The ATR process can be very expensive and time-consuming for First Nations, but use of reserve lands for economic development purposes may recover some of these costs and invite further development and investment in the community from other organizations.

Natural Resources

The expansion and creation of reserve lands provides an opportunity for First Nations to preserve traditional methods of land use, natural resource management and environmental conservation practices.

Land has significant historical value for First Nations, and acquiring land is important, not only for the economic viability of the on-reserve community, but also for the management and preservation of culturally significant land.

The expansion of on-reserve resource-based practices, such as logging, trapping and fishing may also be an important revenue source for the community.

For example, the Athabasca Chipewyan First Nation in Alberta derives revenue from commercial fishing activity on-reserve, and an expansion of their lands might provide increased fishing revenues for the community.

D. Implications for Municipal Governments

When lands within or adjacent to a municipality become reserve, municipal governments are faced with many issues, including a loss of municipal property tax revenues, service provision and by-law compatibility.

Through effective negotiation and open communication, First Nations and municipal governments can cooperate to address issues of municipal tax loss compensation, develop service delivery agreements and ensure by-law compatibility.

Municipal Tax Loss Compensation

Under Canada's Constitution, reserve lands are within the federal government's jurisdiction and are excluded from the municipal tax base.

A municipal government may face a significant loss of property tax revenue as a result of a land claim or treaty settlement agreement that involves land within or adjacent to the municipality. Once land has been approved for reserve status, a municipal government can no longer draw property tax revenue from that parcel of land.

The ATR policy requires that a First Nation negotiate directly with the municipal government to determine reasonable adjustments to tax loss. The purpose of compensation is to allow a municipal government to adjust to the reduction in its tax base.¹² Municipal tax loss compensation is not an obligation, and some municipal governments involved in ATRs have chosen not to request compensation. Compensation is not often requested in those cases where lost revenue is addressed through a municipal service provision agreement or where there was no significant loss of revenue for the municipal government as a result of the reserve addition.

Under the ATR policy, First Nations are not required to compensate the municipal government for tax loss. The purpose of a tax loss compensation agreement is to provide a lump sum payment to the municipal government to help it adjust to the tax revenues lost on the land that becomes reserve.

Without a national standard rate for municipal tax loss compensation, the circumstances of each proposal are examined on a case-by-case basis. Numerous agreements reached between First Nations and municipal governments will address compensation through fee-for-service arrangements that offset any loss in municipal tax revenue.

If a proposal for compensation is submitted, the municipal government and First Nation must negotiate a reasonable rate of compensation. In determining a rate of reasonable compensation, there are various factors to consider, including the amount of taxes raised annually on the land, the amount of the tax loss in relation to the total amount of tax revenue, etc. More information on municipal tax loss compensation agreements is available in Annex B.

Service Provision

After a land purchase or acquisition, a First Nation may determine that it does not have the capacity to service the land because of the distance from the main on-reserve community or due to significant resource and cost implications. The First Nation may then decide that it would be most effective to purchase the required services from a neighbouring municipality.

After a request for services has been communicated to the municipality, the First Nation and local government officials will begin negotiations regarding the provision of services. The purpose of the negotiations is to establish a municipal service provision agreement that will outline the payment schedule, the services to be provided, access rights, etc. Please see Annex C for more information on the components of a service agreement.

A municipal service provision agreement clearly outlines the services to be provided to the new reserve land and how they will be paid for. Common services provided to reserve communities are hard services, such as road paving, snow clearing, fire and police services, water and wastewater treatment, garbage collection and disposal. Soft services may include the maintenance of parks, operation of recreational facilities and other special services.

Municipal services are usually paid by residents in the community through property taxes. Because municipal governments cannot levy taxes on reserve land, a reasonable payment schedule must be determined for services being provided to the First Nation community. The fee charged for the services will be determined through negotiation.

Economic Development

When lands within a municipality become reserve, the local government may view the acquisition as a loss of municipal revenue or development opportunities. However, the ATR may also be considered an opportunity for joint economic development ventures that will benefit the entire community.

A First Nation may purchase or acquire land for many purposes, including for industrial, commercial or residential development. Often, municipal services will need to be expanded to include the new development, and so an agreement or partnership on the new development is beneficial to both parties.

An economic development partnership that results from an addition to reserve can provide benefits for the entire community. For example, the Nipissing First Nation and Township of West Nipissing in Northern Ontario have partnered on a casino proposal that will improve the local economy, provide employment opportunities and increase tourism in the region.

ANNEX A

THE ATR PROCESS

Step 1: Requisite Information

- The First Nation gathers the requisite information and documentation

Step 2: Request for ATR

- The First Nation submits a formal request, usually through a band council resolution, that the land be added to the reserve or that a new reserve be created
- The requisite information and documentation is submitted to the INAC regional office with the request

Step 3: Regional Review

- An INAC regional officer will review the request and supporting documentation and will work with the First Nation to ensure all requirements of the ATR policy are met

Step 4: Regional Review

- When satisfied, the regional officer presents the proposal to the ATR committee for consideration
- The ATR committee makes a recommendation to the RDG or other delegated authority
- If urban or contentious, goes to Deputy Minister for review

Step 5: Approval-in-Principle

- Proposal either rejected or approved-in-principle
- Approval obtained may be subject to conditions (including environmental concerns) that must be satisfied before the proposal receives final approval

Step 6: Title to Land

- Administration and control of land transferred to INAC

Step 7: Approval Submission Package

- INAC Region prepares a submission to request final approval
- Submission package forwarded to INAC headquarters

Step 8: INAC Headquarters Review

- Submission is reviewed by Lands and Trust Services branch at headquarters
- If all requirements have been met, the submission is forwarded to the Minister of INAC

Step 9: Final Approval

- Final approval is given through an order-in-council from the Governor General in Council or through an order from the Minister of INAC
- The order-in-council is registered in the Indian Land Registry

ANNEX B

ELEMENTS OF MUNICIPAL TAX LOSS COMPENSATION AGREEMENTS

The suggested items for inclusion in municipal tax loss compensation agreements are outlined below.

General Terms

Effective Date	when the agreement will be dated for reference
Parties to Agreement	a description of the parties and authority to enter the agreement
Background Information	a description of circumstances that lead to agreement
Intent of Agreement	a statement of intent from both parties
Definition of Terms	include legal definitions wherever possible

Financial Compensation

Amount of Payment	final amount and explanation
Formula	description of how the amount of compensation was calculated
Payment Schedule	lump sum, or installments
Late Payments	penalty for late payment
Interest	amount of interest to be charged on late payments
Terminancy	a provision that dictates that the municipality will be compensated only once

Factors for Consideration

- the gross amount of taxes currently assessed on the property in question
- any funds a municipality is receiving in provincial equalization payments
- any savings a municipality may experience as a result of reduced delivery of services if the land receives reserve status
- any increased municipal revenues resulting from service agreements negotiated with the First Nation if the land receives reserve status
- the relative size of the property tax loss in relation to the total tax revenues of the municipality
- whether the municipal tax base was receding or expanding at the time of the proposed addition to reserve
- whether a phased-in approach or transition period is appropriate to avoid any undue financial strain on the municipality
- whether additional municipal services will be required on the new reserve land

Parties entering into a tax loss compensation agreement should seek legal advice with respect to the content and legalities of the agreement

ANNEX C

ELEMENTS OF MUNICIPAL SERVICE DELIVERY AGREEMENTS

The suggested items for inclusion in municipal service provision agreements are outlined below.

