

Indigenous and Northern Affairs Canada

Land Management Manual, Chapter 10

Additions to Reserve/Reserve Creation

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Contents	Page
Directive 10 – 1: Policy on Additions to Reserve/Reserve Creation	4
1.0 Application (Purpose)	4
2.0 Effective Date	4
3.0 Definitions	4
4.0 Interpretation	6
5.0 Context	6
5.1 Orders in Council	6
5.2 Ministerial Orders	7
6.0 Policy Statement	7
7.0 Objectives	7
8.0 Principles	7
9.0 Categories of Reserve Creation	8
9.1 Legal Obligations and Agreements	8
9.2 Community Additions	8
9.3 Tribunal Decisions	8
10.0 Selection Area	9
11.0 Reserve Creation Proposals	9
12.0 Proposal Assessment	9
13.0 Financial Implications	10
14.0 Community Consent	11
15.0 Dispute Resolution	11
16.0 Roles and Responsibilities	13
17.0 Policy Assessment and Review	13
18.0 Legislation and Related Policy Instruments	13
18.1 Legislation	13
18.2 Related Policy Instruments	14
19.0 Enquiries	15
Annex A – Reserve Creation Proposal Criteria	16
1.0 Duty to Consult - Aboriginal or Treaty Rights	16
2.0 Environmental Management	16
3.0 Improvements to Proposed Reserve Land	18

4.0	Other Federal Government Departments/Agencies	19
5.0	Existing Encumbrances or Charges	19
6.0	Third Party Access	19
7.0	Land Descriptions	20
8.0	Provincial or Territorial Considerations	20
9.0	Local Governments	21
Annex B – Special Circumstances Policy Requirements		23
1.0	Accretion/Erosion	23
2.0	Natural Disasters	23
3.0	Subsurface Rights	24
4.0	Partial Subsurface Interest or Right Additions	24
5.0	Small Mineral Additions	24
6.0	Correcting a Reserve Creation Order in Council or Ministerial Order	25
7.0	Joint Reserves	26
Annex C – Guidelines for First Nation-Local Government Agreements		28
1.0	Objective	28
2.0	Definitions	28
3.0	Requirements	28
4.0	Relationship Building	28
5.0	By-Law Compatibility	29
6.0	Service Agreements and Net Tax Loss Adjustment	30
7.0	Dispute Resolution	32
8.0	Additional Resources	33
Directive 10 – 2: Reserve Creation Process		35
1.0	Effective Date	35
2.0	Application	35
3.0	References	35
4.0	Objectives	35
5.0	Requirements and Responsibilities	35
5.1	Phase 1 - Initiation	36
5.2	Phase 2 - Assessment and Review	37
5.3	Phase 3 - Proposal Completion	38
5.4	Phase 4 - Approval	38
6.0	Enquiries	39
Template 1: Reserve Creation Proposal Application Form		40
Template 2: Reserve Creation Proposal Development Checklist		49
Template 3: Reserve Creation Joint Work Plan		50
Directive 10 – 3: Additions to Reserve/Reserve Creation Transition Guidelines		54
1.0	Principles	54
2.0	Purpose	54
3.0	Transition Process	54
4.0	Priority Consideration	55

5.0	Flow Chart	56
6.0	Enquiries	59

Directive 10 – 1:

Policy on Additions to Reserve/Reserve Creation

1.0 Application (Purpose)

This Policy on Additions to Reserve/Reserve Creation provides guidance with respect to the assessment, acceptance and implementation of Reserve Creation Proposals, including proposals by First Nations operating under the *First Nations Land Management Act*.

2.0 Effective Date

2.1 This Policy is issued under the authority of the Minister of Indigenous and Northern Affairs. This Policy will be administered by the Department of Indigenous and Northern Affairs Canada (INAC). This Policy received approval on June 29, 2016, and is effective as of July 27, 2016.

2.2 This Policy is Chapter 10 of INAC's Land Management Manual. It includes all the directives contained in this Chapter including their annexes. It replaces all prior policies, interim policies, directives, standards, procedures and guidelines relating to Reserve Creation, including Additions to Reserve.

2.3 Reserve Creation Proposals submitted prior to the effective date of this Policy will be processed in accordance with Directive 10-3: Additions to Reserve/Reserve Creation Transition Guidelines.

2.4 In this Policy, the term Reserve Creation is used to refer to both Additions to Reserve and the creation of New Reserves.

3.0 Definitions

The following definitions apply in this Policy.

“Addition to Reserve” means the act of adding land to an existing Reserve land base of a First Nation;

“Agreement” means any written agreement to which Canada is a party that includes provisions with respect to Reserve Creation;

“Approval in Principle” (AIP) is a term applicable only to the 2001 Policy. It means 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. It is given by either the Regional Director General (RDG) or the Deputy Minister (DM). Where conditions are attached to the AIP, they must be satisfied before an order in council (OIC) or Ministerial Order recommendation can be made;

“Canada” means Her Majesty the Queen in right of Canada (the federal government);

“Duty to Consult” means an obligation of the government as a whole to consult with Aboriginal peoples (and accommodate where appropriate) when the Crown contemplates conduct that might have an adverse impact on potential or established Aboriginal or treaty rights protected by section 35 of the *Constitution Act, 1982*;

"Environmental Site Assessment" means an analysis of Proposed Reserve Land with respect to past and present uses, as well as on-site and off-site activities that may have the potential to affect the Proposed Reserve Land's environmental quality, including the health and safety of occupants/residents;

“First Nation” or “Band” means a “band” as defined under the *Indian Act*;

“INAC” means Indigenous and Northern Affairs Canada (the department legally known as the Department of Indian Affairs and Northern Development Canada);

“Joint Reserve” means a Reserve that is set apart for the use and benefit of more than one First Nation;

“Land Management Manual” means INAC's Land Management Manual;

“Letter of Support” means a letter from INAC officials to the First Nation that states that the First Nation's Reserve Creation Proposal will be supported by INAC officials to the extent indicated in this Policy and identifies the criteria that must be satisfied before INAC officials will recommend the Proposed Reserve Land for Reserve Creation;

"Local Government" means a city, town, village or other built-up area with municipal, regional district or other authority, and includes a rural or urban municipality, as defined in relevant provincial or territorial legislation;

“Mines and Minerals” means mines and minerals, precious or base, including oil and gas;

“Minister” means the Minister of Indigenous and Northern Affairs (legally known as the Minister of Indian Affairs and Northern Development Canada);

“New Reserve” means the act of creating a Reserve for a First Nation with no existing Reserve land base;

“Proposed Reserve Land” means land proposed by the First Nation for Reserve Creation;

“Reserve” means a reserve as defined under the *Indian Act*;

“Reserve Creation” means the act of adding land to an existing Reserve or creating a new Reserve for a First Nation by Order in Council or Ministerial Order;

“Reserve Creation Proposal” means the formal proposal by a First Nation to add land to an existing Reserve or to create a New Reserve by Order in Council or Ministerial Order;

“Reserve Creation Proposal Criteria” means the relevant requirements and criteria set out in Annexes A and B of Directive 10-1 of this Policy and any other requirements or criteria as determined by INAC;

"Royal Prerogative" means the power of the Crown, as represented by the Governor in Council, to take action as an exercise of its executive power. Setting apart Reserves is one such power and it is exercised by the Governor in Council acting through an Order in Council at the request of the Minister.

4.0 Interpretation

- 4.1** Where the criteria or requirements in this Policy are inconsistent or conflict with the provisions in an Agreement (including but not limited to a Treaty Land Entitlement, other Specific Claim, or Self-government Agreement), the provisions of the Agreement will prevail to the extent of the inconsistency or conflict.
- 4.2** Any reference in this Policy to a statute or regulation includes any amendment to that statute or regulation and any successor statute or regulation.
- 4.3** Any reference to a policy, directive, standard, procedure or guideline includes any amendment to that policy, directive, standard, procedure or guideline.

5.0 Context

5.1 Orders in Council

The authority of the Governor in Council to grant Reserve status flows from the Royal Prerogative, which is a non-statutory authority. There is no statutory authority under the *Indian Act* to set apart land as a Reserve. Typically, lands must be acquired or a transfer of administration and control accepted by Canada under the *Federal Real Property and Federal Immovables Act*, and then granted Reserve status by federal Order in Council on the recommendation of the Minister of INAC.

5.2 Ministerial Orders

Other authorities to set apart land as Reserve are found in the *Manitoba Claim Settlements Implementation Act* and the *Claim Settlements (Alberta and Saskatchewan) Implementation Act*. These allow for Reserve Creation in the provinces of Alberta, Saskatchewan and Manitoba by Ministerial Order without the requirement for an Order in Council.

6.0 Policy Statement

Reserve Creation may be used to fulfill Canada's legal obligations, and may further serve a broader public interest by supporting the community, social and economic objectives of First Nations by expanding a First Nation's Reserve land base.

7.0 Objectives

This Policy is intended to:

- a) provide clear policy direction for Reserve Creation;
- b) promote consistent assessment, acceptance and implementation of Reserve Creation Proposals where possible;
- c) consider the interests of all parties and find opportunities for collaboration where possible; and
- d) streamline the process for Reserve Creation Proposals.

8.0 Principles

The following principles must be respected in the application of this Policy:

- a) Nothing in this Policy constitutes a guarantee that any Reserve Creation Proposal will ultimately result in a particular parcel of land being set apart as Reserve. The final decision to set apart land as Reserve rests with the Governor in Council or the Minister of INAC. See clause 5.0 (Context).
- b) INAC will consider the potential or established Aboriginal or Treaty rights of First Nation, Métis and Inuit peoples before setting apart lands as

- Reserve.
- c) The views and interests of provincial, territorial and Local Governments will be considered, and collaboration between the First Nations and those governments will be encouraged on issues of mutual interest and concern.
 - d) Options to address third party interests or rights on lands will be identified when considering Reserve Creation Proposals.
 - e) Reserve Creation Proposals will make cost effective use of financial resources.
 - f) The environmental condition of land proposed for Reserve Creation will be acceptable for its intended use, and will comply with applicable federal requirements.
 - g) Reserve Creation Proposals will comply with applicable federal requirements for land acquisition and management.
 - h) The use and development of community and land use planning tools is encouraged to assist First Nations in planning for land acquisition and Reserve Creation, and to facilitate land management after Reserve Creation.
 - i) INAC encourages accountability and transparency through the entire Additions to Reserve process. This can be achieved by communicating key milestones and decision points, where appropriate, to community members using tools such as the First Nations Gazette.

9.0 Categories of Reserve Creation

- 9.1** Legal obligations and Agreements – Where there is a legal obligation or a legal commitment by Canada that contemplates Reserve Creation contained within:
- a) a settlement Agreement (such as Treaty Land Entitlement or other Specific Claims Agreement);
 - b) a Self-Government Agreement;
 - c) a land exchange Agreement;
 - d) a land transaction with a reversionary interest or right to Canada or the First Nation;
 - e) an Agreement for return of former Reserve land where there is no express reversionary interest or right;
 - f) an Agreement with a landless Band; or
 - g) an Agreement for the relocation of a community, the expansion of an existing reserve land base, or the establishment of a New Reserve.
- 9.2** Community Additions – Where a First Nation with an existing Reserve needs additional Reserve land for any of the following purposes:
- a) residential, institutional, recreational uses, to accommodate community growth;
 - b) use or protection of culturally significant sites (such as burial grounds, archaeological, or ceremonial);
 - c) economic development;

- d) geographic enhancements to improve the functioning of existing Reserve base; or
- e) where the First Nation has entered into a legally binding agreement with the province, territory, Local Government or a corporation that is empowered by law to take or to use lands, and Canada is not a party to the agreement but agrees to implement those provisions of the agreement. This may include transactions under section 35 of the *Indian Act*.

