



ADDITIONS TO RESERVE (ATR) PROCESS

Policy Redesign Engagement Report

2024

Six Nations of the Grand River

Elected Council

Lands and Resources Department

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ADDITIONS TO RESERVE (ATR) PROCESS POLICY DESIGN ENGAGEMENT REPORT - 2024

EXECUTIVE SUMMARY:

Funding was received through the Government of Canada as a first step in redesigning the Additions to Reserve Policy - “the objective of this funding is to support engagement activities led by First Nations and Indigenous organizations that result in policy options, considerations and recommendations for the Additions to Reserve redesign”.

INTRODUCTION:

The Land Planning Unit of Indian and Northern Affairs Canada (INAC) created a Land Management Manual (LMM) dated December 2002 (655 pages). This manual has updated sections throughout. The Additions to Reserve Policy was created in 1972 and is now in the LMM as Chapter 10, Additions to Reserve/Reserve Creation and was updated in 2016 and more recently in 2019.

I. Involvement of Assembly of First Nations (AFN):

In 2010, the AFN and Canada formed a Joint Working Group (JWG) assigned by an AFN resolution to mutually reform the 2001 ATR policy. This led to the current ATR Advisory Committee. This committee meets quarterly with at least two face-to-face meetings to discuss and make recommendations for improving the ATR policy/process.

The ATR advisory committee is made up of the National Aboriginal Lands Managers Associations, the Director General of Lands and Environmental Management Branch at Crown-Indigenous Relations and Northern Affairs, AFN, Lands Advisory Board Resource Centre, Implementation Monitoring Committee, Manitoba USKE, Treaty and Aboriginal Lands Stewards Association of Alberta (TALSAA), Ontario Aboriginal Lands Association, First Nations Lands Managers Association for Quebec and Labrador, British Columbia Aboriginal Lands Managers, Saskatchewan Aboriginal Lands Technicians, Planning and Lands Administrators of Nunavut and the Atlantic Region Aboriginal Lands Association. This work concluded in the 2016 revised ATR policy.

At the 2016 AFN Annual General Assembly (AGA) the Chiefs-in-Assembly passed AFN Resolution 17/2016, *Call on Canada to Update the Additions to Reserves Policy (ATR)*, urging Canada to work with the AFN to provide joint policy interpretation and implementation oversight.

At the Special Chief's Assembly in December 2018, AFN Resolution 94/2018, *Reject Canada's Approach to Additions to Reserve Legislation* was passed by consensus. Crown-Indigenous Relations and Northern Affairs (CIRNA) had explored legislative changes that would expand elements of the Claims Settlement Implementation Act nationally.

The changes would alleviate some of the administrative burdens faced by technicians involved in the ATR process. The AFN has rejected the process not the content of the legislative changes.

In December 2017, CIRNA once again signaled a willingness to renew engagement and agreed to provide AFN with limited funding to engage with First Nations on ATR.

In the fall of 2018, Bill C-86 - *Budget Implementation Act, 2018, No. 2* received Royal Assent. CIRNA unilaterally proposed and introduced legislation without AFN involvement. There was no opportunity for AFN to provide comment and the legislative changes were developed unilaterally and introduced by CIRNA without AFN's involvement.

Although AFN is directly involved with the JWG, the AFN does not speak for Six Nations of the Grand River Elected Council (SNGREC).

II. Six Nations of the Grand River Involvement:

SNGREC has been involved in the ATR Process since the 1980's. In 1985, an agreement with the Federal Government was concluded wherein the Six Nations purchased 3 parcels of land totalling 259.171 acres (more or less) and set it aside as an addition to Six Nations' Reserve. A referendum was held resulting in favour of the Settlement Agreement (Canadian National Railway Right-of-Way). By an Order-in-Council P.C. 1987-687, dated April 2, 1987, the 259.171 acres were added to the Six Nations of the Grand River (SNGR) reserve, two years after the agreement was made.

Another example was when the City of Brantford wanted to build a dyke to prevent flooding of lands along the Grand River, more particularly, to protect and enhance the visual aspect of the Mohawk Chapel. An agreement was entered between SNGR and the Grand River Conservation Authority (GRCA) to build and maintain a dyke and return lands around the Chapel to Six Nations. The construction and timing of the dyke directly coincided with the renovations to the Mohawk Chapel and the target of completion was scheduled for the Bicentennial Ceremonies when the Queen of England would attend in 1984. It was agreed that Lots 13 and 14 of Eagles Nest Tract

(approximately 56.9 acres) in the City of Brantford would be added/returned to the SNGR and was completed by Order in Council in 1987. This return happened in 4 years.