General Terms

Effective Date	when the agreement will be dated for reference <i>Can include effective date for service provision to any future land acquisitions</i>
Parties to Agreement	a description of the parties and authority to enter the agreement <i>Authority of parties to enter agreement</i>
Description of Land Background Information	area and legal description
Intent of Agreement	a description of circumstances that led to agreement
Definition of Terms	a statement of intent from both parties
Termination Date	include legal definitions wherever possible
Renewal of Agreement	when the agreement will no longer be effective
Term of Agreement	provision for renewal of the agreement (can be automatic)
Applicable Laws	agreement can be effective for a set period of time
Dispute Resolution	a description of any federal/provincial laws that apply
Breach of Agreement	a provision dictating how disputes will be resolved
Remedy	outlines penalties for a party that does not abide by the agreement immediate termination of agreement or an action agreed upon by both parties

Customary Provisions

Headings	for ease of reference
Notice	the process by which both parties can give appropriate notice to each other
Amendment	description of process for making changes to the agreement

Services

Description of Services	that municipality is willing and able to supply to First Nation and that First Nation is willing to purchase from municipality
Level of Services	description of standard level of services (e.g. ,similar to other municipal residents)
Charges for Services	outline of costs for providing services
Bill Payment	procedure for bill payment
Payment Penalties	description of consequences for late or non-payment
Remedy	action taken to recover costs
Access	by municipality on reserve land for emergency services
Repair	description of process for repairing, upgrading or integrating services provided to First Nation
Specific Services	agreement can include all services provided to municipal residents living off-reserve, but agreement can also provide only certain services

HARD SERVICES

- road paving and patching, snow clearing, etc.
- provision of drinking water
- operation of a sewage collection and treatment system
- maintenance of a storm water drainage system

- garbage collection and operation of a landfill
- fire
- traffic control
- building code enforcement
- policing
- public transit

SOFT SERVICES

- park maintenance
- planning and zoning
- recreational and leisure facilities

Both parties entering into a service agreement should seek legal advice with respect to the content and legalities of the agreement

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BUILDING CAPACITY THROUGH COMMUNICATION:

BOOK 4

Municipal-Aboriginal Partnerships in Land Management



ESTABLISHING MUNICIPAL-ABORIGINAL RELATIONSHIPS



Indian Taxation Advisory Board



National Aboriginal Land Managers Association



Lands Advisory Board



Indian and Northern Affairs Canada

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ESTABLISHING MUNICIPAL-ABORIGINAL RELATIONSHIPS

Defining the First Nations Interest

The *First Nations Land Management Act* (FNLMA) gives First Nations the opportunity to move beyond the limitations of the *Indian Act* towards management of their reserve lands. For First Nations, developing a Land Code is an important step on the path towards self-governance and self-sufficiency on reserve lands.

The Additions to Reserve (ATR) policy provides the framework under which First Nations are able to extend their reserve land for community expansion, increased economic development opportunity or as a result of a treaty obligation. Through the expansion of reserve lands, First Nations are able to develop plans to deal with future population needs and work towards improving the economic potential of their community.

The development of reserve lands for industrial, commercial, retail or residential purposes improves the local economy and brings prosperity to the entire community.

Environmental resource management and protection are also important considerations for First Nations seeking to obtain reserve status for their lands. Traditional approaches to land management and resource use can be preserved in an expanded First Nation community on-reserve.

Under the ATR policy, First Nations are required to consult with a municipality when the lands to become reserve are within municipal boundaries. In this sense, it is beneficial for both parties to identify their objectives and issues concerning the management of those lands. The negotiation of service agreements and partnership opportunities will be streamlined if open and regular communication defines the relationship between the two communities.

Defining the Municipal Government Interest

Municipal governments do not have a veto power over the designation of lands as reserve. However, municipal governments do need to be consulted about a proposed addition to reserve and to be given the opportunity to voice their concerns accordingly.

In many cases, local governments are concerned about the potential tax revenue loss on the new reserve land, as well as the possibility of providing municipal services to the community without adequate compensation. Municipal service provision agreements can often address both issues with a fee-for-service arrangement that is approximately equal to the tax revenue loss on the land.

Other issues for municipal governments include by-law compatibility, dispute resolution, environmental standards and access on reserve lands. To ensure that all relevant issues are addressed, it is beneficial for the municipality to clearly outline its interests and relevant issues in writing and during consultations with the neighbouring First Nation.

Many municipal government officials view ATRs in municipalities as a key opportunity for increased economic development and partnerships in building community capacity. By pooling assets, First Nations and municipal governments can engage in joint initiatives that improve the economic prosperity of their community.



The First Step: Initiating Contact

Establishing effective and mutually beneficial working relationships often involves significant time and effort from both parties. By initiating the first contact with the adjacent community, a First Nation or municipal government can take the first step in developing this relationship. There are numerous opportunities for approaching each other, including informal meetings, reciprocal site visits and community-to-community forums.

INFORMAL MEETINGS

In order to establish communication, organizing an informal meeting will bring both First Nation and municipal government representatives together to meet one another. The advantage of hosting a lunch or supper event is that much of the formality of a meeting is removed and representatives may feel more comfortable discussing their views. For example, the District of Maple Ridge in British Columbia has organized various informal events and dinner exchanges between their council and the Katzie First Nation.

Informal information sessions given by both municipal and First Nation officials will assist in the development of an understanding and respect for each other's respective governance structures, values and beliefs. Further, establishing a list with contact information for both First Nation and municipal government representatives is important for ensuring that communication will continue beyond the first event.

RECIPROCAL SITE VISITS

In many cases, the best way of understanding an issue or gaining knowledge of another culture is to visit the community itself. For a municipal government official, visiting a First Nation community may result in a greater awareness of cultural values, on-reserve development projects, local businesses and outstanding issues that the First Nation may be dealing with. Similarly, a First Nation official may benefit from a tour of municipal government buildings, infrastructure facilities and sites for future development.

COMMUNITY-TO-COMMUNITY FORUMS

Originally introduced in British Columbia through a partnership between the First Nations Summit and the Union of British Columbia Municipalities (UBCM) the community-to-community forum concept can be used in all provinces across Canada. The British Columbia experience in organizing these forums has been extremely positive. As the Chief Negotiator for the Ktunaxa Kinbasket Treaty Council has remarked, these sessions are "a great opportunity to build relationships...we are building some far more productive, constructive relationships than we ever have before."³

For both First Nation and municipal government officials, organizing a community-to-community forum is extremely useful for identifying mutual interests, goals and objectives, as well as for bringing members of both communities together to discuss important issues. The forum can be either formal or informal, but should be based on a spirit of cooperation, open communication and mutual respect.

The Second Step: Maintaining the Relationship

After an initial meeting or an informal meet-and-greet session has taken place, it is important that both parties continue to engage in regular and open communication. Through continued interaction and discussion of their issues, First Nations and municipal governments can work towards establishing mutually beneficial working relationships that may result in a joint venture or business partnership that will deliver benefits to both communities.

REGULAR MEETINGS/JOINT COMMITTEES

The best way to ensure that communication between First Nation and municipal government officials will continue is to schedule regular meetings between chief, mayor and their respective councils, as well as with appropriate staff members. This dialogue will be most effective if staff members from both the First Nation and municipality are included. This will ensure that the relationship continues beyond the political office term of a mayor, chief or council.



Joint committees are also an effective way of maintaining communication and consultation between First Nations and municipal governments. For instance, a joint planning committee comprising of both First Nation and municipal government representatives can help coordinate land use planning processes to ensure compatibility between the two communities. This approach has been successful for the City of Saskatoon and the Yellow Quill Band in Saskatchewan, who established a joint committee as a forum for voluntary cooperation and coordination.

PARTICIPATION IN LOCAL EVENTS/FESTIVALS

Local events or cultural festivals are an excellent opportunity for both communities to learn more about each other's cultures, values and traditions. First Nation and municipal government officials can partner to organize an annual or bi-annual event that brings both communities together in celebration. For instance, the City of Fredericton and Saint Mary's First Nation both participate in the annual Salmon Fiddlehead Festival in New Brunswick.

Other events, such as job fairs or trade shows, can be organized in partnership between the First Nation and municipality. By pooling resources and sharing business contacts, both parties can cooperate to put on a special event in their community.