9.3 Tribunal Decisions – Where a First Nation seeks to acquire lands with compensation awarded by the Specific Claims Tribunal for:

- a) a failure to fulfill a legal obligation of the Crown to provide lands under a treaty or another Agreement;
- b) a breach of a legal obligation arising from the Crown's provision or non-provision of Reserve lands; or
- c) an illegal disposition by the Crown of Reserve lands.

10.0 Selection Area

The Proposed Reserve Land should normally be located within a First Nation's Treaty or Traditional Territory. Where there is an Agreement under the legal obligations and Agreements category of this Policy, Proposed Reserve Land may be outside the First Nation's Treaty or Traditional Territory, but within the province or territory where the majority of the First Nation's existing Reserve land is located.

11.0 Reserve Creation Proposals

11.1 In order for Reserve Creation to be considered under this Policy, a First Nation must provide a Reserve Creation Proposal that satisfies the minimum proposal requirements set out in Directive 10-2 "Reserve Creation Process".

11.2 All Reserve Creation Proposal Criteria identified in a Letter of Support must be met before INAC will submit a Reserve Creation Proposal to the Governor in Council or to the Minister for approval.

12.0 Proposal Assessment

12.1 Before issuing a Letter of Support for a Reserve Creation Proposal, INAC will fully review and assess the Reserve Creation Proposal in accordance with Directive 10-2, "Reserve Creation Process". This includes considering the Reserve Creation Proposal put forward by the First Nation, the Reserve Creation Proposal Criteria required to complete the Reserve Creation (see Annexes A & B

of this Policy), and the responses from provincial, territorial and Local Governments.

- 12.2** In providing advice to the Minister of INAC or the Governor in Council on the merits of the Reserve Creation Proposal, INAC will comment on the social and economic prosperity of the First Nation and describe any other impacts or benefits flowing from the Reserve Creation, which could include any of the following:
- a) fulfillment of legal obligations or Agreements of Canada;
 - b) implementation of Reserve Creation Proposals related to Specific Claims Tribunal decisions;
 - c) economic development potential of the Reserve Creation on residents of the surrounding area;
 - d) costs related to the provision of services to the First Nation and the Local Government (where the First Nation is the service provider);
 - e) revenue adjustments resulting from a change in tax status;
 - f) financial implications for Canada;
 - g) existing First Nation, provincial, territorial, regional or Local Government land use plans;
 - h) regional infrastructure management;
 - i) regional traffic or transit management plans;
 - j) protected or environmentally sensitive areas (such as National Parks, Agricultural Land Reserves in British Columbia, or Greenbelt Lands in Ontario); and
 - k) culturally sensitive areas (such as First Nations burial, archaeological or ceremonial sites).
- 12.3** In advising on the Reserve Creation Proposal, INAC assigns no specific weighting to the factors for consideration, nor is any single factor determinative. On balance, the positives must outweigh the negatives. INAC will consider the factors before providing a Letter of Support, and will provide its assessment of those factors to the Minister and the Governor in Council when INAC submits the Reserve Creation Proposal to the Minister or the Governor in Council for approval.
- 12.4** Reserve Creation Proposals based on the Community Additions category must establish a community need for the Proposed Reserve Land. The Proposal must demonstrate that the existing Reserve base is not suitable for the intended land use. Reserve Creation Proposals for economic development under this category must further demonstrate that the benefits and positive impacts from the Reserve Creation outweigh the potential tax impacts associated with Reserve Creation, as tax advantages cannot be the sole justification for Reserve Creation.
- 12.5** If a proposal will be supported, INAC will identify in the Letter of Support any relevant criteria, including criteria set out in Annex A or B (where applicable) that must be satisfied before INAC will recommend that the Proposed Reserve Lands

be set apart as a Reserve.

- 12.6** If a proposal will not be supported, INAC will provide a written explanation to the First Nation.

13.0 Financial Implications

- 13.1** In the absence of an Agreement or other arrangement providing funding, INAC is not obligated nor prevented by this Policy from providing funding for Reserve Creation activities, including:

- a) land acquisition;
- b) surveys;
- c) environmental assessment activities, remediation and monitoring/mitigation activities, or other environmental costs;
- d) transactional costs associated with land acquisition;
- e) incremental costs resulting from negotiations with Local Governments; and
- f) any additional funding for infrastructure housing, or other capital costs.

- 13.2** INAC must identify any foreseeable financial implications for Canada, as well as potential sources of funding relevant to the intended use of the Proposed Reserve Land before a Letter of Support is issued.

14.0 Community Consent

- 14.1** A Band Council Resolution is required for all Reserve Creation Proposals.
- 14.2** In the limited circumstances where a Band vote is required under this Policy, a vote will be held in accordance with, or in a similar manner to, the *Indian Referendum Regulations*, and will be decided by a majority of those eligible electors of each participating First Nation who voted (simple majority). A First Nation may choose to establish a higher threshold for community consent for the conduct of these votes.

15.0 Dispute Resolution

- 15.1** INAC promotes a “good neighbour” approach that encourages effective relations when First Nations and Local Governments, provinces, territories, or third parties are seeking to resolve issues relating to Reserve Creation. INAC encourages discussions on issues of mutual interest and concern that are conducted with good will, good faith and reasonableness, and within reasonable timeframes.

- 15.2** To assist First Nations and Local Governments, provinces, territories, or third

parties in successfully resolving disputes, the following best practices are encouraged:

- a) early communication on the Reserve Creation Proposal that pro-actively seeks to avoid disputes, encourages cooperation among parties, and works towards building a positive relationship;
- b) the development of mutually agreeable approaches to dispute resolution between the parties at the outset of discussions in order to identify and address areas of disagreement quickly, and facilitate further resolutions as they may arise in the negotiation of agreements;
- c) the inclusion of dispute resolution mechanisms in any final agreements between the parties, where appropriate, to address future disagreements as they arise;
- d) the establishment of mutually agreeable time frames for efforts to resolve disagreements; and
- e) the use of mediation where negotiations have reached an impasse.

15.3 It is expected that the parties to a dispute will attempt to resolve disputes on their own, both during and after the negotiation of any required agreements. Where appropriate, INAC encourages the use of non-binding dispute resolution processes, such as:

- a) Conciliation: The parties may try to work out the issues by themselves such as at a joint meeting between the First Nation council and the other party. In the alternative, the parties may work out the issues with the assistance of a third party;
- b) Facilitation: The parties may request assistance from neutral third party for facilitation of a joint meeting to support discussions that assist the parties to identify issues, and develop options to resolve disputes; and
- c) Mediation: Pursuant to this process, a third party assists in working out a solution to the dispute. A decision is reached by consensus, which may or may not be binding depending on the terms of the mediation.

15.4 Discussions around issues of mutual interest and concern where instances of disagreement between First Nations and Local Governments, provinces, territories, or third parties have arisen should not unreasonably delay a Reserve Creation Proposal.

15.5 While INAC is not a party to agreements between First Nations and Local Governments, provinces, territories, or third parties, and has no authority under this Policy to impose agreements or arbitrate decisions among the parties, INAC will support these discussions and negotiations by:

- a) encouraging the parties to contact INAC as early as possible to provide technical assistance such as general information and clarification of policy and process;
- b) where requested, providing facilitated management (by INAC or a neutral third party) of a joint meeting to support discussions that assist the parties to identify issues, and develop options to resolve disputes; and

- c) providing access to tools and resources to assist the parties in understanding the dispute resolution process and how to incorporate dispute resolution techniques into their ongoing relationship.

15.6 Where there are outstanding issues or concerns arising from negotiations between First Nations and Local Governments, provinces or territories, or third parties, and all dispute resolution options (including mediation) have been explored, the Regional Director General or Deputy Minister may nonetheless agree to support the Reserve Creation Proposal, or may withdraw support. In this instance, INAC will discuss the decision with the First Nation, and the Reserve Creation Proposal will be forwarded to the Minister for review.

16.0 Roles and Responsibilities

16.1 The Minister of INAC is responsible for:

- a) the decision to approve Reserve Creation through the issuance of a Ministerial Order; or
- b) the decision to recommend Reserve Creation where the Reserve will be created by Order in Council.

16.2 The Deputy Minister is responsible for:

- a) the administration of this Policy;
- b) the review and consideration of whether to issue a Letter of Support for Community Additions Reserve Creation Proposals.
- c) the issuance of Clarification Bulletins where an aspect of this Policy is either ambiguous or inconsistent with another aspect of this Policy; and
- d) the issuance of amendments, as may be required from time to time for the effective implementation of the Policy, to any of the templates set out in Directive 10-2 (Reserve Creation Process) of this Policy.

16.3 The Regional Director General is responsible for:

- a) the review and consideration of whether to issue a Letter of Support for Legal Obligation and Agreements Reserve Creation Proposals and Specific Claims Tribunal Reserve Creation Proposals; and
- b) advising the Deputy Minister on decisions to issue a Letter of Support for Community Additions Reserve Creation Proposals.

17.0 Policy Assessment and Review

17.1 Within five years from the effective date of this Policy, INAC will conduct a joint review of the effectiveness of this Policy. The review will be guided by a steering committee that will include First Nations stakeholders.

17.2 The effectiveness of this Policy will be examined by INAC using the results of assessments of this Policy and other related instruments that flow from it. INAC will identify and undertake any additional monitoring and assessment activities as necessary to undertake an effective policy review.

18.0 Legislation and Related Policy Instruments

Legislation and policy instruments applicable to the Additions to Reserve/Reserve Creation Policy include but are not limited to the following:

18.1 Legislation

- a) The *Indian Act*;
- b) The *Constitution Act(s)*;
- c) *Manitoba Claim Settlements Implementation Act* and the *Claim Settlements (Alberta and Saskatchewan) Implementation Act*;
- d) The *Federal Real Property and Federal Immovables Act*, and regulations;
- e) *Canadian Environmental Assessment Act 2012 (CEAA 2012)* and regulations;
- f) The *Species at Risk Act*;
- g) *Canada Lands Surveys Act* and regulations;
- h) *Indian Lands Agreement (1986) Confirmation Act, 2010* (Statutes of Ontario);
- i) *Indian Lands Agreement Act (1986)*;
- j) *Specific Claims Tribunal Act*;
- k) *First Nation Fiscal Management Act*;
- l) *First Nations Commercial and Industrial Development Act*;
- m) *Canadian Environmental Protection Act, 1999*.

18.2 Related Policy Instruments

- a) INAC's *Land Management Manual*;
- b) INAC's *New Bands and Band Amalgamations Policy*;
- c) Chapter 12 of INAC's *Land Management Manual* (Environmental Obligations);
- d) Treasury Board Secretariat *Policy on Management of Real Property*;
- e) INAC's *Indian Lands Registration Manual*;
- f) INAC's *Specific Claims Policy*;
- g) *Canada's Aboriginal Consultation and Accommodation Updated Guidelines for Federal Officials to Fulfill the Duty to Consult*;
- h) *Geographical Names Board of Canada; Principles and Procedures for Geographic Naming, 2011*; Public Works and Government Services Canada, ISBN 978-1-100-52417-7;

- i) *First Nation Taxation Commission and Federation of Canadian Municipalities* for information on First Nation/municipal tax/service agreements and models;
- j) *Framework Agreement between INAC and Legal Surveys Division, Natural Resources Canada, February 25, 2009*, registered in the Indian Land Registry under Instrument No. 258930, for the type of land description requirements for Reserve land transactions.