Additional lands were purchased in the 1990's and remain in the ATR Process to this day. They are adjacent to the current Six Nations Reserve and total approximately 620 acres. This report will outline the complications and challenges endured over the last 30 years.

ACTIVITY AND ENGAGEMENT:

SNGR has been vocal about the problems with the ATR Policy and Process. Waiting for 30 plus years to have lands added to the current reserve is unacceptable and completely avoidable.

During the 2006-2009, Douglas Creek Negotiations with Haudenosaunee/Six Nations, Canada and Ontario, a land replacement process approach paper was presented to put ideas on the table for discussion.

In 2011, Six Nations hosted a side event at the Tenth Session of the Permanent Forum on Indigenous Issues at the United Nations, documenting and explaining the challenges in seeking justice for Land Rights with Canada.

In 2023, Six Nations hosted the third side event to the 23rd Permanent Forum on Indigenous Issues at the United Nations, continued to explain the injustices and making recommendations on how to transfer "Crown Lands" back to First Nations.

In 2023, a submission to the House of Commons Standing Committee on indigenous and Northern Affairs, Six Nations stated the challenges of restitution for lands and resources lost through the misappropriation of the Haldimand Treaty lands, managed by the Federal Government.

In 2023-2024, through the Engagement Process with the Community and administration departments of the SNGREC. It has been made evident that the return/acquiring of lands to Six Nations is one of the most important issues that is agreed upon. It was also agreed that the current process is not working and takes too long. The community continues to grow with population and business needs.

ISSUES AND RECOMMENDATIONS:

Issue 1 - Consultation Letters – The Policy requires that Provincial and Municipal Governments to be notified every two (2) years until the applied lands are added to the reserve. Since 1990, the number of Provincial (Ontario) Governments to be notified has risen to the following: Ministry of Indigenous Affairs; Ministry of Environment, Conservation and Parks; Ministry of Finance; Ministry of Transportation; Ministry of Energy, Northern Development and Mines; Ministry of Natural Resources and Forestry; Ministry of Municipal Affairs; Ministry of Municipal Affairs and Housing; and Ministry of Government and Consumer Services. Each of these Ministries can comment and state any objections/concerns that need to be addressed before the ATR can be completed. The Municipal Considerations must also be given to the local government where the lands to be added are located. Some of the concerns are loss of taxation dollars and yet they provide no services to Six Nations for these taxation dollars; provisions for services; by-law enforcements (signs, etc.); and road maintenance. The municipal concerns/comments must be addressed, or an arrangement/agreement completed before the land can be finalized.

Recommendation:

Consultation Letters – This process does not need to be done every two years and any notifications to Government or Municipality should be dispensed with. Adding lands to an existing Reserve should not rely upon other Government institutions or Municipalities.

Issue 2 - Environmental Assessments (EA) – An environmental review of the proposed property is required. This involves an EA from a consultant who will outline and assess the recommended “clean up” of any contamination or environmental concerns. The stages include Overview; Land Use History; Preliminary Site Visit; and Assessment/Clean-up. This becomes a very costly process as the First Nation is responsible for steps and based upon the approval of ISC environmental officials. The EA's are done in stages with costs associated with each one. The EA also need to be re-done every 5 years if the lands have not been added. The majority of Six Nations' land to be added to the reserve are agricultural lands and pose little to no environmental risks.

Recommendation:

Environmental Assessments – First Nations should have the decision to have land transferred in an “as is” condition and would indemnify Canada for any

liability. It should be noted that the lands purchased by Six Nations were all agricultural lands and had only houses and barns, on the lands. There were no major environmental concerns and yet the EA still needs to be complete.

Issue 3 - Permits – Any Easements, such as railway, hydro, phone lines, etc. need to be addressed with a Permit/Agreement before the land can be added. This becomes a costly and timely process to the First Nations as lawyers are required to advocate and complete any issues. The permit process takes years as agreements between all parties is sometimes difficult to achieve. Six Nations has been negotiating a permit for several years for one property. The present process of this extremely slow and overly expensive because of ISC incompetence.

Recommendation:

Permits - Land transfers should be finalized while negotiating any Permit/Agreement for services. This should not hold up the process.

Issue 4 - Title Searches – They are finalized by the Department of Justice (DOJ) that is done on their time schedule and any concerns, such as trails, encumbrances, reservations, etc, must be addressed before transfer is complete. Currently, there are issues holding up the process for things such as trails and reservations for mines and minerals.

Recommendation:

Title Searchers - Any encumbrances, reservations, etc. should not hold up the process of completing the transfer.