PARTNERSHIP AGREEMENTS

To establish effective communications based on mutual respect and trust, municipal and First Nation officials may wish to sign a document to formalize their relationship.

Although a formal document is not always required, many First Nations and municipal governments will sign agreements to ensure that their respective goals and objectives are compatible.

COMMUNITY ACCORD / MEMORANDUM OF UNDERSTANDING

A Community Accord or Memorandum of Understanding between a First Nation and municipality will usually include the following: the broad principles that both parties will adhere to in cooperating with each other; a statement of mutual recognition for each other's jurisdiction; and a provision for dispute resolution. This document broadly defines the relationship, the rationale behind it and the process for maintaining the relationship (such as working groups and forums).

PROTOCOL AGREEMENT

A Protocol Agreement is often quite specific and will outline the agreed upon areas of cooperation, including economic development initiatives, heritage projects, etc. This agreement is usually created by First Nation and municipal officials after the Community Accord has been signed. It sets out which priority areas and concerns will be addressed through partnership. Further information on developing these types of agreements is available in Annex A.

The District of Powell River and the Sliammon First Nation in British Columbia have enjoyed an effective working relationship based on mutual respect and trust as a result of their signed Community Accord and Protocol Agreements. The documents are based on the premise that both Sliammon and the District of Powell River have distinct authorities and responsibilities toward their members, but that the interests of all persons living in the two communities are best served by working together in a spirit of cooperation.¹⁴



The Third Step: Developing Partnerships

Municipal-Aboriginal partnerships can be large-scale economic development projects, or may involve cooperation on an aspect of service delivery, such as snow removal. For smaller municipalities and First Nations, partnerships can involve pooling resources and sharing costs to achieve a development that may not have been possible if done by either party alone. For larger centres, partnerships between First Nations and municipal governments can result in more efficient service provision or greater economic development opportunities. In any municipality across Canada, the development of effective working partnerships between local governments and First Nations will provide benefits for the entire community.

As the result of an ATR, there are numerous partnership opportunities available to First Nations and municipal governments that will deliver benefits to the entire community. Below are some suggested opportunities for municipal-Aboriginal partnership; however, there are many other avenues through which First Nations and municipal governments can pursue joint projects.

ECONOMIC DEVELOPMENT

The advantages of an ATR for both a First Nation and a municipality are often linked to complementary economic development objectives. Through joint economic development ventures, First Nations and municipal governments can build their respective capacities and develop more cost-effective methods of providing services to their communities.

Increased economic activity often leads to growth in tourism and industrial development, as well as improvements in the social conditions both on- and off-reserve. A First Nation may gain better proximity to markets or transportation routes, achieve economies of scale, increase employment opportunities and gain better access to skilled labour and supporting infrastructure.

As economic development is a priority for many municipal councils, opportunities for increased economic activity and development within the municipality are compatible with their objectives.

In Ontario, the City of Thunder Bay and the Fort William First Nation formed a partnership to encourage economic development on-reserve through the development of a \$14 million industrial park project. The project is expected to generate \$100 million for the Fort William First Nation's economy over the next 20 years, as well as more than 250 jobs for First Nation and city residents and support for local businesses throughout the City of Thunder Bay.

LAND USE PLANNING

Cooperation in land use planning and ensuring compatibility on adjacent lands is of mutual interest for both First Nations and municipal governments. Compatible land use planning provides community members with the confidence that their property values will not decrease because of the actions of neighbouring land owners. Further, it helps to ensure that incompatible developments (such as a toxic waste plant and a residential development or school) are not adjacent to one another.

Municipal development plans and zoning restrictions that applied to the land before the ATR can be addressed in cooperation with the First Nation. For instance, the Red Pheasant First Nation in Saskatchewan selected land that was subject to the policies of the District Development Plan of the City of Saskatoon. To address this issue, the First Nation signed an agreement with the city, committing to compatibility with the surrounding municipal planning area.

First Nations and municipal governments can also cooperate with other organizations in promoting sustainable land use within the community. To this end, the Canadian Institute of Planners and the First Nations Land Management Resource Centre have signed a Protocol Agreement to promote capacity building in First Nation communities through the development of effective land use planning practices. By coordinating land use plans and objectives, both First Nations and municipal governments can ensure that lands within the community are being developed in a resource-efficient and environmentally sustainable way.



Joint land use planning committees provide an effective means through which First Nation and municipal government officials can discuss their respective issues and identify common goals and objectives. Through the appointment of a First Nation representative to a municipal council committee, consultation and coordination of planning processes are facilitated.

SERVICE DELIVERY

Municipal governments provide many infrastructure services to their communities, including road paving and maintenance, water and wastewater treatment, garbage collection and disposal, as well as social infrastructure services, such as recreation and leisure facilities. When a First Nation community's reserve land is expanded, agreements between the First Nation and the municipal government must be negotiated to ensure that services continue to be provided to the land.

There are partnership opportunities for First Nations and municipal governments in many areas of service delivery, including the joint ownership of facilities. For example, the Township of Middlesex Centre, Caradoc Township and the Chippewa of the Thames First Nation have signed an agreement for joint ownership and co-management of the Tri-Township Arena in Mt. Brydges, Ontario.

In some instances, First Nations exclusively provide services to their communities, as opposed to contracting with a municipality. Some First Nations have the capacity to provide certain services to the non-reserve community, as the Opaskwayak Cree Nation does for the Rural Municipality of Kelsey in northern Manitoba.

When opportunities are identified, partnerships in service delivery will usually result in efficiencies for all parties. For instance, a First Nation may offer to provide garbage disposal or snow removal services to municipalities in exchange for other services that the municipality will provide to the on-reserve community. In this way, both First Nations and municipal governments serve the interests of their communities, and partnerships in service delivery provide benefits for the entire community.

ENVIRONMENTAL RESOURCE MANAGEMENT

The protection of the environment and the sustainable use of resources are central concerns for both First Nations and municipal governments.

In Nova Scotia, the Town of Hantsport and the Glooscap First Nation pooled their resources and partnered on a new water treatment facility that brought major improvements to the quality of drinking water for all residents in the community.

Opportunities for partnership between First Nations and municipal governments concerning environmental protection and resource management are numerous. By pooling resources on "green" technologies or projects, greater improvements can be realized and costs will be reduced. Such partnerships can also leverage funding from the federal government, as programs are available for First Nation-led projects that are environmentally conscious and result in improvements to "green" infrastructure, such as wastewater treatment or flood protection.

The Hay River Dene Reserve, the only reserve in the Northwest Territories, undertook a community development plan based on input from community workshops that included non-Aboriginal residents from the Town of Hay River. The workshops led to the development of a land use plan that minimized the risk of flooding in the community and reduced the cost of servicing to the reserve. The First Nation has also worked on striking a balance between development and environmental conservation.¹⁵

Other partnerships between municipal and First Nation communities can involve the preservation of forests and resource-rich areas, as well as walking trails and other land-based conservation projects. In Ontario, the Towns of Aurora, Newmarket, East Gwillimbury and Georgina have joined with the Lake Simcoe Region Conservation Authority, local business partners and the Chippewas of Georgina Island First Nation to design a series of trails that will provide local residents and visitors the opportunity to enjoy the natural environment of the area. Mike Walters of the Conservation Authority has said "these projects and ongoing reforestation efforts will be of benefit to all those who work, live and play in the East Holland River drainage basin."¹⁶



Challenges in Working Together

While the reasons for partnership and benefits of relationship-building between First Nations and municipal governments are clear, there are often various challenges to overcome in developing effective working relationships. Similar to any other partnership, municipal-Aboriginal relations must be based on mutual respect, trust and open communication.

Much of the conflict that occurs between First Nations and municipal governments relates to land use disputes. As such, the ATR process has the potential to be extremely divisive in a community and can cause many adverse effects for all residents.