19.0 Enquiries

For information on this Policy or to obtain any of the above-noted references, please contact:

Indigenous and Northern Affairs Canada
Terrasses de la Chaudière
10 Wellington, North Tower
Gatineau, Quebec
Postal Address:
Ottawa, Ontario
K1A 0H4

Email: InfoPubs@aadnc-aandc.gc.ca

Phone: (toll-free) 1-800-567-9604

Fax: 1-866-817-3977

TTY: (toll-free) 1-866-553-0554

Directive 10 – 1: Annex A **Reserve Creation Proposal Criteria**

The criteria that apply to all Reserve Creation Proposals within the categories set out in clause 9.0 of Directive 10-1 of the Policy include, but are not limited to:

1.0 Duty to Consult - Aboriginal or Treaty Rights

- 1.1 As provided in clause 8.0(b) of this Policy, INAC will consider the potential or established Aboriginal or Treaty rights of First Nation, Métis and Inuit peoples before setting apart lands as Reserve.
- 1.2 Before Reserve Creation, INAC will assess whether the Crown has met its Duty to Consult (where the duty exists) with First Nation, Métis and Inuit peoples, as applicable, where Crown action related to the Reserve Creation may have an impact on Aboriginal or Treaty Rights. INAC will follow the applicable policies and guidelines of the Government of Canada relating to the Duty to Consult when considering a Reserve Creation Proposal.
- 1.3 This assessment may also include examination of any prior consultations conducted by other parties.

2.0 Environmental Management (see Chapter 12 of the Land Management Manual)

2.1 Definitions

In this clause,

- a) “Applicable Environmental Standard” means the standard established to determine whether the environmental condition of land (including water and sediments) is suitable for the intended land use. The standard for such a determination is the standard established by the Canadian Council of Ministers of the Environment, or in the absence of a Canadian Council of Ministers of the Environment standard, the provincial or territorial standard in the province or territory in which the Reserve is being created.
- b) “Indemnification Agreement” means an Agreement that sets out terms satisfactory to INAC on the following matters: a release of Canada from liability for any existing and future claims relating to the environmental condition of the Proposed Reserve Land; an indemnity by the First Nation against such claims; an agreement by the First Nation to impose appropriate land use restrictions through land use plans and by-laws; the provision of funds or security for remediation; any necessary ongoing

monitoring or future remediation requirements; and any other conditions deemed necessary by INAC in the circumstances.

2.2 General Policy

It is the policy of INAC to avoid the acquisition of contaminated land for Reserve Creation. Acquisition of contaminated land will only be considered where the level of contamination is consistent with the intended use, the risks to human health and the environment are minimal, the risks to Canada are manageable, and there is a strong business case supporting Reserve Creation.

2.3 Environmental Site Assessment

- a) An Environmental Site Assessment must be conducted in accordance with Chapter 12 of the Land Management Manual to determine the environmental condition of the Proposed Reserve Land. The Environmental Site Assessment identifies past or present activities that might have adversely affected the environmental condition of the Proposed Reserve Land. The Environmental Site Assessment should include information on the nature, scope and limitations of the assessment.
- b) If INAC prepares or contracts for the preparation of the Environmental Site Assessment, INAC shall provide a copy to the First Nation. If the First Nation contracts for the preparation of the Environmental Site Assessment, the First Nation shall provide a copy to INAC.
- c) If the Environmental Site Assessment identifies some contamination, but determines that the environmental condition of the Proposed Reserve Land meets the Applicable Environmental Standard for its intended use following Reserve Creation, INAC may consider recommending Reserve Creation provided that:
 - i. in the case of industrial or commercial use, a lease will be put in place containing environmental terms and a federal regulatory regime is in place to govern the use following Reserve Creation;
 - ii. the First Nation is fully apprised of the condition of the Proposed Reserve Land and has received independent expert advice;
 - iii. the First Nation has, by Band Council Resolution and (if requested by INAC) Band vote, approved the acquisition of such Land on an "as is" basis; and
 - iv. if requested by INAC, the First Nation has entered into an Indemnification Agreement on terms satisfactory to INAC.
- d) Where the Environmental Site Assessment determines that the environmental condition of the Proposed Reserve Land does not meet the Applicable Environmental Standard for the intended use following Reserve Creation, INAC will reject the Reserve Creation Proposal but may reconsider it at a later date if the land is remediated to the Applicable Environmental Standard. Where either the vendor of the land or the First

Nation undertakes the remediation, the First Nation must provide satisfactory evidence to INAC of the remediation to the Applicable Environmental Standard, supported by an environmental consultant's report. Where, in rare cases, INAC is responsible for remediation, the Department must ensure that satisfactory remediation has been completed. In all cases, the remediation should be well documented and the documentation retained on file by INAC.

2.4 Environmental Review of a Proposed Project

- a) Where there is a proposed activity or project contemplated for the Proposed Reserve Land, INAC may not be able to proceed with acquisition of the Proposed Reserve Land or with a recommendation for Reserve Creation until an environmental review with respect to the activity or project has been completed in accordance with the applicable law and a decision has been made by the appropriate authority that the activity or project is not likely to cause significant adverse environmental effects or that the significant environmental effects that it is likely to cause are justified in the circumstances.
- b) In the case of certain projects, INAC may not be able to recommend Reserve Creation unless there is a federal regulatory regime in place to govern the activity or project, and the First Nation should be advised accordingly. An Indemnification Agreement may also be required in some circumstances.
- c) See Chapter 12 of the Land Management Manual for more detail on environmental assessment of activities or projects.
- d) Designations are usually required for activities or projects. See Chapter 5 of the Land Management Manual for more detail on designations.

3.0 Improvements to Proposed Reserve Land

- a) Any improvements made by the First Nation to the Proposed Reserve Land before Reserve Creation must be in compliance with applicable federal legislative requirements that will apply once the Reserve is created.
- b) Any improvement on Proposed Reserve Land may delay or prevent Reserve Creation due to environmental issues or other matters. For example, improvements on Proposed Reserve Land may require an additional Environmental Site Assessment (as described in clause 2.0 of this Annex) and, where applicable under the *Manitoba Claim Settlements Implementation Act* and the *Claims Settlements (Alberta and Saskatchewan) Implementation Act*, may require a pre-designation vote.

4.0 Other Federal Departments and Agencies

- 4.1** Following issuance of a Letter of Support, INAC's regional office will contact other federal departments and agencies and give them the opportunity to assess any potential impact of the Reserve Creation Proposal on their program delivery (e.g. provision of health or public safety services). Three months should be allowed for a response.
- 4.2** Reserve Creation Proposals arising from an Agreement are expected to have addressed the implications for other federal departments and agencies in the Agreement. In this instance, the requirement outlined in clause 4.1 of this Annex is for notification purposes only.

5.0 Existing Encumbrances or Charges

- a) As provided in clause 5.1.1 of Directive 10-2 "Reserve Creation Process", the First Nation must include in its Reserve Creation Proposal the results of investigations identifying existing encumbrances or charges (third party interests or rights both registered or unregistered, such as leases, licenses, permits, easements, rights of way, etc.) normally achieved by a title search, provincial or territorial canvass, or site visit, and include supporting documentation if applicable.
- b) Following receipt of the Reserve Creation Proposal and prior to issuing the Letter of Support, due diligence will be undertaken by Justice Canada to identify all encumbrances or charges and other title issues and to report on title to INAC.
- c) Following issuance of the Letter of Support, all title issues must be resolved and existing encumbrances or charges should be extinguished, or replaced, or minimized such that Justice Canada is satisfied that the Crown will receive good title to the Proposed Reserve Land.
- d) In certain circumstances, acquiring title or right of ownership to Proposed Reserve Land subject to an encumbrance or charge may be considered.
- e) Before Reserve Creation, the First Nation must resolve any issues related to lawful possession or rights for First Nation members occupying Proposed Reserve Land pursuant to section 22 or 23 of the *Indian Act*.

6.0 Third Party Access

- a) Before Reserve Creation, in conjunction with INAC, the First Nation must address:
 - i. access to any third-party land that would be "landlocked" by the Reserve Creation; and
 - ii. access to utilities for that third-party land.

- b) If a third party has subsurface rights in the Proposed Reserve Land, the First Nation must negotiate access over the Proposed Reserve Land to exercise those rights, or a buy-out of those rights, before Reserve Creation.
- c) If a third party owns the Mines and Minerals in the Proposed Reserve Land, and intends to exploit the Mines and Minerals, the First Nation must negotiate access to the Mines and Minerals in the Proposed Reserve Land, and have written consent of that party to a surface only Reserve, or a buy-out of the sub-surface title or right must be completed prior to the surface land being granted Reserve status.
- d) The First Nation has the lead role in the negotiations on third party access issues. Where requested, INAC may provide facilitative or technical assistance in support of negotiations.

7.0 Land Descriptions

- a) Before recommending Reserve Creation, parcel boundaries will be described in accordance with the Interdepartmental Agreement with the Department of Indian Affairs and Northern Development and Legal Surveys Division, Earth Sciences Sector, Natural Resources Canada, from Chapter B1-2 - General Instructions for Surveys (<http://class.nrcan.gc.ca/standards-normes/b1-2-v4-eng.php>), and such description must be reviewed by Justice Canada before being finalized.
- b) A land description may include a survey.

8.0 Provincial or Territorial Considerations

General:

- a) While provinces or territories must be consulted, they have no general or unilateral veto with respect to a Reserve Creation Proposal.
- b) Provincial or territorial concurrence is required for the return of unsold surrendered land within the province or territory where the unsold surrendered land is under provincial or territorial title (e.g. in Ontario, pursuant to the *Indian Lands Agreement Act, 1986*).

Consultation:

- c) The First Nation is encouraged to initiate discussions with the province or territory as early as possible regarding a Reserve Creation Proposal.
- d) Before a Letter of Support is issued, INAC will notify the province or territory in writing of the Reserve Creation Proposal and give them the opportunity to assess potential impacts and issues for discussion with the First Nation .
- e) Three months must be given to the province or territory to express any

views in writing to INAC and the First Nation and set out any issues for discussion with the First Nation. It is not expected that these issues need to be resolved at this stage. These issues may inform the content of the Letter of Support, and will assist INAC in assessing the impacts and benefits of the Reserve Creation Proposal.

- f) Further discussion of issues raised by the province or territory should not unreasonably delay the Reserve Creation.
- g) The First Nation is responsible for discussing issues raised by the province or territory. Where requested, INAC may provide facilitative or technical assistance in support of the discussions.
- h) Any issues must be addressed and documented by written correspondence between the First Nation and the province or territory before Reserve Creation.
- i) Where INAC is satisfied that concerns arising from these consultations have been addressed, a Reserve Creation Proposal may proceed in accordance with this Policy.

9.0 Local Governments

General:

- a) In recognition that Reserve communities and Local Governments exist side by side, INAC promotes a “good neighbour” approach, which means that any discussions between First Nations and Local Governments should be conducted with good will, good faith and reasonableness.
- b) First Nations and Local Governments will discuss issues of mutual interest and concern (such as joint land use planning, by-law harmonization, tax considerations, service provision, and dispute resolution).
- c) While Local Governments must be consulted, they have no general or unilateral veto with respect to a Reserve Creation Proposal. Where concerns arising from these consultations have been addressed, a Reserve Creation Proposal may proceed in accordance with the Policy.
- d) A Municipal Service Agreement is required to provide essential services to a Reserve (where needed). In addition, an agreement may be necessary to address the provision of other services, by-law compatibility, a consultation and dispute resolution process for matters of mutual concern, or potential net tax loss adjustments.
- e) The First Nation is responsible for negotiation of agreements with Local Governments. The Local Government and First Nation should formalize such an agreement in writing. Where requested, INAC may provide facilitative or technical assistance in support of the negotiations. For assistance with developing agreements between First Nations and Local Governments, refer to Directive 10-1: Annex C “Guidelines for First Nation-Local Government Agreements”.

- f) INAC will not be a party to any agreement between a First Nation and a Local Government.

