



Proposed Changes to Improve the Additions to Reserve and Reserve Creation Process

September 2018



Additions to Reserve

- A reserve is a tract of land where legal title is held by the Crown (Government of Canada), for the use and benefit of a particular First Nation. An Addition to Reserve is the process by which the Government of Canada converts a parcel of land, acquired by the First Nation to reserve.
- An Addition to Reserve:
 - Enables Canada to fulfill legal obligations established by Treaty Land Entitlement and Specific Claims Agreements;
 - Improves community access to land and resources; and
 - Increases community and economic development opportunities for First Nations.

There are currently 8,8 million + acres of reserve land in Canada.

4 million acres of reserve land are owed to First Nations.
1.3 million acres of land are actively being processed.

80% of all active Additions to Reserve submissions represent a legal obligation for the Crown.

Today, nearly 10% of all Additions to Reserve are urban.
Over 125 urban reserves have been created since 2000.



Additions to Reserve/Reserve Creation Policy Directive (2016)

- Beginning in 2009, the Department worked with the Assembly of First Nations, the National Aboriginal Lands Managers Association and others through a Joint Working Group on Additions to Reserves to improve the Additions to Reserve process.
- A new Additions to Reserve/Reserve Creation Policy Directive came into effect July 27, 2016.
- The Department, in collaboration with the National Lands Managers Association, has been actively working with communities to implement the new Policy Directive.
- The National Lands Managers Association offers ongoing ATR training and has trained over 100 land managers/officers

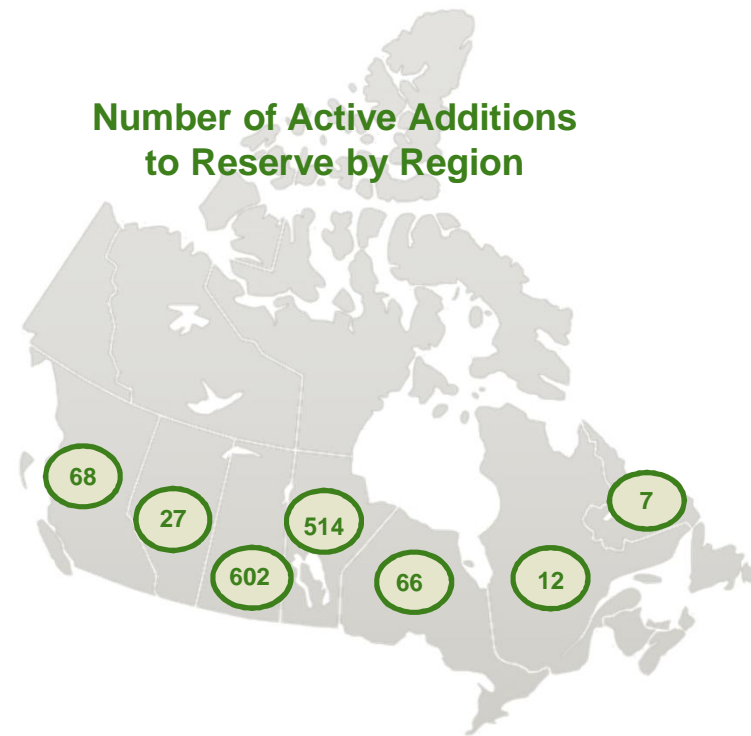
2016 Policy Directive

- Provides an updated framework for the assessment, acceptance and implementation of Additions to Reserve proposals;
- Clarifies roles and responsibilities of all parties and outlines a process for better collaboration between all affected parties;
- Adds a new category for addressing Additions to Reserve pursuant to specific claims tribunal decisions;
- Supports flexible environmental requirements based on intended use rather than requiring all land to be free of contaminants.
- Provides for more flexible land selection area.

APPROVED ADDITIONS TO RESERVE PER REGION SINCE NOVEMBER, 2015.		
Region	# of Submissions	Acres Added
ATL	4	22,550
QC	11	10,608.708
ON	15	41,227.931
MB	85	60,328.204
SK	85	33,886.836
AB	1	8,779.860
BC	15	970.219
TOTAL	216	155,824.308

Challenges with the Additions to Reserve Process

- First Nations, the Assembly of First Nations, internal audits, and Parliamentary Committees have indicated that significant challenges remain in the Additions to Reserve process including:
 - A lack of access to pre-reserve designation outside of the prairie provinces for treaty land and settlement agreements.
 - Challenges with addressing existing third-party interests, before reserve creation, leading to delays, uncertainty, frustration, and lost opportunities for First Nations and other stakeholders.
 - Proposals to add urban reserves are often more complex, with additional features (e.g. municipal service agreements)
 - Lack of core capacity in First Nation communities, program management/tracking tools, resources for land surveys, environmental studies, etc.