Some of the most frequent challenges for developing effective municipal-Aboriginal relationships are different cultural values, the length of ATR process, distrust, conflict resolution and geographic location.

DIFFERENT CULTURAL VALUES

In developing municipal-Aboriginal partnerships, an awareness of each other's perspectives, background, culture and values is important for developing relationships based on mutual understanding, trust and respect. For example, First Nations place a strong emphasis on oral tradition as a means of passing cultural knowledge onto future generations. Conversely, non-aboriginal people often rely on written documents or pictures to document knowledge or events to be shared with others.

Differences in culture, values and beliefs can cause misunderstandings within a community. It is important to promote information-sharing within the community to dispel myths and rumours that may impede a potential relationship between a First Nation and municipal government.

LENGTH OF ADDITIONS TO RESERVE PROCESS

Many communities that have been involved in an ATR claim that the process would have been expedited if the appropriate information had been available to them. Further, many First Nation and municipal government officials suggest that the length of the ATR process is a significant deterrent to effective municipal-Aboriginal relations.

Representatives from Indian and Northern Affairs Canada (INAC) have stated that the department is examining internal processes and the current ATR policy and considering reform of the process with the objective of reducing the time it takes to move a proposal through the process and set land apart as reserve.

DISTRUST

Historical conflict and outstanding issues can cause significant distrust and misinformation within a community. Establishing effective communication is the best option for communities attempting to overcome longstanding conflict, misinformation and divisive issues. For the Town of the Pas and the Opaskwayak Cree Nation in Manitoba, working through past issues helped them overcome a strained relationship, and they began working together to build a positive economic future for their community. Further information on this partnership is available in the Case Studies, Book 5.

Cross-cultural exchanges and information sessions can also help overcome outstanding issues caused by a lack of understanding, preconceived notions or historical conflict. By gaining an appreciation of each other's respective values and beliefs, municipal governments and First Nations can develop effective relationships based on mutual respect and trust, which lead to partnerships that will benefit both communities.

CONFLICT RESOLUTION

It is reasonable to assume that First Nations and municipal government officials will not agree on all issues. It is important for First Nation and municipal government officials to ensure that there are measures in place to help them move beyond an impasse in negotiations. Dispute resolution is an important element of many working relationships, so that both parties can work through a difference of opinion and reach agreement or compromise on important issues.



GEOGRAPHIC LOCATION

The proximity of a reserve to a municipality will often influence the relationship between First Nations and municipal governments. If a First Nation community is a significant distance away from the core service area of the municipality, providing services and engaging in regular communication may be a challenge.

For rural and remote communities, providing services can be inconvenient for both parties. Not all reserves are adjacent to or in close proximity to a municipality, and therefore service provision agreements and partnerships between two communities separated by a significant distance may be more challenging. A commitment to cooperation and regular communication by First Nation and municipal government officials is required in order to overcome the challenge of geographic distance and location in developing partnerships.

Dispute Resolution

Recognizing the challenges and areas of dispute are important for both First Nations and municipal governments. Through this recognition, both parties can examine ways in which to move beyond a conflict or impasse in negotiation and cooperate to find a solution or compromise.

While a “good neighbour” approach to land management is optimal for both First Nations and municipal governments, sometimes disagreements can occur and negotiations may be stalled as a result of an outstanding issue or misunderstanding. It is important to have alternative measures in place to resolve disputes before conflicts arise in order to salvage an agreement or partnership, but not to shape the process.

For municipal-Aboriginal relations, identifying dispute resolution measures and alternative dispute resolution practices is important to ensure that the parties can move beyond an impasse in negotiations regarding a service agreement or other important partnership.

WHAT IS ALTERNATIVE DISPUTE RESOLUTION?

Alternative Dispute Resolution or ADR is a flexible approach to dispute resolution that seeks to achieve a less time-consuming and more cost-effective resolution of disputes than the traditional approach of litigation.

ADR involves a wide range of alternatives to litigation, ranging from informal and voluntary negotiations to more formal methods of mediation and arbitration. ADR is an inclusive, consensual process that can provide a less adversarial solution to a conflict.

ADVANTAGES OF ALTERNATIVE DISPUTE RESOLUTION

Practices within ADR provide alternatives for First Nations and municipal governments for resolving issues and disputes without compromising their values or beliefs.

This is achieved when

- There is a high degree of participant involvement;
- Creative solutions that closely reflect the interests of both parties are employed;
- There is flexibility in procedures and approval processes;
- Parties are able to choose their own neutral facilitator, mediator or arbitrator;
- The process occurs in a confidential setting; and,
- Existing positive relationships can be preserved.¹⁷

In contrast, traditional litigation practices usually result in little input or control over the dispute resolution process and general dissatisfaction with a process that can be both time-consuming and expensive. Further, the “win-lose” approach associated with traditional practices can have damaging effects on long-term relationship building.



MAIN METHODS OF ALTERNATIVE DISPUTE RESOLUTION

The following methods have been adapted from the *Communities in Cooperation Dispute Resolution Guide*, published by Nemtin Consultants Limited, in partnership with the First Nations Summit and the Union of British Columbia Municipalities.

INFORMAL COMMUNICATION

Informal communication is the preferred method for addressing disputes between First Nations and municipal governments, as it deals with matters simply and effectively without cost or the involvement of a third party. This method tends to be most effective in those situations wherein a relationship based on mutual respect and trust has already been established between the First Nation and the municipality. For example, the City of Saskatoon and Muskeg Lake First Nation in Saskatchewan have agreed to meet at least once a year to ensure harmonious operation of the service agreement and resolve any issues that may arise.

NEGOTIATION MEETING

If informal communication is not successful, the next step may be to organize a negotiation meeting between the First Nation and the municipal government to discuss specific issues. The success of a negotiation meeting is dependent on a number of factors, including the historical relationship between the parties and the complexity of the issues in dispute. If both parties are not willing to work through the issues and consider other views on the matter, positional bargaining may result in a power struggle that ends in an impasse or deadlock in negotiations.

ASSISTED NEGOTIATION

If the parties are unable to resolve the issues within a formal face-to-face meeting, they may wish to involve a neutral third party to moderate the discussion. The facilitator manages the process of negotiation by assisting the parties in identifying issues, communicating concerns and in formulating their own solutions to the dispute. The facilitator can be any individual who is respected by both sides or someone who has specialized training in conflict resolution or mediation.

MEDIATION

Mediation is similar to assisted negotiation, but involves more formal and structured processes of negotiation and has a proven record of success in many different situations. Mediation involves a skilled neutral third party, a professional mediator, who assists the parties by focusing on issues and interests in order to achieve a settlement crafted by the parties themselves. Settlements reached through mediation are not legally binding, but are adhered to in the vast majority of cases.

ARBITRATION

If mediation is unsuccessful, First Nations and municipal governments can proceed to arbitration. Arbitration involves an informal judicial or quasi-judicial procedure, with the decision being rendered by an independent and impartial adjudicator. Despite the fact that the arbitration process is based on consensus, the adjudicator's decision is binding on both parties and adherence to the decision is mandatory once the process has been engaged.

Although arbitration is generally preferable to litigation, it still removes the decision-making powers from both First Nation and municipal government officials during the negotiation process. Therefore, arbitration is not recommended as the first method of alternative dispute resolution as it is not a collaborative process conducive to building cooperative relationships.¹⁸

LITIGATION

Litigation is often viewed as a last resort for resolving a dispute between First Nations and municipal governments. Litigation involves attending court and making submissions to a judge who will render a decision that is legally binding on both parties. This method removes all decision-making powers of First Nations and municipal governments and can destroy a cooperative relationship along with future opportunities for partnership.

ANNEX A

ELEMENTS OF A COMMUNITY ACCORD / PROTOCOL AGREEMENT

To establish effective communications based on mutual respect and trust, municipal and First Nation officials may wish to sign a document to formalize the relationship between the two parties.