Consultation:

- g) Where the Proposed Reserve Land is within or adjacent/abutting a Local Government, the First Nation is encouraged to initiate discussions with the Local Government as early as possible regarding a Reserve Creation Proposal.
- h) Before a Letter of Support is issued, INAC will notify the Local Government in writing of the Reserve Creation Proposal in order to give the Local Government an opportunity to assess any potential impacts and issues for discussion with the First Nation.
- i) Three months must be given to the Local Government to express any views in writing to INAC and the First Nation and set out any issues for discussion. It is not expected that these issues need to be resolved at this stage. These issues may inform the content of the Letter of Support, and will assist INAC in assessing the impacts and benefits of the Reserve Creation Proposal.
- j) Further discussion of issues raised by the Local Government should not unreasonably delay the Reserve Creation.
- k) The First Nation is responsible for discussing issues raised by the Local Government. Any issues must be addressed and documented by written correspondence between the First Nation and the Local Government before Reserve Creation.
- l) Where INAC is satisfied that concerns arising from these consultations have been addressed, a Reserve Creation Proposal may proceed in accordance with the Policy.

Local Government Tax Considerations:

- m) Unless already provided for in an Agreement or in a service agreement between the First Nation and the Local Government, and where it can be demonstrated by a Local Government, the First Nation is responsible for paying any negotiated net tax loss adjustment.
- n) Negotiations concerning net tax loss adjustments are intended to allow the Local Government to adjust to the net effect of the combined reduction in Local Government servicing costs and reduced tax base caused by a Reserve Creation Proposal. It is not intended to compensate indefinitely for the gross level of lost taxes, given that servicing costs are also being reduced or are subject to a separate Municipal Service Agreement. Guidelines for the determination of payment for net tax loss adjustment are found in Directive 10-1: Annex C “Guidelines for First Nation-Local Government Agreements”.

Directive 10 – 1: Annex B **Special Circumstances Policy Requirements**

1.0 Accretion/Erosion

1.1 In this clause,

“Accretion” means the imperceptible and gradual addition to land by the slow action of water; and

“Erosion” means the imperceptible and gradual loss of land by the slow action of water.

1.2 Where the gradual movement of water boundaries occurs on Reserve lands:

- a) Any locatee or interest or right holder benefits from any Accretion or suffers any loss due to Erosion;
- b) Any lands accreting to a Reserve takes on the characteristics of the Reserve and any lands lost by Erosion lose the characteristics of the Reserve; and
- c) No Order in Council or Ministerial Order is required to change the boundary of the Reserve unless there are exceptional or controversial circumstances such as litigation or contentious relations between parties. These exceptional or controversial circumstances will be determined on a case by case basis.

1.3 For greater certainty, Accretion and Erosion do not apply to flooding.

2.0 Natural Disasters

2.1 Reserve Creation Proposals that are made as a result of natural disasters such as flooding will be considered on a case by case basis. These may include the use of replacement lands where an Agreement has been reached.

2.2 A proposal made under these circumstances will be assessed in accordance with the Reserve Creation Proposal Criteria set out in Annex “A” of Directive 10-1 “Policy on Additions to Reserve/Reserve Creation”. In addition, such proposals resulting from a natural disaster may require consideration of the following:

- a) The risk involved if the community remains at the original site;
- b) The nature and extent of future risk;
- c) Extent of preventative or remedial action required;
- d) The cost of undertaking preventative or remedial measures compared to the cost of relocation; and

- e) The overall benefits to the community for each option.

3.0 Subsurface Rights

- 3.1** This Policy does not authorize Reserve Creation which consists of subsurface rights only. This Policy does authorize Reserve Creation for specific portions of subsurface rights described in clauses 4.0 and 5.0 of this Annex.
- 3.2** When the land being set apart as Reserve is subject to a provincial or territorial exception in the surface title or right of ownership, every effort should be made to include the mineral rights underlying the exception even if this makes the subsurface rights greater than the surface rights.

4.0 Partial Subsurface Interest or Rights Additions

- 4.1** In this clause,

“Partial Interests or Rights in Mines and Minerals” means that a First Nation would acquire only a part of an interest or right in Mines and Minerals. For example, if a $\frac{1}{4}$ interest or right is purchased, only that $\frac{1}{4}$ interest or right can be set apart as Reserve providing that the conditions set out in this clause are met.

- 4.2** Where First Nations seek Reserve Creation to acquire Partial Interests or Rights in Mines and Minerals, the following conditions apply:
 - a) The surface of the land described in the Reserve Creation Proposal must be Reserve;
 - b) Title or right of ownership to the Partial Interest or Right in the Mines and Minerals must be acquired by the First Nation and transferred to Canada before Reserve Creation;
 - c) The First Nation must be fully informed of the complexities of dealing with Partial Interests or Rights in Mines and Minerals;
 - d) A Partial Interest or Right in Mines and Minerals cannot be explored or exploited without obtaining the appropriate provincial or territorial instrument, where necessary, including the written consent of each partial interest or right holder; and
 - e) All the owners of the partial subsurface interests or rights must sign a joint agreement before Canada proceeds with Reserve Creation. This agreement must detail the conditions under which this partial interest or right would be held and how it would be managed for the group of owners.

5.0 Small Mineral Additions

- 5.1** In limited circumstances Reserve Creation may be considered for subsurface rights (i.e., Mines and Minerals) where the surface land is not Reserve. This may

arise where a province or territory excludes the surface land from the transfer to Canada for Reserve Creation. The common provincial or territorial exclusions to the surface title or right of ownership are public roads, highways, certain water bodies and water courses.

5.2 Reserve Creation Proposals for subsurface interests or rights may be greater than the surface rights due to the exclusions by the province or territory from the surface title or right of ownership. These subsurface rights can include Mines and Minerals which are potentially valuable resources for First Nations. The following would create this situation:

- a) The province, territory or Local Government holds the title or right of ownership to the surface while a private individual holds title or right of ownership to the subsurface. The province, territory or Local Government is willing to transfer its interest or right to the surface for the purpose of granting Reserve status but wishes to reserve a portion for purposes such as public roads, highways, certain water-bodies and water courses. However, the subsurface owner is willing to transfer the entire underlying subsurface interest or right. This will result in a lesser amount of surface rights being granted Reserve status than subsurface rights.
- b) A private individual holds title or right of ownership to both the surface and subsurface and is willing to transfer this interest or right for the purpose of granting Reserve status to the land. The Mines and Minerals may be included with the surface title or may be held under a separate subsurface title. However, the province or territory has the option of reserving a portion of the surface title or right of ownership for purposes such as public roads, highways, certain water-bodies and water courses. This will result in a lesser amount of surface rights being granted Reserve status than subsurface rights.
- c) Either the province or territory, or a private individual, has title or right of ownership to the surface and the province or territory holds title or right of ownership to the subsurface. The province or territory may, upon negotiated agreement, choose to transfer subsurface rights while reserving portions of the surface title or right of ownership to itself for purposes such as public roads, highways, certain water-bodies and water courses. This will result in a lesser amount of surface rights being granted Reserve status than subsurface rights.

6.0 Correcting a Reserve Creation Order in Council or Ministerial Order

6.1 Where provincial or territorial Crown land has been acquired and set apart as a Reserve by an Order in Council or Ministerial Order and the surface or subsurface rights are unclear, both an amending Order in Council from the province or territory and an amending Order in Council or Ministerial Order from Canada are required to clarify the rights.

6.2 Where small amounts of mineral rights were purchased with the intention of Reserve Creation but this has not been done, an omnibus Order in Council or Ministerial Order may be used.

7.0 Joint Reserves

7.1 Reserve Creation Proposals for the creation of Joint Reserves will be considered on a case-by-case basis where cost implications and other factors associated with the management of a Joint Reserve have been addressed.

7.2 Reserve Creation Proposals for Joint Reserves raise complex legal and administrative issues. Before a Reserve Creation Proposal for the creation of a Joint Reserve will be considered, a written co-management agreement between the parties is required, and must address the following elements:

- a) Cost implications for the creation and management of the Joint Reserve;
- b) The requirement for unanimity of all First Nations involved for decisions requiring consent of the band council or membership (surrenders, designations, permits, leases, certificates of possession, etc);
- c) Applicability of a First Nation Land Management land code;
- d) Treaty – generally speaking, in the province of British Columbia, Joint Reserve lands will not be eligible for conversion to treaty settlement lands through the implementation of a treaty under the British Columbia Treaty process unless all First Nations for whom the Reserve was set aside by-law would need to be passed by each of the First Nations involved; and
- e) Interest or Right - each First Nation will have an equal undivided interest or right in the Joint Reserve lands regardless of the size of the lands.

7.3 Reserve Creation Proposals for the creation of Joint Reserves require a vote by the electors of each participating First Nation, held in accordance with the *Indian Referendum Regulations*, and will be decided by a majority of those eligible electors of each participating First Nation who voted (simple majority).

7.4 Information Session. At a minimum, one information session is held for the benefit of the electors of each participating First Nation prior to a vote. The information session should include all the details of the Reserve Creation Proposal for the creation of a Joint Reserve including, but not limited to, details of the co-management agreement, complexities associated with designation requirements, the day-to-day administration, the requirement for unanimity for any decision affecting the use of the Joint Reserve and what that means, etc.

7.5 Separate Votes. While all participating First Nations may vote at the same time, separate voting results must be tabulated for each to confirm that the membership of each participating First Nation supports the Joint Reserve.

- 7.6** Failed Votes. If one or more of the participating First Nations fail to consent to the Reserve Creation Proposal for the creation of a Joint Reserve, those First Nations that did not vote in favour may hold a second vote following the same procedure as the first vote. If all of the First Nations do not vote in favour, the Reserve Creation Proposal for the creation of a Joint Reserve will not normally be considered further, unless the participating First Nations have previously agreed that the Joint Reserve may proceed without the First Nations who did not hold a successful vote.
- 7.7** Legal obligation. Where the Reserve Creation Proposal for the creation of a Joint Reserve is in partial or full satisfaction of legal obligations, to one or more of the participating First Nations, the Reserve Creation Proposal for the creation of a Joint Reserve must address how the obligation is being satisfied with respect to those First Nations and include a release of Canada from any liability.
- 7.8** Indemnity. INAC will require that all participating First Nations indemnify Canada in writing from any claims by any of them or their members pertaining to the use of the Joint Reserve or the division of benefits or losses derived from the Joint Reserve.
- 7.9** Reserve Creation Proposals for the addition of lands to an existing Joint Reserve will follow the terms of existing agreements outlining terms for community approval of a Reserve Creation Proposal and co-management of the Reserve lands, as applicable. The co-management or other agreement should be amended to include identification of the Proposed Reserve Land. Where no such agreement or other arrangement exists, the requirements of clauses 7.1 to 7.8 will apply.

Directive 10 – 1: Annex C **Guidelines for First Nations-Local Government** **Agreements**

1.0 Objectives

These guidelines are intended to assist in creating long term, functional and productive relationships between First Nations and Local Governments with respect to Reserve Creation development and implementation. First Nations and Local Governments should work together collaboratively to resolve issues of mutual interest and concern, with a view to building stronger communities, improving standards of living and cooperating on municipal and other services.

2.0 Definitions

Please refer to Directive 10-1 “Policy on Additions to Reserve/Reserve Creation” for an explanation of certain terms used in these Guidelines.

3.0 Requirements

3.1 As described in Directive 10-1, Annex A, clause 9.0 of the Policy, a First Nation-Local Government agreement may be necessary to address the provision of services, by-law compatibility, a consultation and dispute resolution process for matters of mutual concern, or potential net tax loss adjustments.

3.2 The following outlines and provides guidance on important aspect of the Reserve Creation Process.

4.0 Relationship-Building

4.1 Fostering positive working relationships creates strong communities and helps to provide improved services to all community members both on and off Reserve. Cooperation between First Nations and Local Governments can result in numerous benefits such as:

- a) improving levels of service;
- b) realizing financial savings;
- c) building a stronger labour force;
- d) enhancing social standards;
- e) providing growth and new opportunities to both First Nation and Local Government communities; and
- f) improving intergovernmental relationships.