Issue 5 - CLSR Surveys – A Canada Lands Survey Record (CLSR) must be completed on the proposed property and the cost is responsibility of the First Nation and can take up to a year to finalize. The issue of the limited number of CLS is an issue and is extremely expensive.

Recommendation:

CLSR Surveys - Relying on a complete CLSR Survey before transfer should not hold up the process. An Ontario Land Survey (OLS) should be sufficient as there are more OLS surveyors than CLSR and the OLS surveyors are more readily available, less costly and not as cumbersome for approvals. Better yet, a new surveying method using GPS technologies needs to be explored and implemented.

Issue 6 - Existing Encumbrances or Charges – the property needs to be free of any encumbrances before the transfer (e.g. Squatters). The issue of a squatter on a property has become a block as it needs to be vacant.

Recommendation:

Existing Encumbrances – This should not hold up the process of transferring the property. As the property remains under municipal/Ontario jurisdiction until officially added to the reserve, we are unable to fully assert our jurisdiction and control over these properties. The First Nations can indemnify Canada and deal with the situation once transferred.

Issue 7 - Indemnity Clause – This clause withdraws Canada’s liability in the proposed lands to be added and states it will be transferred “as is”. Six Nations has repeatedly requested that this be abided by as most of the lands are former agricultural.

Recommendation:

This clause should be able to be implemented by First Nations to transfer the lands “as is.” Although Six Nations are willing to adhere to this clause, it has not been an option at this point.

Issue 8 - Regional Managers – Over the last 30 years, Six Nations have had to deal with multiple changes in people within the Department of Indian Affairs, Lands Division. The most recent assigned manager was as of November 2023. This creates frustration for the First Nation as the new manager needs to be “brought up to date” on the issues.

Recommendation:

Regional Managers – The land should be transferred in a maximum of 2 years so that the same Manager can see the file to fruition. Files for First Nations should be transferred with ease to the next Manager with little to no period of transition

Issue 9 - Ministerial Order – The final decision of completing the ATR must be approved by the Minister of ISC, this could take up to 9 months once all the steps have been completed.

Recommendation:

Ministerial Order - Should take no more than 3 months after all steps have been completed. If more than 3 months has elapsed and ministerial order is not complete, then it is understood as granted.

Issue 10 - Trust Agreement – Until recently, under the *Land Titles Act*, it provides that a trust shall not be entered on the register as legal title and recommends that the lands held in Trust be transferred to a First Nations Corporation. Six Nations holds several properties in trust, and these are tax exempt. Once they are transferred to the Corporation, the tax-exempt issue is dismissed and Six Nations will have to pay taxes until returned, which could be many more years.

Recommendation:

Trust Agreement – When the lands are transferred from the Trustees to a Corporation, the issue of municipal taxes become relevant. There should be no taxes paid on ATRs as we receive no services from the municipality for any land taxes paid.

Issue 11 – First Nations Land Management (FNLM) Regime – This Regime allows First Nations to have more control over how development on reserve lands takes place; can collect land revenues directly; set out their own land codes; and potential for job creations. It does not, however, address legacy issues that some First Nations have, that would create difficulties in creating land codes and enforcement.

Recommendation:

Six Nations does not want to join the FNLM System and feels that this system would not benefit Six Nations’ community as it would only create more problems with land management, CLSR surveys, estates, and enforcement of land use policies. This would only relieve Canada’s liability and create management difficulties for the First Nation as the title of the land would remain with the Crown.

QUESTION?

What is more important than SNGR purchasing these lands back for the use and benefit of Six Nations’ people critical needs. These needs are not being addressed by the Crown. Housing, economic development, education to environmental and wildlife management opportunities, infrastructure and climate change issues. The Crown should be assisting with every opportunity Six Nations is making available, be it morally and legally right. Is the Crown opening themselves up to more legal liabilities with the current “broken ATR process” and the lost opportunities Six Nations have not been able to take advantage of?

FIDUCIARY RESPONSIBILITY:

The Federal Government Departments responsible for First Nations are not working together. ISC continually and expeditiously expands membership laws that increases population, and they cause every roadblock possible on the Lands (ATR) side that the scale of Justice is tipped. This isn't right.

Once lands are entered into the ATR process and are not returned to Six Nations after 2 years have passed, Six Nations (at a rate defined by them) would impose a tax on the Crown on said lands until such time that the lands are returned to Six Nations. This action will show ISC honoring their fiduciary obligation to SNGR First Nation and further support ISC is sincere in their support of the true meaning of truth and reconciliation.

The following needs to be addressed:

Lack of Surveyors – ISC requirement is a CLS designation. We need to open this up to a new way. We need to build capacity on surveyors and survey system.