Although a formal document is not always required, many First Nations and municipal governments will sign agreements to ensure that their respective goals and objectives are compatible. Documents that formalize these relationships can come in the form of one of the following:

- Memorandum of Understanding
- Protocol Agreement
- Statement of Political Relationship
- Other document agreed upon by both parties

Suggested items to include in these agreements are as follows:

General Terms (« whereas » clauses)

Parties Entering Agreement

Commitments / Mandate	a statement on the parties' commitments or mandate
Background	a statement of how the parties came to sign an agreement
Rationale / Context	a statement of explanation for the agreement
Recognition / Respect	a statement for each party in recognition/respect of each other's jurisdiction
Intention	a statement of intent for entering into agreement (can be specific)
Matters of Mutual Interest	a statement of general matters of mutual concern
Communication	a statement that parties agree to maintain open communication

Specific Items and Resolutions (« therefore be it resolved that » clauses)

Matters of Mutual Interest / Concern	a statement of how matters will be dealt with (e.g., forum)
Communication	a statement of how open communication will be achieved (e.g., regular meetings)
Review Process	a statement on when the relationship and agreement will be reviewed by both parties and how (e.g., every two years)
Other Interested Parties	a statement that allows for other interested parties to discuss issues related to the relationship or agreement between the First Nation and municipal government
Responsibility	a statement on areas of responsibility in information-sharing, education, etc.

All agreements should be dated and signed by the appropriate representatives from both the municipality and First Nation.



NOTES

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BUILDING CAPACITY THROUGH COMMUNICATION:

BOOK 5

Municipal-Aboriginal
Partnerships in
Land Management



CASE STUDIES



Indian Taxation Advisory Board



National Aboriginal Land
Managers Association



Lands Advisory Board

Canada

Indian and Northern
Affairs Canada

CASE STUDY 1

REGIONAL MUNICIPALITY OF WOOD BUFFALO AND ATHABASCA TRIBAL COUNCIL

Population

Regional Municipality of Wood Buffalo: 58,317
(2002 Municipal Census)

Athabasca Tribal Council: 2,500 (ATC Website)

Location

Stretching from northern Alberta to the borders of Saskatchewan and the Northwest Territories, the Regional Municipality of Wood Buffalo ranks by area among the largest municipalities in North America. The Athabasca Tribal Council (ATC) represents the interests of the five First Nations of North Eastern Alberta: the Athabasca Chipewyan First Nation, Chipewyan Prairie First Nation, Fort McKay First Nation, Fort McMurray No. 468 First Nation and Mikisew Cree First Nation.

Partnership

Prior to signing a Memorandum of Understanding (MOU), the Regional Municipality of Wood Buffalo and the ATC had communicated with each other on an as-needed basis. With a mutual interest in fostering economic growth and sustainability within the community, Wood Buffalo and the ATC signed an MOU in 2003 in order to work together for the benefit of all residents in the region. The MOU focuses on five areas to promote capacity building: (1) Environmental/consultation capacity; (2) Education, employment and training initiatives; (3) Human infrastructure (health and social); (4) Physical infrastructure; and (5) Long-term benefits.

As a result of the MOU, Wood Buffalo has established numerous partnerships with various First Nation communities represented by the ATC. For example, the Mikisew and Athabasca Chipewyan First Nations have signed an agreement with Wood Buffalo for fire protection services. Further, the Mikisew First Nation has a contract to provide all maintenance services for municipal government vehicles. These partnerships have brought employment opportunities and increased revenues to the entire community.

The ATC and Wood Buffalo are also parties to a Core Agreement involving various private sector corporations, such as Shell Canada and Exxon Mobil Oil, as well as the federal and provincial governments. The Core Agreement was created to ensure that long-term mutually beneficial relationships between the parties would be developed in support of their mutual goals of economic growth and sustainability in the community.

Keys to Success

For the ATC and Wood Buffalo, the existence of similar governance structures has facilitated negotiations and helped both parties in relating to one another. Wood Buffalo is a regional municipality that serves smaller municipalities, and

the ATC is a governing body that serves its member First Nation communities. The ability of the chiefs, mayor and councillors to understand one another has been important for establishing an effective working relationship between the two governments.

A mutual understanding that there is a need for cooperation has also been an important element in the relationship between the ATC and Wood Buffalo. Both the municipality and the ATC recognized that they could better serve their constituents through a partnership, guided by principles outlined in their MOU and Core Agreement.

The relationship between the ATC and Wood Buffalo has also been successful as a result of open and regular communication. Within the Core Agreement, provision was made for the organization of monthly meetings where all stakeholders could meet, discuss their respective issues and identify common goals and objectives.

Challenges

Jurisdictional issues related to taxation, as well as confusion over their respective roles and responsibilities continue to present challenges for the ATC and Wood Buffalo. Further, the sustainability of effective relationships based on mutual respect and trust is a concern for both parties. There is a concern that important relationships will need to be re-established time and again as the leadership of both the ATC and Wood Buffalo changes. Through their MOU and regular meetings, the municipality and the ATC are attempting to address these issues.

Lessons Learned

Despite their MOU, Wood Buffalo and the ATC indicate that more progress can be made in advancing their objectives and developing partnerships in areas of mutual interest. Information-sharing can also be improved between the two governments, so that open and regular communication will facilitate future partnerships.

The parties advise other municipal governments and First Nations to have respect for each other's organizational objectives and to try to understand different approaches to land management, service delivery and other issues. If mutual understanding and respect define a municipal-Aboriginal relationship, effective partnerships can lead to benefits for all members of the community.

Future

The Regional Municipality of Wood Buffalo and the Athabasca Tribal Council will continue to cooperate on various initiatives and build capacity and economic development opportunities within the community. Possible joint ventures currently being examined would involve cooperation on land use planning processes, employment programs and mutual aid agreements, as well as more effective coordination on service provision to the entire community.

CASE STUDY 2

REGIONAL DISTRICT OF CENTRAL OKANAGAN AND WESTBANK FIRST NATION

Population

Regional District of Central Okanagan: 158,562
(2002 B.C. Statistics)

Westbank First Nation: 547 band members; 8,000 on-members living on-reserve (Westbank 2004)

Location

The Regional District of Central Okanagan (RDCO) represents three member municipalities—Kelowna, Peachland and Lake County—and is located approximately five hours from the City of Vancouver and the Lower Mainland in British Columbia. The Westbank First Nation is one of seven communities that belong to the Okanagan Nation, and Westbank's reserve lands are situated on the west side of Okanagan Lake, adjacent to the City of Kelowna.

Partnership

A need to develop infrastructure that would be economically viable for both communities led to consultation and negotiations between the RDCO and Westbank. Together, they have worked to build a strong relationship based on mutual respect and trust.

This relationship has resulted in numerous partnership opportunities and joint ventures that have delivered significant benefits to the entire community. The RDCO and Westbank have formed partnerships on road maintenance, infrastructure projects and economic development, and have developed service agreements for sanitary sewer, fire protection and other municipal services. Further, the RDCO and Westbank have established First Nation representatives on the municipal Transit and Economic Development Committees.

Keys to Success

The partnership between the RDCO and Westbank has led to significant commercial, industrial and residential development on the reserve. A mutual recognition that development on-reserve would provide benefits to the entire community has been important for sustaining this effective working relationship. Further, a mutual acceptance of change has been essential for both governments in developing infrastructure improvements and identifying urban development opportunities.

A mutual understanding that there is a need for cooperation has also been an important element in the relationship between the ATC and Wood Buffalo. Both the municipality and the ATC recognized that they could better serve their constituents through a partnership, guided by principles outlined in their MOU and Core Agreement.