- 4.2** Local Governments provide many infrastructure services to their communities. When a First Nation's Reserve land base is expanded and services cannot be provided solely within the boundaries of the Reserve, agreements between the First Nation and the Local Government must be negotiated to ensure that services continue to be provided to the land. Canada is not a signatory to any service agreements that are entered into between First Nations and Local Governments.
- 4.3** While both First Nations and Local Governments represent broader community interests, their approaches to decision making, governance structure, values, beliefs and culture may vary significantly and as a result, this can lead to misunderstandings. Differences also exist with respect to each community's decision making process, whether based in tradition or legislation. First Nations and Local Governments may also have different methods of interacting with their community within their decision making processes.
- 4.4** The creation of protocols or memoranda of understanding may assist by outlining broad principles that both parties will adhere to in working together, to define the relationship and goals of the parties, recognize each other's jurisdiction, identify the process for maintaining the relationship (working groups or forums, joint decision making) and provide for dispute resolution.
- 4.5** One of the most important factors in establishing and maintaining good intergovernmental relations is the development of positive relationships through open communication and face-to-face meetings. Formal and stable processes are useful tools to promote understanding and cooperation and to develop mutually beneficial solutions.

5.0 By-Law Compatibility

- 5.1** By-law compatibility and harmonization helps to set out a common process for two or more neighbouring governments to coordinate their approaches to land use and development. Neighbouring governments are interdependent which requires that they collaborate and collectively plan for and manage land use, economic development, as well as infrastructure services, such as water, sewer, waste and transportation.
- 5.2** By-laws and land use plans enacted by a First Nation and Local Government need not be the same but should strive for compatibility to achieve objectives that are acceptable to all parties. Joint Local Government and First Nation committees may be created to develop guidelines on compatible by-laws, work in partnership to review by-laws and provide a collaborative forum to air concerns and make recommendations.
- 5.3** Joint land use planning committees may provide an effective means through

which First Nations and Local Governments can discuss their respective issues and identify common goals and objectives. Cooperation in land use planning and ensuring compatibility on adjacent lands is of mutual interest for both First Nations and Local Governments.

5.4 A protocol may also be established between the First Nation and the Local Government to ensure that regular meetings and ongoing information sharing will occur beyond the term of the elected governments. It is also the representation of a long term commitment of both governments to work together.

5.4.1 A protocol or process document may address at a minimum issues such as:

- a) Consultation;
- b) Engagement;
- c) Costs;
- d) Services;
- e) Compatibility of Uses;
- f) Methods for implementation;
- g) Decision making processes; and
- h) Creation of implementation committees or working groups.

5.4.2 A First Nation and Local Government may wish to achieve by-law compatibility in areas such as:

- a) land use or zoning standards;
- b) building and safety standards;
- c) public utilities;
- d) animal control;
- e) health and safety;
- f) traffic regulation; and
- g) property maintenance.

6.0 Service Agreements and Net Tax Loss Adjustment

6.1 Each province or territory has a municipal Act or Code which specifically defines which services each municipality is responsible for. The level of service provided by each Local Government varies across Canada and is completely dependent on the size of the Local Government and what level of services it may afford. In order to fund services provided to residents, a Local Government levies taxes on properties within their boundaries as a source of revenue.

6.2 When a Reserve is created or lands are added to Reserve within or adjacent to Local Government boundaries, Local Governments no longer levy property taxes nor are they required to provide services on Reserve lands. However, First Nations may request services in order to complete the requirements of a Reserve Creation Proposal. In addition, Local Governments may request that a one-time payment may be negotiated between the First Nation and the Local Government

to offset the difference in property tax revenue.

- 6.3** First Nations and Local Governments have similar goals and objectives in relation to the provision of services to their residents. Both governments need to work together to ensure that safe, reliable and cost effective services are provided. Effective land use planning and coordination can help to foster stable servicing relationships between a First Nation and Local Government.
- 6.4** Where a First Nation has determined that it is unable to physically service the Proposed Reserve Land, the First Nation may seek to purchase services from a neighbouring Local Government rather than supply the necessary services to the Reserve on its own. In such a case, the First Nation will have to request the required services from the Local Government and enter into negotiations to conclude a Municipal Service Agreement (MSA).
- 6.5** A Municipal Service Agreement may include the following items:
- a) A description of the services that the Local Government is able and willing to supply to the First Nation;
 - b) The basis for the charges levied by the Local Government;
 - c) Payment due dates;
 - d) The manner in which the First Nation will be billed for the services;
 - e) Fees for administration and legal costs;
 - f) Access by the Local Government to install, maintain and operate the services;
 - g) Access for emergency services; including fire protection;
 - h) Upgrading, improvement, replacement or major repairs respecting services;
 - i) Costs for related engineering studies; and
 - j) Impacts of major development on the Reserve which may affect provision of current or future municipal services.
- 6.6** Where a Reserve Creation may impact a Local Government's property tax revenue arising from the loss of taxation authority over Proposed Reserve Lands, the Local Government may request the negotiation of a net tax loss adjustment payment.
- 6.7** A reasonable calculation of the net tax loss adjustment payable by the First Nation to a Local Government may be determined by consideration of the following factors:
- a) Any funds the Local Government will receive from a Municipal Services Agreement with the First Nation;
 - b) Any savings which will result from a reduced delivery of services following the granting of Reserve status;
 - c) Agreement on a reasonable determinate time period for the calculation of net tax loss adjustment that considers the length of time the Local Government has been formally advised of the Reserve Creation Proposal

- d) and the estimated or known time that the Reserve Creation will occur;
 - d) The gross amount of taxes currently assessed on the land to be set aside as Reserve, limited to the municipal share of annual taxes, excluding school and hospital taxes;
 - e) Any funds the Local Government is receiving in provincial equalization payments for the Proposed Reserve Creation Lands; and
 - f) The relative size of the loss in relation to the total tax revenues of the Local Government.
- 6.8** Net tax loss adjustment payment is not required for school boards where they are already funded for tuition costs for on-Reserve students through other funding arrangements.
- 6.9** INAC is not a party to any agreement for net tax loss adjustment payment.
- 7.0 Dispute Resolution**
- 7.1** Dispute resolution is an important element of working relationships that enables both parties to work through differences of opinion and reach agreement or compromise on important issues. When issues or disputes arise, both informal and formal alternate dispute resolution mechanisms should be in place to resolve the issue. All parties need to believe that for the good of each community, a form of compromise may be necessary and every attempt should be made to create a win-win solution.
- 7.2** INAC promotes a “good neighbour” approach that encourages effective relations when First Nations and Local Governments are seeking to resolve issues relating to Reserve Creation. INAC encourages discussions on issues of mutual interest and concern that are conducted with good will, good faith and reasonableness, and within reasonable timeframes.
- 7.3** To assist First Nations and any third parties in successfully resolving disputes, the following practices are encouraged:
- a) Early communication on the Reserve Creation Proposal that pro-actively seeks to avoid disputes, encourages cooperation among parties, and works towards building a positive relationship;
 - b) The development of mutually agreeable approaches to dispute resolution between the First Nation and Local Governments at the outset of discussions in order to identify and address areas of disagreement quickly, and facilitate further resolutions as they may arise in the negotiation of agreements;
 - c) The inclusion of dispute resolution mechanisms in any final agreements between the First Nation and Local Governments, where appropriate, to address future instances of disagreement as they arise;
 - d) The establishment of mutually agreeable time frames for efforts to resolve

- e) instances of disagreement; and
 - e) The use of mediation where negotiations have reached an impasse.
- 7.4** Disagreements may be resolved through a number of non-binding dispute resolution processes, such as:
- a) Conciliation: The parties may try to work out the issues by themselves such as at a joint meeting between the Local Government and First Nation councils. In the alternative, the parties may work out the issues with the assistance of a third party;
 - b) Facilitation: The parties may request assistance from INAC in providing facilitative management (by INAC or a neutral third party) of a joint meeting to support discussions that assist the parties to identify issues, and develop options to resolve disputes; and
 - c) Mediation: Pursuant to this process, a third party assists in working out a solution to the dispute. A decision is reached by consensus, which may or may not be binding depending on the terms of the mediation.
- 7.5** The parties may also agree to enter into a dispute resolution process that is binding in nature, such as arbitration, where the matter in dispute is referred to a third party for review. The third party determines on how to settle the disagreement and the final decision is usually binding on all parties.
- 7.6** Procedural details of dispute resolution processes that may be addressed in a First Nation-Local Government agreement may include:
- a) Authority of the dispute resolution body to call meetings and conduct hearings;
 - b) Authority of the dispute resolution body to review and examine by-laws, reports and minutes of the Local Government and First Nation;
 - c) The effect of the decision of the dispute resolution body: recommendation or binding decision;
 - d) Timeframe for the dispute resolution process;
 - e) The manner in which the decision will be reached: majority vote, consensus or another method; and
 - f) The agreement should specify how costs for dispute resolution will be shared.
- 8.0 Additional Resources**
- 8.1** The National Aboriginal Land Managers Association provides assistance to First Nations through training technical expertise on the Additions to Reserve process and other land management related activities (<http://www.nalma.ca>).
- 8.2** The First Nation Tax Commission (<http://www.fntc.ca/>) is able to provide technical assistance to support service agreement and tax loss negotiation processes, including the analysis of net tax loss adjustment, and facilitation, tools

and training to support service agreement negotiations. The Tulo Centre of Indigenous Economics (<http://tulo.ca>) also offers university accredited courses related to implementing First Nation tax powers, negotiating service agreements, developing economic strategies and plans for First Nation lands and communications with Local Governments and stakeholders.

- 8.3** The Federation of Canadian Municipalities, through the Canadian Infrastructure Partnership Program, has developed a number of tools to assist with navigating the process of negotiating First Nation-Local Government service agreements (<http://www.fcm.ca/home/programs/community-infrastructure-partnership-program.htm>).

Directive 10 – 2: **Reserve Creation Process**

1.0 Effective Date

- 1.1 This Directive on the Reserve Creation Process is effective as of **XXXX**, and applies to all Reserve Creation Proposals received after this date.
- 1.2 Reserve Creation Proposals submitted prior to the effective date of this Policy will be processed in accordance with Directive 10-3: Additions to Reserve/Reserve Creation Transition Guidelines for Regional Offices.
- 1.3 This Directive forms part of INAC’s Land Management Manual, Chapter 10, Additions to Reserve/Reserve Creation.

2.0 Application

- 2.1 This Directive applies to employees of INAC and provides guidance to First Nations with respect to Reserve Creation Proposals, including First Nations operating under the *First Nation Land Management Act*.
- 2.2 This Directive sets out the process to be followed for Reserve Creation.
- 2.3 Definitions used in this Directive are found in Directive 10-1, clause 3.0 of this Policy.

3.0 References

- 3.1 Legislation and related policy instruments relevant to this Directive are set out in Directive 10-1, clause 18.0 of the Policy.

4.0 Objectives

- 4.1 The objectives of this Directive are set out in Directive 10-1, clause 7.0 of the Policy.

5.0 Requirements and Responsibilities

5.1 Phase 1 - Initiation

5.1.1 The Reserve Creation Process begins when the First Nation submits a Band Council Resolution and the Reserve Creation Proposal to the INAC Region seeking Reserve Creation. At a minimum, the Reserve Creation Proposal must include:

- i. The applicable Policy category;
- ii. Selection area;
- iii. Land Use – Unless otherwise stated in an Agreement, the First Nation must describe the current and intended use of the Proposed Reserve Land;
- iv. Where available, the offer to purchase, title search including, the registered owner(s), and a general description of the Proposed Reserve Land sufficient to identify location;
- v. Proximity of the Proposed Reserve Land to the nearest Local Government;
- vi. Whether interests or rights in Mines and Minerals are to be included and, if so, the registered owner(s);
- vii. Although an Environmental Site Assessment is not required at this stage, any environmental information of the historical, current and intended use of the Proposed Reserve Land;
- viii. Transaction costs applicable under the Policy (and the potential source of funds);
- ix. Other impacts and benefits of Proposed Reserve Land use;
- x. Results of investigations identifying existing encumbrances or charges normally achieved by a title search, provincial or territorial canvass, and/or site visit, and including supporting documentation if applicable;
- xi. Any known provincial, territorial, Local Government, Aboriginal, or other interests or rights; and
- xii. Whether services are required. If services are required, enumerate what services and the plan to provide for or acquire them.