Claim Settlement Implementation Act(s)

- The *Manitoba Claim Settlements Implementation Act* and the *Claim Settlements (Alberta and Saskatchewan) Implementation Act* were enacted to facilitate the fulfillment of Agreements to settle the land debt owed to First Nations still owed under historic treaties (Treaty Land Entitlement) and to support implementation of settlement agreements from specific claims.
- First Nations outside of the prairie provinces and all First Nation adding land to reserve outside of settlement agreements do not have access to the benefits in the legislation.

Benefits of the Acts

- 1. Approval of Additions to Reserve by way of Ministerial Order;**
- 2. Address third-party interests before reserve creation;**
- 3. Access to pre-reserve designation; and**
- 4. Ability to put in place pre-reserve leases and permits that can come into effect upon reserve creation.**



Proposed legislative approach

- National Additions to Reserve/Reserve Creation legislation is being considered that would include key benefits of the *Manitoba Claim Settlements Implementation Act* and the *Claim Settlements (Alberta and Saskatchewan) Implementation Act* for additions to reserve/reserve creation.
- Additional efficiencies are being considered such as providing the Minister with the authority to approve easements and voluntary land exchanges rather than having to seek Order in Council approval.
- First Nations benefiting now from the Claim Settlements Implementation Acts would continue to have access to the same instruments.
- Through the potential repeal and replacement of the Claim Settlement Implementation Acts, the proposed legislative approach could create a nationally consistent and unified method to address all Additions to Reserve.



Anticipated Outcomes

- All First Nations will have access to the same procedural tools that streamline the and bring efficiencies to the Additions to Reserve process .
- Legislative proposal would provide commercial certainty and the continuity of existing third-party interests, a significant obstacle to the Additions to Reserve process.
- The selection of economically viable development lands, increases opportunities for future development and supports the development of healthier, more sustainable communities.



Next Steps

- The Department is seeking feedback from First Nations communities and key stakeholders to improve the Additions to Reserve Process.
- The proposed improvements are a part of a larger scale lands modernization initiative that will support First Nations in being “opportunity ready” where communities have a stable, efficient and predictable investment climate where economic development projects can operate at the speed of business.



National ATR Approach

	Issue	Current Approach	Proposed Approach
Ministerial Orders	Ministerial approval of all Additions to Reserve.	<p>Additions to Reserve pursuant to the Claims Settlement Implementation Acts in the Prairies are approved by way of a Ministerial Order.</p> <p>All other Additions to Reserves require approval by the Governor General in Council by way of an Order in Council.</p>	It is proposed that all Additions to Reserve be approved by way of a Ministerial Order.
	Ministerial approval for statutory easements, granted under the <i>Indian Act</i> .	Statutory easements, issued in accordance with the <i>Indian Act</i> , are approved by the Governor General in Council, by way of Order in Council.	<p>It is proposed that statutory easements required for the completion of an Addition to Reserve be granted by Ministerial Order.</p> <p>All other statutory easements would continue to require approval of the Governor General in Council, by way of Order in Council.</p>
	Voluntary land exchanges – where one or more parcels of land are added to reserve in exchange for the removal of one or more parcels of land from reserve status.	<p>Land to be added to reserve is approved by the Governor General in Council, by way of Order in Council, except for First Nations operating under the Claims Settlement Implementation Acts in the Prairies where reserve land status is granted via a Ministerial Order.</p> <p>Land leaving reserve status for voluntary land exchanges require the approval of the Governor General In Council by way of an Order In Council.</p>	To improve the timelines of all Additions to Reserve, it is proposed that submissions for both the addition and the removal of reserve land be approved by the Minister.



National ATR Approach

Pre-Reserve Designation	<p>Access to pre-reserve designation by all First Nations.</p>	<p>In instances where the Lands are added to reserve pursuant to a Treaty Land Entitlement Agreement in the Prairies, the designation process may take place prior to reserve status being granted.</p> <p>For all other First Nations, the designation process takes place after reserve creation.</p>	<p>It is proposed that access to pre-reserve designation be extended to all First Nations across Canada.</p>
Pre-reserve Leases	<p>Ability to put in place new or replacement leases to address new or existing uses on reserve.</p>	<p>For First Nations operating under the Claim Settlements Implementation Acts, leases can be negotiated and executed prior to reserve creation, with the condition that they come into effect upon reserve creation.</p> <p>For all other First Nations, the leasing processes cannot be completed until after the reserve has been created.</p>	<p>It is proposed that all First Nations be able to put in place leases to address existing interests or new (proposed) interests before reserve creation has been granted, with the condition that they do not come into effect until the reserve creation has been granted.</p>
Pre-Reserve Permits	<p>Issuance of pre-reserve permits by the Minister</p>	<p>Land proposed for reserve land may contain interests that have been granted to third parties. Before reserve status is granted, all parties must agree on how to address these interests.</p> <p>At present, only those First Nations falling under the Claims Settlement Implementation Acts may issue permits prior to the lands being granted reserve status.</p>	<p>It is proposed that <i>Indian Act</i> instruments be available to replace the existing provincial interest on the land (i.e. permits) before reserve status is granted, with the condition that they do not come into effect until the reserve creation has been granted.</p>