Regular meetings have been an important element to the relationship between the RDCO and Westbank. Further, joint meetings between political and technical representatives ensure that staff in both organizations work well together. While negotiating the service agreements was the responsibility of the political representatives, technical and administrative staff achieved a cooperative working relationship to facilitate implementation of the agreements.

Challenges

For the RDCO and Westbank, the most significant challenge has been education and information-sharing between the communities. Before forming various partnerships and engaging in regular communication with Westbank, the RDCO was not familiar with First Nation issues, governance structures or any approach to land management. Similarly, Westbank had little or no experience in dealing with municipal issues and had to develop an understanding of municipal service provision and planning processes, as well as its governance structure and administration. Through the involvement of First Nation representatives on municipal government committees, a greater understanding of these issues has been achieved.

Lessons Learned

In providing advice to other municipal governments and First Nations who are examining possible partnership opportunities, the RDCO and Westbank suggest that flexibility is very important, particularly in economic development partnerships. For instance, municipal governments may need to adjust their land-use planning processes and business practices in order to facilitate the involvement of First Nations. Through improved information-sharing practices and regular meetings, a strong relationship based on mutual respect and understanding can be established.

Future

The RDCO and Westbank are continually examining possible partnership opportunities, particularly in economic development, infrastructure improvements and service provision. In developing joint initiatives, both the RDCO and Westbank agree that if one community benefits economically, everyone in the area will benefit.

CASE STUDY 3

TOWN OF THE PAS AND OPASKWAYAK CREE NATION

Population

Town of The Pas: 5,795 (Statistics Canada, 2001)

Opaskwayak Cree Nation: 2,191 on-reserve; 753 off-reserve (OCN 2004)

Location

The Pas is referred to as both a geographically and economically integrated region composed of three distinct communities—the Town of The Pas, the Opaskwayak Cree Nation (OCN) and the Rural Municipality of Kelsey. The Town of The Pas is located 600 km northwest of Winnipeg, Manitoba, and has with deep roots in forestry, retail, service, transportation and tourism. The OCN is located at the junction of the Saskatchewan and Pasquia Rivers, 150 km south of Flin Flon.

Partnership

After overcoming a strained relationship and past issues within the community, the Town and OCN have begun working together to encourage economic development within the area. They have formed many partnerships, including service agreements and community improvement projects, such as waste and oil recycling centres.

The Town provides basic services, such as water, sewage and fire protection to the OCN reserve. Further, they have signed a tri-partite agreement with the Rural Municipality of Kelsey to share the costs associated with providing police dog services to the community. They also successfully hosted the 2002 Manitoba Winter Games together.

Keys to Success

Overcoming distrust and poor community relations, the communities have managed to build a strong economic future for The Pas region. The parties have effectively dealt with issues as they have arisen and have maintained a spirit of cooperation and mutual respect through each partnership and joint venture.

A mutual commitment in recognizing and reducing barriers that prevent both parties from realizing the social and economic potentials of a partnership has been important for the Town and OCN. Both the Town and OCN promote the region as one community and work cooperatively to build community capacity.

Challenges

In the past, the Town of The Pas and the OCN have had a strained relationship, defined by poor community relations resulting from a 1971 criminal assault case that involved members of both communities. The ability to work through past issues has been very important in the development of an effective working relationship between the Town and OCN.

Although the municipal service provision agreements negotiated by the Town and OCN have satisfied many concerns, the issue of education tax was not addressed. The service agreement does not require OCN to pay education taxes to the Town, which views the Town as lost revenue. The Town of The Pas is addressing this concern with the provincial government in order to try to obtain funding to assist with school costs and offset the lost education tax revenue.

Lessons Learned

In sharing their experiences with other First Nations and municipal governments, the partners advise that setting realistic goals and exercising patience are very important for maintaining a strong working relationship. In this way, success with small projects will build confidence and momentum for larger projects.

The partners also advise that communities need to put aside fear and apprehension to begin working together at developing relationships based on mutual trust and effective communication through improved information-sharing.

Future

The Town and OCN will continue to expand and improve their strong working relationship in the future and are consistently looking for potential areas for partnership. Currently, the parties are negotiating a municipal service provision agreement for lands acquired through Treaty Land Entitlement. The communities are planning further joint ventures in economic development, as well as the development of recreational facilities, road extensions and tourism opportunities.

CASE STUDY 4

CITY OF FREDERICTON AND SAINT MARY'S FIRST NATION

Population

City of Fredericton: 81,346 (2001 Census data)

Saint Mary's First Nation: 1,201 (Indian and Northern Affairs, 2002)

Location

Fredericton is the capital of New Brunswick and is situated along the banks of the St. John River. The Saint Mary's First Nation is also located on the St. John River, approximately six kilometres east of Fredericton.

Partnership

The need for basic services to be provided to the reserve formed the basis for a partnership between Fredericton and the Saint Mary's First Nation. Through negotiated service agreements, Fredericton provides fire protection, police, water and other general services to Saint Mary's, with other services provided on an as-requested basis. The general services agreement formerly provided for public works services (such as snow removal); however, Saint Mary's now performs this service on-reserve and hires its own employees.

Fredericton and Saint Mary's have also worked in partnership with the provincial and federal governments. In the late 1990s, land was transferred from New Brunswick Power to Saint Mary's in exchange for a highway right-of-way through the reserve. The highway has increased traffic to the whole area, delivering economic opportunities to all local businesses.

Keys to Success

Fredericton's approach to its relationship with Saint Mary's has been to examine ways in which it can provide assistance in the growth of the on-reserve community. A city official remarked: "If they are growing, happy and healthy, so is the rest of the community." The growth and prosperity of the entire community is dependent on all of its members, and cooperation is important to ensure that the priorities and initiatives of both the Aboriginal and non-Aboriginal communities are compatible.

Regular and consistent communication has been a central component of the long-standing relationship between Saint Mary's and Fredericton. Both parties have donated time and effort in maintaining this relationship and are continually looking at potential areas for partnership. By organizing regular meetings between chief, mayor and their respective councils, Saint Mary's and Fredericton have been able to sustain effective communication and consultation between their respective communities.

Patience and understanding are also important to Fredericton and Saint Mary's when working with one another. Through the recognition of different cultures, background and approaches to land management, both parties have been able to develop a common understanding of the issues within their respective communities.

Challenges

The cost of providing municipal services in Fredericton is increasing steadily. The rates charged to non-Aboriginal citizens for services are the same as those charged to citizens living on the Saint Mary's reserve, except that the on-reserve community pays only for those services that it requires. Saint Mary's has developed the capacity to begin providing some services to its own community, such as snow removal.

With the continued growth of both communities, discussions on compatible plans for growth of the city and development on adjacent lands will be important. Due to the close proximity of the reserve to the city (six kilometres east), significant growth or expansion in either community will require consultation with the other.

Lessons Learned

The partners advise other municipal governments and First Nations looking at developing partnerships to have respect for other cultures and values and to be patient when negotiating agreements or examining partnerships. They also emphasize that open communication based on trust and an understanding of one another's issues is key to a successful relationship. Regular meetings between the mayor, chief, and respective councils are an effective way to maintain communication and to discuss important issues being dealt with in both communities.

Future

Fredericton and Saint Mary's will continue to cooperate in the development of the entire city, through economic development, land use and resource management. A possible partnership currently being examined would involve the creation and maintenance of walking trails along old railroad routes that traverse through the reserve and areas of Fredericton. Continued attendance at special events such as the Salmon Fiddlehead Festival will also foster a spirit of community cooperation and will help sustain this partnership in the future.

CASE STUDY 5

MUNICIPALITY OF TEMAGAMI, TEMAGAMI FIRST NATION AND TEME AUGAMA ANISHNABAI

Population

Municipality of Temagami: 893 (2001 Census data)

Temagami First Nation/Teme Augama Anishnabai: 639 (Indian & Northern Affairs, 2002)

Location

The Municipality of Temagami is located on Highway 11 North approximately one hour north of North Bay, Ontario, and four hours north of Toronto, Ontario. The Temagami First Nation (TFN) and Teme Augama Anishnabai (TAA) are located six kilometres south of the municipality on Highway 11.