5.1.2 If the Reserve Creation Proposal adds to an existing Reserve, the Band Council Resolution should set out the name and number of the existing Reserve. If the Reserve Creation Proposal involves the creation of a New Reserve, the proposed name and number of the New Reserve should be identified in the Band Council Resolution. Naming should be in accordance with the Geographical Names Board of Canada.

5.1.3 Reserve Creation Proposals must be submitted to the INAC Region within which the majority of the First Nation's land is located, regardless of the selection area. Refer to Template 1 of this Directive for a Reserve Creation Application Form.

5.1.4 The First Nation and INAC may discuss the Reserve Creation Proposal to assist the First Nation in the preparation of the Reserve Creation Proposal where appropriate.

5.2 Phase 2 - Assessment and Review

- 5.2.1** Upon receipt of a Reserve Creation Proposal, a written acknowledgement of receipt will be provided by INAC Region to the First Nation.
- 5.2.2** Following receipt, INAC will determine whether or not the proposal meets the minimum requirements set out in 5.1.1 of this Directive. When that review is complete, INAC will advise the First Nation in writing of the results of the determination. If the Reserve Creation Proposal has not met the minimum requirements, the Region will advise the First Nation of the deficiencies to be addressed before the Reserve Creation Proposal will be considered further. Refer to Template 2 of this Directive for a Reserve Creation Proposal Development Checklist.
- 5.2.3** Once the Reserve Creation Proposal has met the minimum requirements, INAC will undertake the following additional assessment activities prior to issuing a Letter of Support (to the extent possible, those activities will be done concurrently):
- a) Conduct a preliminary assessment and identification of requirements related to any potential Duty to Consult with Aboriginal groups on the Proposed Reserve Land;
 - b) Identify any financial implications for Canada and any potential sources of government funding to assist the Reserve Creation Proposal;
 - c) Advise the province or territory and the Local Government of the Reserve Creation Proposal (where the First Nation has not already done so); and
 - d) Request a title report from Justice Canada to identify encumbrances, charges and any other title issues
- 5.2.4** Once the additional information, if required, has been obtained for the purpose of identifying issues that will need to be resolved before Reserve Creation, INAC will complete its assessment of the Reserve Creation Proposal and decide whether or not to issue a Letter of Support.
- 5.2.5** INAC's concurrent review and assessment activities, while requiring a necessary level of due diligence, should not unreasonably delay the decision whether or not to issue a Letter of Support. Where appropriate, INAC will advise the First Nation of the status of the assessment of a Reserve Creation Proposal, in accordance with any applicable INAC service standards.
- 5.2.6** Reserve Creation Proposals that are outside the Regional Director General's authority (Community Additions) will be forwarded to the Deputy Minister with recommendations on the decision to issue a Letter of Support or not.
- 5.2.7** The Regional Director General (or the Deputy Minister) may issue a Letter of Support or reject the Reserve Creation Proposal. If a Letter of Support is to be issued, INAC will identify in the Letter of Support the Reserve Creation Proposal

Criteria that must be satisfied before INAC will recommend Reserve Creation.

- 5.2.8** INAC will provide a written explanation for any Reserve Creation Proposal that will not be supported. Such explanation may include but is not limited to:
- a) Reserve Creation Proposal Criteria not able to be readily satisfied;
 - b) Minister's discretion not to recommend Reserve Creation; or
 - c) INAC Reserve Creation Proposal implementation planning.

5.3 Phase 3 – Proposal Completion

- 5.3.1** Where a Letter of Support is issued, Regional INAC and the First Nation will work together to develop a work plan identifying the requirements to meet the Reserve Creation Proposal Criteria identified. INAC and the First Nation will clarify their respective roles and responsibilities within the process (e.g., with respect to communications planning, Environmental Site Assessments, surveys, community planning requirements, mechanisms to address third party interests or rights, etc.). Refer to Template 3 of this Directive for a Reserve Creation Joint Work Plan.
- 5.3.2** INAC will initiate an annual review of each Reserve Creation Proposal with the First Nation to determine whether work plan objectives have been met. Based on this review, the work plan requirements may be revised.
- 5.3.3** Once all of the Reserve Creation Proposal Criteria have been satisfied, the First Nation will ensure that all of the required information has been forwarded to the INAC Region and will advise INAC that the requirements set out in the Letter of Support have been satisfied.
- 5.3.4** Transfer of administration and control from a province or territory or acquisition of the fee simple title or right of ownership is to be completed in accordance with the *Federal Real Property and Federal Immovables Act* and its regulations.
- 5.3.5** INAC Region will verify that the Reserve Creation Proposal is complete, confirm the number and name of the proposed Reserve, and notify the First Nation that the Reserve Creation Proposal will be submitted to the Minister.

5.4 Phase 4 – Approval

- 5.4.1** Regional INAC staff will prepare the Order in Council or Ministerial Order submission requesting Reserve Creation.
- 5.4.2** The Order in Council or Ministerial Order submission is sent to the Minister who may in the case of an Order-in-Council submission recommend its approval to the Privy Council, or reject or approve the Ministerial Order.

- 5.4.3** The Governor in Council either rejects or approves the Order in Council submission.
- 5.4.4** If the Order in Council or Ministerial Order is granted, the Order in Council or Ministerial Order is registered in INAC's Indian Lands Registry and in any other relevant land registries. Regional INAC staff should arrange for the registration of all related land title documents in the Indian Lands Registry to be attached to, or accompany, the registration of the Order-in-Council or Ministerial Order, as applicable.
- 5.4.5** INAC Region will notify the First Nation and other relevant parties of the Reserve Creation and provide each with the registration particulars as required.

6.0 Enquiries

For information on this Directive or to obtain any of the above-noted references, please contact:

Indigenous and Northern Affairs Canada
Terrasses de la Chaudière
10 Wellington, North Tower
Gatineau, Quebec
Postal Address:
Ottawa, Ontario
K1A 0H4

Email: InfoPubs@aadnc-aandc.gc.ca

Phone: (toll-free) 1-800-567-9604

Fax: 1-866-817-3977

TTY: (toll-free) 1-866-553-0554

TEMPLATE 1: Reserve Creation Proposal Application Form

TEMPLATE 2: Reserve Creation Proposal Development Checklist

TEMPLATE 3: Reserve Creation Work Plan

Template 1: Reserve Creation Proposal Application Form

The Reserve Creation Proposal Application Form below may be used as a tool to consolidate key information about the ATR Proposal.



Affaires autochtones et
Développement du Nord Canada

Aboriginal Affairs and
Northern Development Canada

RESERVE CREATION PROPOSAL	
PART A – GENERAL INFORMATION	
1. BAND/FIRST NATION NAME	
2. BAND/FIRST NATION OFFICE MAILING ADDRESS	
3. CONTACT NAME AND POSITION	
4. TELEPHONE	5. TELEPHONE (MOBILE)
6. FAX	7. E-MAIL

PART B – ATR PROPOSAL

8. (A) NEW RESERVE ADDITION TO EXISTING RESERVE

(B) PROPOSED RESERVE NAME (IF CREATING A NEW RESERVE)

(C) EXISTING RESERVE NAME (IF ADDING TO AN EXISTING RESERVE)

9. APPLICABLE POLICY CATEGORY: LEGAL OBLIGATION AND AGREEMENTS

COMMUNITY ADDITIONS TRIBUNAL DECISION

IF LEGAL OBLIGATION, EXPLAIN/PROVIDE NAME OF AGREEMENT:

(A) IF THIS IS A COMMUNITY ADDITION ATR, OUTLINE THE RATIONALE (NEED) FOR THE RESERVE CREATION

10. SELECTION AREA (WITHIN TRADITIONAL TERRITORY?): YES NO

(NOTE THAT THE ACCOMMODATION AND CONSULTATION UNIT AT INDIGENOUS AND NORTHERN AFFAIRS CANADA MAY BE CONTACTED FOR MAPS TO HELP DETERMINE TRADITIONAL TERRITORY)

IF “NO”, PLEASE EXPLAIN:

11. SUBSURFACE MINERAL RIGHTS TO BE INCLUDED? YES NO

IF “YES”, IDENTIFY THE REGISTERED OWNERS:

12. IS THIS APPLICATION THE SUBJECT OF ONE OR MORE OF THE FOLLOWING?

NATURAL DISASTER PARTIAL SURFACE INTEREST OR RIGHT SMALL MINERAL ADDITION JOINT RESERVE

13. BAND COUNCIL RESOLUTION ATTACHED AS “ANNEX A”? YES NO

14. OFFER TO PURCHASE ATTACHED AS “ANNEX B”? YES NO

15. TRANSACTION COSTS APPLICABLE UNDER POLICY AND SOURCE OF FUNDS

(NOTE THAT THE PROVISIONS OF AN AGREEMENT (TREATY LAND ENTITLEMENT, SPECIFIC CLAIM OR SELF-GOVERNMENT) WILL PREVAIL TO THE EXTENT OF THE INCONSISTENCY OR CONFLICT)

	SETTLEMENT/BAND FUNDED	INAC FUNDED	OTHER (PLEASE SPECIFY)
LAND ACQUISITION			
SURVEYS			
ENVIRONMENT (E.G. ASSESSMENTS, REMEDIATION, MONITORING/MITIGATION)			
TRANSACTIONAL COSTS			
INCREMENTAL COSTS (RESULTING FROM NEGOTIATIONS WITH LOCAL GOVERNMENTS)			
ADDITIONAL FUNDING (HOUSING, INFRASTRUCTURE, OTHER CAPITAL COSTS)			

PART C – PROPERTY DESCRIPTION

16. (A) ADDRESS OF THE PROPERTY/PARCEL IDENTIFICATION NUMBER/LEGAL DESCRIPTION

(B) LEGAL DESCRIPTION OF LAND TO BE ADDED (SKETCH/SITE PLAN, REGISTRATION PLAN OR SURVEY) ATTACHED AS “ANNEX C”? YES NO

PROVIDE SUFFICIENT DETAIL TO IDENTIFY LOCATION OF PREMISES TO BE ADDED.

(C) NAME OF MUNICIPALITY OR UNINCORPORATED CROWN LAND/CROWN LAND WITHOUT CADASTRAL SURVEY

17. LOT SIZE: ACRES: _____ HECTARES: _____
18. CURRENT LAND USE(S):
19. ADJACENT LAND USES:
20. CURRENT PROPERTY OWNERSHIP STATUS: <input type="checkbox"/> FEDERAL <input type="checkbox"/> PROVINCIAL <input type="checkbox"/> PRIVATE
21. (A) CURRENT LAND USE OR ZONING:
(B) HAS THE LAND BEEN DESIGNATED PRE-RESERVE? <input type="checkbox"/> YES <input type="checkbox"/> NO
22. PROXIMITY OF PROPOSED RESERVE LAND TO OTHER LOCAL GOVERNMENTS (INCLUDING DISTANCE IN KILOMETERS)

23. DESCRIPTION OF TOPOGRAPHY/SURFACE WATER/ SOIL:

PART D – PROPOSED LAND USE

25. INTENDED USE OF PROPOSED RESERVE LAND:

26. ANTICIPATED IMPACTS AND BENEFITS OF THE PROPOSAL ON THE FOLLOWING:

- A) THE EFFECT OF THE RESERVE CREATION ON THE SOCIAL AND ECONOMIC PROSPERITY OF THE FIRST NATION;
- B) ECONOMIC DEVELOPMENT POTENTIAL OF THE RESERVE CREATION ON RESIDENTS OF THE SURROUNDING AREA;
- C) COSTS RELATED TO THE PROVISION OF SERVICES TO THE FIRST NATION AND THE LOCAL GOVERNMENT (WHERE THE FIRST NATION IS THE SERVICE PROVIDER);
- D) REVENUE ADJUSTMENTS RESULTING FROM A CHANGE IN TAX STATUS;
- E) FINANCIAL IMPLICATIONS FOR THE GOVERNMENT OF CANADA;
- F) EXISTING FIRST NATION, PROVINCIAL, TERRITORIAL, REGIONAL OR LOCAL GOVERNMENT LAND USE PLANS;
- G) REGIONAL INFRASTRUCTURE MANAGEMENT;
- H) REGIONAL TRAFFIC OR TRANSIT MANAGEMENT PLANS;
- I) PROTECTED OR ENVIRONMENTALLY SENSITIVE AREAS (SUCH AS NATIONAL PARKS, AGRICULTURAL LAND RESERVES IN BRITISH COLUMBIA, OR GREENBELT LANDS IN ONTARIO); AND
- J) CULTURALLY SENSITIVE AREAS (SUCH AS FIRST NATIONS BURIAL, ARCHAEOLOGICAL OR CEREMONIAL SITES).