Estates – This remains with ISC and is problematic as there has been a lot of situations coming in from community members on lands dealing in Estates. Where's the fiduciary obligation?

Land Use Planning – We need a designated person to take the lead to create a land use mechanism and without a full Environment Department, it is challenging. We need funding to build capacity in all areas.

According to the Guerin Decision, "The existence of such unconscionability is the key to a conclusion that the Crown breached its fiduciary duty. Equity will not countenance unconscionable behaviour in a fiduciary, whose duty is that of utmost loyalty to his principal."¹

In simpler terms "When the Crown does certain things that affect First Nations, it must do them in the **BEST INTERESTS of the FIRST NATION** and do them with **LOYALTY and CARE.**"²

¹Guerin v. The Queen [1984] 2 S.C.R. pages 388-389

²NALMA, (2024) PLMC101 Laws (Treaties) Acts & Regulations, Technical Training Professional Land Managers Certification Program

Canada has a fiduciary responsibility to SNGR/First Nations, they must Honour Fiduciary obligations

CONCLUSION

SNGR needs to move forward to being a self-governing, self-sustaining community, without outside interference from Canada.

Six Nations is seeking a Land Tenure System as historically agreed that we govern our lands, ourselves under our laws. The lands we select must be under our ownership and control without waiting for the unacceptable ATR process nor from outside Indigenous Affairs interference.

Six Nations will be establishing our own justice system focused on our values, our culture, and our principles to govern our lands.

As the courts will not order the return of all the lands illegally disposed from Six Nations by the Crown(s); we are left to purchase back sufficient lands required by our Nation to meet our housing, farming, environmental initiatives, and economic opportunities.

The other lands within the Haldimand Tract, wherein we authorized outside people to share our lands under long term mortgages/leases, we will negotiate for revenue sharing agreements with Canada, Ontario and municipalities based upon Six Nations Consultation and Accommodation Policy. These lands were intended to create a perpetual revenue stream for our infrastructure, health care, educational, housing needs etc. “which them and their posterity are to enjoy forever”.

We intend to achieve our goals through fruitful negotiations secured by legally binding agreements between SNGREC, Canada, and Ontario outside of existing Indian Act Legislation and Bureaucratic Indian Affairs Policies.

These negotiations we promote as a fiscally responsible and manageable solutions to address the liabilities the Crown(s) will owe SNGR in the outcome of Six Nations of the Grand River Band of Indians v. The Attorney General of Canada and His Majesty the King in Right of Ontario.

APPENDIX 1 – Community Engagement Session results:

Feedback Survey Questions:

1. What is your opinion of the current Additions to Reserve process?

Does not work for us; It does not produce results in a reasonable time. There seems to be repeated road blocks; Its stupid, Gov. has so much say; requires change, convoluted; It takes way too long to get lands added to reserve, should be 1-2 years max; The length of time is unacceptable for this ATR process; its racist and meant to work against us;

2. What issues do you have with the current Additions to Reserve Process?

All of it; Slow, not clear, too many players, repeated environmental reviews slow down; Why do EAs need to be done every 5 years? Municipalities can get away without doing so, if land use has not changed, prior to EA should work; Required too much cost; create loop holes that allow/create perpetuate undo hardships on or fiscal spending; The process is so long & were paying taxes! In the meantime, should be no taxes at all, no provincial laws on lands awaiting ATR no municipal laws; The policies or procedures do not align with each other, ex EA/5 yrs. vs 20 years in ATR process, it will be a constant spinning of your wheels; They are dicking around in the name of Reconciliation, how they force us under their process when we can create our own

3. Do you have any ideas for potential solutions or areas of concern you would like Lands & Resources to address?

This is a Six Nations concern, its very big, get more people involved; eliminate the need for multiple jurisdictions to have a right to block the process. The resolution should be directly between the first nation and the crown. There should be a set period elapsed time for each transfer; The official “unofficial” guide to creating legal change, who needs to be yelled at?; Start using our lands that have been added, eg. Housing. Unite with other territories to push to change the ATR, use government laws/acts against them somehow, to our advantage, state to Feds “how” the ATR process is negatively effecting us! Eg. Housing crisis, population growth, homelessness, addictions, no lands to house people.; Focus on the time period or time frame, Get consensus on this first, then make the rest of the work fit within those time frames, if the time is not addressed then you get the land back movements aroused (protests), build capacity to push, Need to make this issue an emergency movement on land back; We start building capacity now, start building planners, EA/INAC

stewards, surveyors, etc, to conduct the work required for their process to steward/care for land use once they are in our possession, The funding to do so should come from government, continue more education & awareness, create our own EA/IAAC process, land tenure system