Partnership

The partnership between the Municipality of Temagami, the TFN and the TAA began as a result of a land claim within the municipality. In 2002, the TFN and TAA reached an agreement with the Province of Ontario on the land claim, including the creation of a reserve totalling 330 square kilometres of land. As part of the land claim settlement, a municipal advisory committee was established, and the mayor of Temagami was appointed as co-chair of the committee.

The mayor's involvement on the municipal advisory committee lead to discussions between the municipality, the TFN and the TAA, as well as an understanding that the land claim process would be more successful if all communities could work together. To formalize their consultations, a Memorandum of Understanding (MOU) was signed by the three communities, signifying their commitment to cooperation and consultation during the land claim process.

As a result of their MOU and regular consultation sessions, the municipality, the TFN and the TAA have examined other areas of potential partnership. A current joint effort among the communities is a forestry management plan that involves cooperation among the First Nations and municipal governments, as well as the Ontario Ministry of Natural Resources.

Keys to Success

For the municipality, the TFN and the TAA, a strong willingness to work together and a mutual understanding of the issues has been essential for a successful working relationship. The role of the mayor on the municipal advisory committee was important, not only for ensuring that the municipality was involved in the land claim process, but also for bringing the communities together to discuss their outstanding issues and concerns with respect to the creation of the reserve.

Regular and open communication has also been very important for all parties involved in the Temagami Land Claim. The municipality, the TFN and the TAA have formed a working advisory committee with the mayor, chiefs, and members of council to meet on a monthly basis to discuss

their respective issues. The advisory committee has also created a Work Plan to guide joint initiatives in areas of mutual concern, such as economic development.

Challenges

Although the relationship between the municipality, the TFN and the TAA has been relatively harmonious and productive, initial public concern over the land claim became a challenge for the community. The land claim involves a large section of Lake Temagami, which is a prime tourist attraction and cottage location for many residents of the area. When news of the approved land claim settlement was made public, many cottage residents voiced concerns about much of the lands surrounding the lake becoming reserve. To address these concerns, the municipality, the TFN and the TAA launched an information-sharing campaign within the community to educate members of the public on the facts of the land claim.

Lessons Learned

In sharing their experience with others, the municipality advises that keeping an open mind is important for relationships based on mutual respect and trust. By being open to learning about different cultures and approaches to land management, both First Nations and municipal governments can feel comfortable about expressing their views and discussing the issues facing their communities.

Understanding each other's goals and objectives has also been an important part of this relationship. The Mayor of Temagami advised that clarifying the basis for consultation so that it is not a "rights-based negotiation" is important for mutual acceptance of the goals and objectives of the partnership. By debating the issues and not the rights and responsibilities of either party, the municipality, the TFN and the TAA have been able to identify mutual goals and objectives and potential areas of partnership.

The importance of education and information-sharing was emphasized during the initial public opposition to a partnership between the municipality, the TFN and the TAA as a result of the land claim. In retrospect, the parties could have organized more frequent public information sessions to ensure that all members of the community were aware of the nature of the relationship, the objectives and the benefits that would result from the partnership.

Future

Through their MOU, the municipality, the TFN and the TAA have agreed to work together on various initiatives of mutual interest or concern. The partners are continually examining possible partnership opportunities through their monthly advisory committee meetings. Discussions continue on possible economic development projects and youth programs, as well as land use planning and service agreements.

CASE STUDY 6

CITY OF REGINA AND NEKANEET FIRST NATION

Population

City of Regina: 190,400 (City of Regina, 2000)

Nekaneet First Nation: 407 (Indian and Northern Affairs, 2004)

Location

Regina is the capital of Saskatchewan and is the Canadian city closest to the geographical centre of North America. The Nekaneet First Nation owns property in a northern section of the city that, if approved by Indian and Northern Affairs Canada (INAC), could become the first urban reserve in Regina.

Partnership

The City of Regina and Nekaneet First Nation are not adjacent communities, as the main Nekaneet on-reserve community lies approximately 200 kilometres outside of the city limits. Despite the fact that almost 70 per cent of the Nekaneet members live within Regina, communication between the two communities had been casual and infrequent.

The relationship changed when Nekaneet, through the company “New Horizons”, purchased a parcel of land in the northern section of Regina. Before a submission to INAC was made for reserve status, Nekaneet officials approached Regina to discuss possible servicing options and compatibility arrangements.

In September 2002, Nekaneet and Regina signed a municipal services and compatibility agreement wherein the city would provide all normal municipal services to the parcel of land in exchange for payment equal to the property taxes levied on that land the previous year.

If the ATR proposal submitted by Nekaneet is approved by INAC for this parcel of land, it could become the first urban reserve in Regina. A reserve within city limits creates a wealth of partnership opportunities for both the First Nation and the city.

Keys to Success

The *Saskatchewan Treaty Land Entitlement Framework Agreement* requires that First Nations engage in consultations with municipal governments before an ATR proposal can be approved. Although the consultation was a requirement, both Regina and Nekaneet approached the negotiations in a spirit of cooperation and mutual agreement that a partnership could provide benefits for both parties. A city official remarked that the Framework Agreement is an excellent guide for both First Nations and municipal governments, as it recognizes the importance of effective communication and consultation during the ATR process.

Regular meetings have been very important for Nekaneet and Regina for maintaining their effective working relationship. The chief, the mayor and the city manager meet regu-

larly to discuss their respective issues and to work through any challenges that may present themselves as a result of their agreements. Frequent and open communication is essential for addressing issues as they arise and identifying possible areas for improvement or future partnership.

Challenges

Initially, both Aboriginal and non-Aboriginal people living within Regina expressed some concern over a partnership between Nekaneet and the city. Some citizens were concerned that a reserve within city limits would cause a tax haven or benefit for some at the expense of others. Representatives from both Nekaneet and Regina have worked hard to address some of these concerns and to educate members of the public on the benefits of this partnership.

The length of the land acquisition and reserve designation processes were also cited as significant challenges for the partnership between Nekaneet and Regina. Following the ATR process was said to be onerous and confusing, and a lack of policy advice and direction from the federal government complicated the situation. Despite the length of the process and frustration over the lack of information, Regina and Nekaneet were able to proceed with negotiations on municipal service and compatibility agreements, and in developing an effective working relationship.

Lessons Learned

As a result of their experience, the partners advise other municipal governments and First Nations to encourage formative, early discussions during the ATR process. By establishing communication before any major land issues or disputes arise, both parties have laid the foundation for an effective working relationship. Further, early discussions allow both First Nations and municipal governments to identify their goals, objectives and outstanding issues with respect to an ATR or service provision agreement.

After communication has been established, it is strongly advised that both First Nation and municipal government officials move into discussions in good faith and in a spirit of cooperation. Further, keeping communication open through regular meetings or informal sessions is recommended so that both parties can continue to identify common goals and objectives that can lead to mutually beneficial partnerships.

Future

Regina and Nekaneet have begun preliminary discussions on various joint economic development initiatives and land acquisitions. Possible partnerships that have been identified include housing developments, job skills training and various other projects that will stimulate the local economy.

RECOMMENDATIONS

Strategies for Success

The six case studies outlined in this toolkit illustrate some of the successes, challenges and opportunities for developing effective municipal-Aboriginal relations.

Each case study provided some lessons learned and advice for other communities considering a joint First Nation-municipal government initiative in economic development, land use planning, service provision or resource management. To summarize the experiences of these communities, some strategies for success are listed below.