FURTHER, ANY BENEFITS AND POSITIVE IMPACTS OF A RESERVE CREATION PROPOSAL FOR ECONOMIC DEVELOPMENT UNDER THE COMMUNITY ADDITIONS CATEGORY OF THIS POLICY MUST OUTWEIGH THE POTENTIAL TAX IMPACTS ASSOCIATED WITH RESERVE CREATION, AS

SUCH TAX ADVANTAGES CANNOT BE THE SOLE JUSTIFICATION FOR RESERVE CREATION.

27. ENVIRONMENTAL INFORMATION (HISTORICAL/CURRENT/INTENDED USE OF PROPOSED RESERVE LAND)

ATTACHED AS A SEPARATE DOCUMENT

28. WILL SERVICES BE REQUIRED FROM THE MUNICIPALITY?

YES NO

IF NO SERVICES ARE REQUIRED, DESCRIBE HOW THE FIRST NATION INTENDS TO PROVIDE

SERVICES THEMSELVES (FOR EXAMPLE, FIRE PROTECTION)

IF "YES", WILL A MUNICIPAL SERVICE AGREEMENT BE REQUIRED? YES NO

IF "YES", PLEASE LIST SERVICES REQUIRED, AND INCLUDE A PLAN TO PROVIDE FOR AND/OR ACQUIRE THEM.

ADDITIONAL DOCUMENTATION ATTACHED

PART E – ENCUMBRANCES OR CHARGES/INTERESTS OR RIGHTS

29. TITLE SEARCH (INCLUDE THE NAMES OF REGISTERED OWNERS ATTACHED AS "ANNEX D")
 YES NO

30. EXISTING ENCUMBRANCES OR CHARGES IDENTIFIED

NOT APPLICABLE ADDITIONAL DOCUMENTS ATTACHED (SUCH AS A TITLE SEARCH)

<p>31. KNOWN PROVINCIAL/MUNICIPAL/ABORIGINAL/OTHER INTERESTS OR RIGHTS IN PROPOSED RESERVE LAND</p> <p><input type="checkbox"/> NO KNOWN INTERESTS OR RIGHTS</p>

Template 2: Reserve Creation Proposal Development Checklist

Section 5.1.1 of Directive 10 - 2: Reserve Creation Process of the ATR Policy states that the Reserve Creation Process begins when the First Nation submits a Band Council Resolution (BCR) and a Reserve Creation Proposal to INAC seeking Reserve Creation. Regarding the minimum requirement, the Reserve Creation Proposal must include a BCR and the 12 elements that are listed below in the checklist. The checklist tool below will be used by INAC staff to ensure that the First Nation has submitted all applicable documents for Phase I in the ATR Policy.

To use the checklist below, gather all items that the First Nation has sent to the INAC Regional office. Place a checkmark in the “received” column if you have the item or place a checkmark in the “not received” column if the item has not been obtained.

Band Council Resolution	Received	Not Received
Band Council Resolution (BCR) Document		
Minimum Reserve Creation Proposal Items	Received	Not Received
1) The applicable Policy category		
2) Selection Area		
3) Land Use – Unless otherwise stated in an Agreement, the First Nation must describe the current and intended use of the Proposed Reserve Land		
4) Where available, the offer to purchase, title search including, the registered owner(s), and a general description of Proposed Reserve Land sufficient to identify location		
5) Proximity of the Proposed Reserve Land to the nearest Local Government		
6) Whether interests or rights in Mines and Minerals are to be included and, if so, the registered owner(s)		
7) Any environmental information of the historical, current and intended use of the Proposed Reserve Land		
8) Transaction costs applicable under the Policy (and the potential source of funds)		
9) Other impacts and benefits of Proposed Reserve Land use		
10) Results of investigations identifying existing encumbrances or charges normally achieved by a title search, provincial or territorial canvass, and/or site visit, and including supporting documentation if applicable		
11) Any known provincial, territorial, municipal, Aboriginal, or other interests or rights		
12) Whether services are required. If services are required, enumerate what services and the plan to provide for or acquire them		

Template 3: Reserve Creation Joint Work Plan

Purpose:

Section 5.3.1 of Directive 10 - 2: Reserve Creation Process in the ATR Policy states that Regional INAC staff and the First Nation will work together to develop a work plan once a Letter of Support has been issued.

Process:

Under the ATR Policy, INAC will identify in the Letter of Support the requirements that must be satisfied before INAC will recommend Reserve Creation. After the Letter of Support is issued, Regional INAC staff and the First Nation will work together to develop a work plan outlining the requirements to meet Reserve Creation, timelines, and their respective roles and responsibilities.

Annual Review and Completion of File:

During the annual review of the ATR files, INAC staff will arrange to meet with the First Nation to determine whether work plan objectives have been met. In the case that work plan objectives have not been met, the work plan requirement may be revised.

In the case in which a First Nation has more than one ATR application, the First Nation will have one work plan containing all ATR submissions. First Nations may work with INAC staff to rank the submissions based on priority so that priorities can be considered as much as possible when processing ATR submissions for that First Nation.

Work Plan Template:

The following table contains a template of a work plan that may be used by the First Nation and INAC staff to assist them with preparing the work plan. Note that instructions/definitions for each field are in italics text under each box in the document.

Work Plan Template – General Information
First Nation Name:
<i>Add the legal name of the First Nation that has submitted the Reserve Creation Proposal above</i>
ATR Name/NATS Number/ATR Number:
<i>Add the ATR Name/NATS/ATR Number that identifies the ATR submission above</i>
Other Identifying Numbers:
<i>Add any other identifying numbers that are assigned to the ATR submission if applicable, such as CIMS/Order in Council/Ministerial Order Numbers) above</i>
ATR Purpose:
<i>Briefly describe the purpose of the ATR above</i>
Date the work plan was developed:
<i>Include the date (month/day/year) that the work plan was developed above</i>
Date the work plan was modified:
<i>Include the date (month/day/year) that the work plan was modified (if applicable) above</i>
Signature of the First Nation Representative and date:
<i>Ask the First Nation Representative to sign, print his or her name, and date (month/day/year) above once the work plan is completed</i>

Signature of the Director or the Manager in the INAC Regional Office:					
<i>Ask the accountable Director or Manager in the INAC Regional Office to sign, print his or her name, and date (month/day/year) above once the work plan is completed</i>					
ATR Submission #1					
<i>Include the ATR Name/NATS Number/ATR Number in the line above</i>					
Objective	Activity	Lead	Costs	Target	Dates
<i>List the work plan requirement</i>	<i>List the activity and briefly describe the purpose of the activity within the process</i>	<i>List who is ultimately responsible to complete the activity</i>	<i>List any anticipated costs and who will be responsible to pay for the activity</i>	<i>List the date (month/day/year) that the activity is expected to be completed by</i>	<i>List the date (month/day/year) that the activity was actually completed on (this column is for tracking purposes)</i>
Environmental Studies					
Land Description					
Service Agreements					
Third Party Interests or Rights					
ATR Submission #2					
Objective	Activity	Lead	Costs	Target	Dates
Environmental Studies					
Land Description					
Service Agreements					
Third Party Interests or Rights					
ATR Submission #3					
Objective	Activity	Lead	Costs	Target	Dates
Environmental Studies					
Land Description					
Service Agreements					
Third Party Interests or Rights					

ATR Submission #4					
Objective	Activity	Lead	Costs	Target	Dates
Environmental Studies					
Land Description					
Service Agreements					
Third Party Interests or Rights					
ATR Submission #5					
Objective	Activity	Lead	Costs	Target	Dates
Environmental Studies					
Land Description					
Service Agreements					
Third Party Interests or Rights					

Work Plan Sample:

The following information is an example of what a completed work plan template might look like. Note that this information is fictitious and it is to be used for illustration purposes only.

Work Plan Template – General Information
First Nation Name: XYZ First Nation
<i>Add the legal name of the First Nation that has submitted the Reserve Creation Proposal above</i>
ATR Name/NATS Number/ATR Number: LED12345
<i>Add the ATR Name/NATS Number/ATR Number that identifies the ATR submission above</i>
Other Identifying Numbers: CIMS # LSSK123 and MO # 2014-001
<i>Add any other identifying numbers that are assigned to the ATR submission if applicable, such as CIMS/Order in Council/Ministerial Order Numbers) above</i>
ATR Purpose: To Build a Shopping Centre
<i>Briefly describe the purpose of the ATR above</i>
Date the work plan was developed: January 15, 2014
<i>Include the date (month/day/year) that the work plan was developed above</i>
Date the work plan was modified: Not applicable
<i>Include the date (month/day/year) that the work plan was modified (if applicable) above</i>
Signature of the First Nation Representative and date: Jane Smith Jane Smith January 16, 2014
<i>Ask the First Nation Representative to sign, print his or her name, and date (month/day/year) above once the work plan is completed.</i>

Signature of the Director or the Manager in the INAC Regional Office: John Doe John Doe January 16, 2014					
Ask the accountable Director or Manager in the INAC Regional Office to sign, print his or her name, and date (month/day/year) above once the work plan is completed					
ATR Submission #1 - LED12345					
Include the ATR Name/NATS Number/ATR Number in the line above					
Objective	Activity	Lead	Costs	Target	Dates
<i>List the work plan requirement</i>	<i>List the activity and briefly describe the purpose of the activity within the process</i>	<i>List who is ultimately responsible to complete the activity</i>	<i>List any anticipated costs and who will be responsible to pay for the activity</i>	<i>List the date (month/day/year) that the activity is expected to be completed by</i>	<i>List the date (month/day/year) that the activity was actually completed on (column is for tracking purposes)</i>
Environmental Studies	Environmental Site Assessment	First Nation	Phase I and II - \$X	July 1, 2014	To be done in Year 1 with actual results to added
Land Description	Survey	First Nation	\$X	June 1, 2015	To be done in Year 2 with actual results to be added
Service Agreements	Service Agreements For Water, Garbage and Wastewater	First Nation	\$X for lawyers, \$X for travel, \$X for engineers, \$X for studies	June 1, 2018	To be done in Year 5 with actual results to be added
Third Party Interests or Rights	Hydro Easement or servitude	First Nation to negotiate and INAC to process	\$X	January 1, 2018	To be done in Year 5 with actual results to be added
	Rail Line Easement or servitude				
	Permit – cell tower				

Directive 10 – 3: **Additions to Reserve/Reserve Creation Transition** **Guidelines**

1.0 Principles

These Guidelines will help to implement the revised ATR Policy and support transition from the 2001 ATR Policy. The following principles will guide transition activities:

- i) The application of the revised ATR Policy will be efficient and fair, consider the respective workloads and capacity of the parties, focus on completing ATRs as quickly as possible, and optimize the advantages of the new process;
- ii) For all ATR Proposals within INAC at the effective date, First Nations will have the ability to opt into the revised ATR Policy. All ATR Proposals submitted after the effective date will be processed according to the revised ATR Policy (unless otherwise defined in an agreement); and
- iii) The prolonged application of the 2001 ATR Policy will be minimized where possible.

2.0 Purpose

2.1 The purpose of these Guidelines is to provide information and support to Indigenous and Northern Affairs Canada (INAC) staff in the Regional Offices and to First Nations using the Additions to Reserve/Reserve Creation Policy.

3.0 Transition Processes

- 3.1.** As part of the launch of the 2016 Policy, INAC will advise all First Nations, in writing, that a new Policy has been developed and approved. The written notification will include:
- a) Information to find the online copy of the 2016 Policy;
 - b) The date the 2016 Policy will be in effect; and
 - c) Contact information for the First Nation to have a discussion with an INAC official and receive a briefing on the 2016 Policy or to discuss the Reserve Creation Proposal process and next steps.
- 3.2** INAC may hold regional information sessions so that First Nations may meet with INAC to discuss the changes introduced by the Policy. If requested, INAC Regional officials will meet one-on-one with a First Nation to discuss their

respective ATR files.

- 3.3 INAC Regional officials will partner with First Nations to conduct a file review to determine which files will continue to be processed in accordance with the 2001 Policy and which ones will be transitioned to the 2016 Policy. The file review will take into consideration whether an Approval in Principle has been issued under the 2001 Policy. If an Approval in Principle has been issued, the proposal is likely nearing completion, and for efficiency, it could proceed under the 2001 policy.
- 3.4 If an Approval in Principle has not been issued, INAC Regional officials will work with the First Nation to ensure that the file contains the information required by the 2016 Policy to proceed to a Proposal Assessment. INAC Regional officials and the First Nation will review each Proposal to identify any missing information. Where additional information is required, INAC Regional officials will send a written request for the information to the First Nation.
- 3.5 Regardless of which Policy is used, INAC Regional officials will continue to partner and work with the First Nation to ensure Proposals proceed in a timely manner.
- 3.6 In circumstances where a Reserve Creation Proposal is subject to an Agreement under the Legal obligations category (such as a Treaty Land Entitlement Settlement Agreement, other Specific Claim Agreement, or Self-Government Agreement), and where the criteria/requirements in the 2016 Policy are inconsistent or in conflict with the provisions in the Agreement, the provisions of the Agreement will prevail to the extent of the inconsistency or conflict. Therefore, depending on the Agreement, the 1991, 2001 or the 2016 Policy may be applied to these Reserve Creation Proposals.

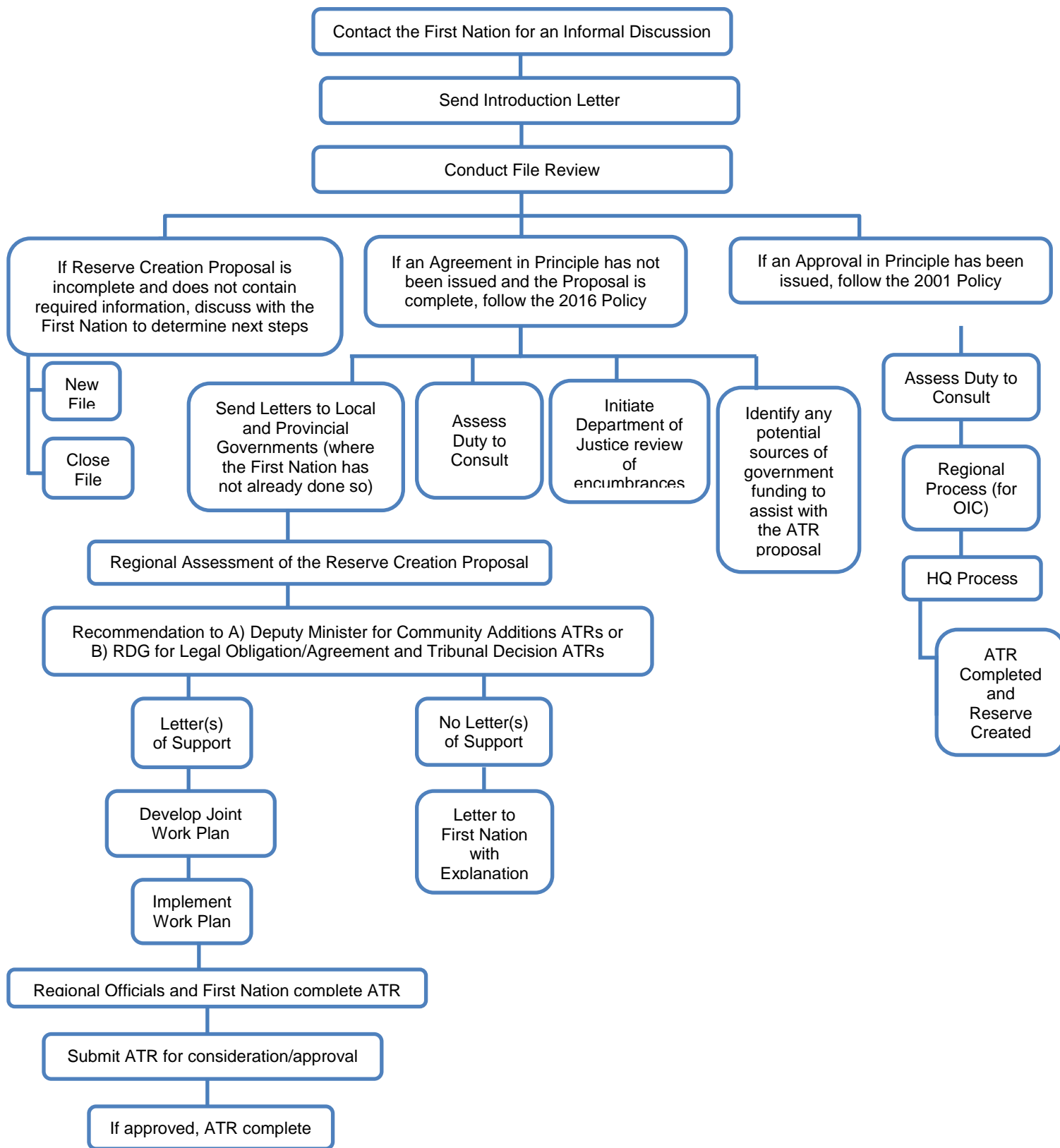
4.0 Priority Consideration

- 4.1 INAC will work to address First Nation priorities, where possible, when processing Reserve Creation Proposals during the transition period and under the 2016 Policy.
- 4.2 First Nations will have the opportunity to identify their priority Reserve Creation Proposals and work with INAC officials to incorporate this information into the work plan.
- 4.3 First Nations representatives and INAC regional staff will work collaboratively to arrive at priorities and will be realistic about what can be achieved during the transition period.

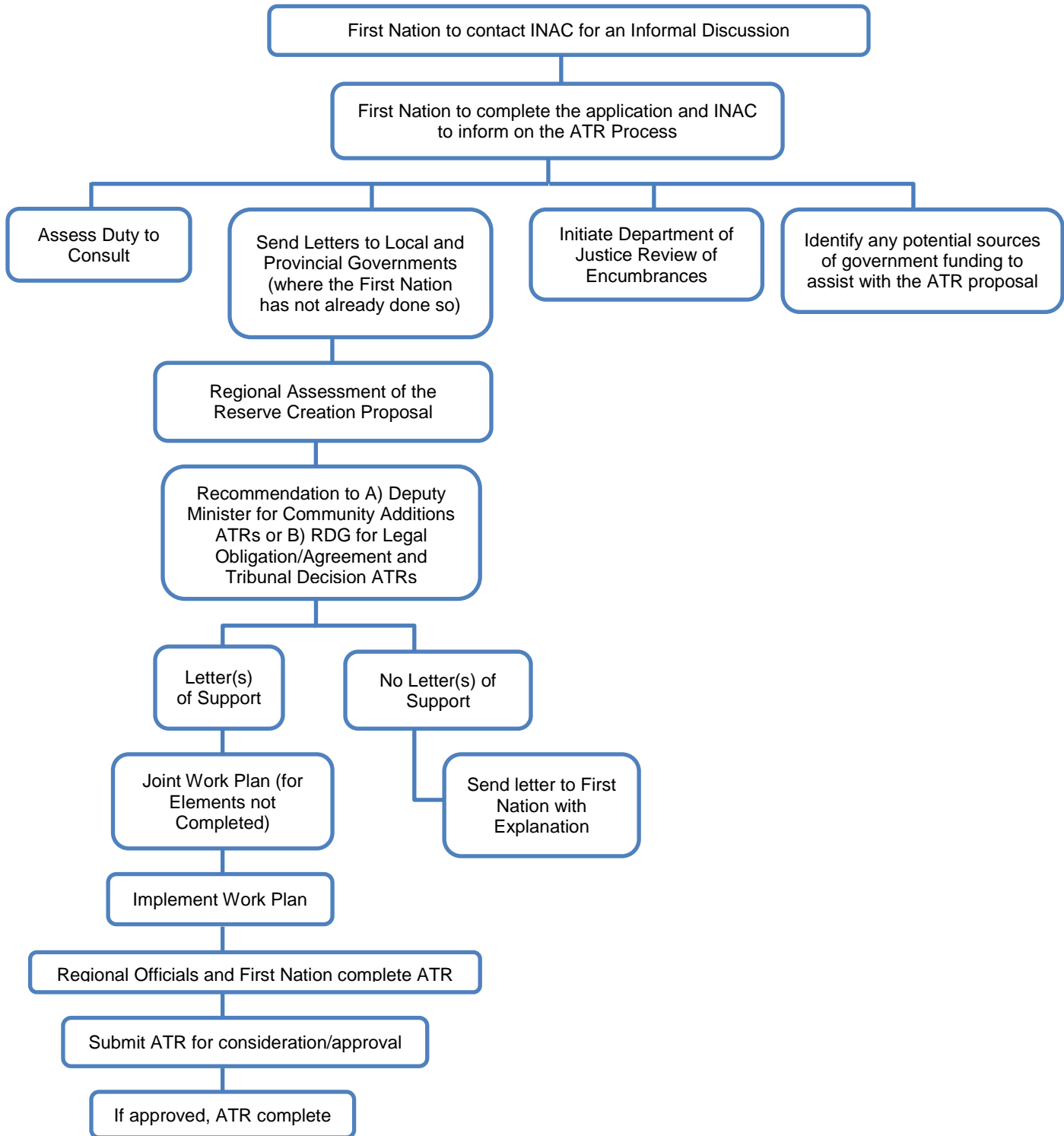
5.0 Flow Charts

The following flowcharts outline the main steps in the transition process for all remaining 2001 Policy Reserve Creation Proposals (meaning “Community Additions” or “New Reserves/Other Policy” Reserve Creation Proposals that are not subject to the Legal Obligations category), and for all new Reserve Creation Proposals once the 2016 Policy is effective. The flowcharts may be used by INAC as a guide to understand all the steps in the processes.

Flowchart 1: Transition Process for Existing Reserve Creation Proposals



Flowchart 2: Process for initiating Additions to Reserve/Reserve Creation Proposals



6.0 Enquiries

For additional information on this Policy or to obtain any of the above-noted references, please contact:

Indigenous and Northern Affairs Canada
Terrasses de la Chaudière
10 Wellington, North Tower
Gatineau, Québec
Postal Address:
Ottawa, Ontario
K1A 0H4

E-mail: InfoPubs@aadnc-aandc.gc.ca

Phone: (toll-free) 1-800-567-9604

Fax: 1-866-817-3977

TTY : (toll-free) 1-866-553-0554