Communication

Regular and open communication is a key element of successful municipal-Aboriginal partnerships. Communication not only improves the effectiveness of partnership activities, but also helps foster trust and understanding.¹⁹

Strategies for Success

1. Initiate contact (with the municipality or with the First Nation).
2. Routinely share information and build an awareness of the different governance structures.
3. Ensure early, regular and direct communication.
4. Ensure that both partners have a clear understanding of goals and objectives.
5. Be honest and open when dealing with the municipality or First Nation.
6. Promote success stories to share with other communities.

Partnership Agreements

Partnership agreements in the form of a Community Accord, Memorandum of Understanding (MOU), Protocol or Service Provision Agreement are important for providing the guiding principles for an effective municipal-Aboriginal partnership.

Strategies for Success

1. Create and sign a Community Accord or MOU to formalize the relationship and to outline the fundamental principles for partnerships.
2. Identify mutual goals and objectives.
3. Create and sign a Protocol Agreement to guide future partnerships in various areas of mutual interest and concern.
4. Begin with small-scale projects that build confidence and momentum for larger initiatives.
5. Meet regularly to review partnership opportunities and discuss mutual goals and objectives.

Public Education

Providing education and important information to members of the entire community is important for effective municipal-Aboriginal relations. By promoting the positive outcomes of partnerships between First Nations and municipal governments, the partners can build public support for the relationship.

Strategies for Success

1. Begin public education and information-sharing sessions early in the relationship.
2. Address community concerns and negative feedback as they arise.
3. Circulate a community newsletter to promote an awareness of the issues.
4. Promote the benefits of the partnership through media, joint community events and town/First Nations council meetings.

Building effective municipal-Aboriginal relations based on mutual respect and trust requires time, effort, patience and understanding from both First Nations and municipal governments. Once established, these strong relationships often lead to mutually beneficial partnerships that deliver significant benefits to the entire community.

Municipal-Aboriginal partnerships allow First Nations and municipal governments to build capacity in their community and achieve significant results in economic development, land use planning and service provision that could not be achieved if done in isolation of one another. The development of effective municipal-Aboriginal relations is important for building the social and economic capacity of First Nations and municipal governments, as well as for improving the quality of life in communities across Canada.

**For Sample Agreements
for each of the
Case Studies
included in this
book, please see
Annexes A, B, C, D, E and F.**

The Glossary of Terms has been adapted from various sources, including Indian and Northern Affairs Canada and various provincial government departments.

Aboriginal people – refers to all indigenous people of Canada, including Indians (status and non-status), Métis and Inuit people (as defined in the *Constitution Act, 1982*)

Addition to Reserve (ATR) – an ATR means a proposal for the granting of reserve status to land that is within the service area of an existing reserve community (see *definition of service area below*)

Approval in Principle (AIP) – an AIP is INAC's decision to recommend a proposal to the Minister for consideration of reserve status through a submission to the Governor in Council or by means of a Ministerial Order, as permitted by claims legislation. An AIP can be granted with or without conditions and is given by either the Regional Director General (or other delegated authority) or the Deputy Minister. Where conditions are attached to the AIP, they must be satisfied before an order in council or Ministerial Order recommendation can be made

Band – a body of Indians as defined under the *Indian Act* and declared to be a band by the Governor General in Council for the purposes of the Act. The term First Nation is often used in place of Band.

Band Council Resolution – the authority mechanism by which the elected representatives on a band council authorize an action

By-laws – by-laws are a form of legislation passed by a municipal government relating to matters under the jurisdiction of the municipality. For the most part, they relate to land use, public order, road closings, some expenditures and similar issues. First Nations that develop a land code under the *First Nations Land Management Act* can also develop more extensive laws governing reserve lands than the by-laws allowed under the *Indian Act*

Capacity-building – the development of human, technical and financial resources

Crown land – land or an interest in land owned by Canada or the Province

Fee simple – legal interest in land that is commonly characterized as private ownership

Fiduciary duty – legal obligation of one party to act in the best interests of another, e.g., Canada has a fiduciary duty with respect to Indians and lands reserved for Indians under s.91(24) of the *Constitution Act, 1867*

FCM – acronym for Federation of Canadian Municipalities (see *Book 1 for more information*)

First Nation – has the same meaning as Band.

INAC – acronym for Indian and Northern Affairs Canada. Also commonly referred to in legal

documents as the Department of Indian Affairs and Northern Development (DIAND) (see *Book 1 for more information*)

Indian – Indian peoples are one of three groups of people recognized as Aboriginal under the *Constitution Act, 1982*. Indians in Canada are often referred to as Status Indians, non-Status Indians, Registered Indians and Treaty Indians

Indian Act – federal legislation designed to give effect to the legislative authority of Canada for “Indians and Lands reserved for the Indians”, pursuant to s.91(24) of the *Constitution Act, 1867*

Inuit – a group of Aboriginal people living in Northern Canada, Nunavut, Northwest Territories, Northern Quebec and Northern Labrador. The word means “people” in the Inuit language (Inuktitut)

ITAB – acronym for the Indian Taxation Advisory Board (see *Book 1 for more information*)

LAB – acronym for the Lands Advisory Board (see *Book 1 for more information*)

Land claims – the federal government recognizes two classes of land claims—comprehensive and specific. Comprehensive claims are based on the assessment that there may be continuing Aboriginal rights to lands and natural resources. Specific claims deal with grievances that First Nations may have regarding the fulfillment of treaties and cover grievances relating to the administration of First Nation land and assets under the *Indian Act*

Land claim agreement – term used by the federal government to refer to an agreement negotiated with a First Nation to settle a land claim

Legal obligation – obligation regarding Crown activity that arises from court decisions. When the province or Canada engages in Crown activity, it must determine if Aboriginal rights exist in the area of the proposed activity, whether the activity will infringe upon those rights and make efforts to avoid or minimize the infringement of those rights to the extent possible

Métis – people of mixed First Nation and European ancestry who identify themselves as Métis, as distinct from Indians, Inuit or non-Aboriginal people

Municipal government – an order of government legally incorporated to provide essential services to its constituents at the local level

Municipality – a geographical area that is incorporated

On-reserve community – refers to the locality where First Nation members reside on a reserve, comprising physical infrastructure, community services, and installations

NALMA – acronym for the National Aboriginal Land Managers Association (see *Book 1 for more information*)

New reserve – land that has been granted reserve status and is not within the service area of an existing reserve community

Non-status Indian – an Indian person who is not registered as an Indian under the *Indian Act*

Ratification – official acceptance of an agreement by one of the parties

Registered Indian – a person who is defined as an Indian under the *Indian Act* and who is registered under the Act

Reserve – tract of land, the legal title to which is held by the Crown, set apart for the use and benefit of an Indian band

Section 35 of the Constitution Act, 1982 – states that Aboriginal and treaty rights are recognized and affirmed and makes it clear that treaty rights include rights that now exist by way of land claim agreements or that may be so acquired. As a result of this constitutional protection, government has an obligation not to infringe upon Aboriginal and treaty rights without justification

Section 91(24) of the Constitution Act, 1867 – confers upon the federal government the power to make laws in relation to “Indians and Lands reserved for the Indians”

Self-government – the internal regulation of a First Nation by its own people

Service area – the geographic area generally contiguous to an existing reserve community within which existing on-reserve programs and community services can be delivered, infrastructure extended and installations shared, at little or no incremental cost

Specific claim – a claim made by a First Nation that is based upon the alleged failure of Canada or the province to meet either the terms of an existing agreement or, in the case of Canada, its fiduciary obligation

Status Indian – a person who is registered as an Indian under the *Indian Act*. The Act sets out the requirements for determining who is an Indian for the purposes of the Act

Third parties – parties other than the principal parties to an agreement or action, including parties who hold legal interests, rights, permits or leases on the land

Treaty – an agreement between the federal government and a First Nation that defines the rights of the First Nation with respect to lands and resources over a specified area and may also define the self-government authority of a First Nation

Treaty Indian – a status Indian who belongs to a First Nation that signed a treaty with the Crown

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