

DRAFT RESOLUTION # 28 / 2023

AFN Annual General Assembly, July 11-13, 2023, Halifax, NS

TITLE: Returning First Nations Lands through Additions to Reserve Reform

SUBJECT: Lands

MOVED BY: Chief Patricia Bernard, Madawaska Maliseet First Nation, NB

SECONDED BY: Chief Calvin Sanderson, Chakastaypasin Band, SK

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
- i. Article 26 (2): Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
 - ii. Article 26 (3): States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.
- B. The Government of Canada's Additions to Reserve (ATR) policy and process has been largely ineffective in adding lands to First Nations' reserves in a timely or efficient manner.
- C. In 2012, First Nations-in-Assembly passed Assembly of First Nations (AFN) Resolution 26/2012, *Additions to Reserve Policy and Process Reform*, mandating the AFN and the Government of Canada to jointly renovate the existing ATR policy to create a more efficient, effective and transparent process.
- D. In 2016, following four years of extensive co-development, the Government of Canada released an updated ATR policy, but excluded the AFN from its subsequent implementation or oversight as a critical facet of effective policy reform.
- E. In 2018, the Government of Canada unilaterally introduced the *Addition of Land and Reserves and Reserve Creation Act* (the Act) within omnibus *Budget Implementation Act, 2018, No. 2 (C-86)*, which expanded elements of the Treaty Land Entitlement Act(s), including the ability to pre-designate lands.
- F. Federal Budget 2021 included \$43 million over three years to support ATR policy reform, while also addressing a massive backlog of over 1300 ATR submissions stuck within the federal ATR system.
- G. In addition, Minister Miller's 2021 ministerial mandate letter commits Crown Indigenous Relations and Northern Affairs Canada (CIRNAC) to "accelerate ongoing work with First Nations to redesign federal policies on additions-to-reserves...to provide just and timely resolution, conscious of the need for a fairer and more equitable process."
- H. In 2022, CIRNAC outlined a staged approach to ATR reform, beginning with a pre-engagement process with select First Nations and regional representative organizations, alongside preliminary discussions with the AFN.

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- I. The persistent longstanding reality many First Nations face when navigating the ATR process relates to three primary impediments that consistently undermine a First Nation's ability to add land to its reserve:
 - i. A longstanding hesitancy on the part of Canada to create new section 91(24) reserve lands, even when required by its own legal obligations or agreements.
 - ii. The non-availability of suitable lands and the absence of a mechanism to make lands available for purchase, even when Treaty or settlement agreements provide cash for the purchase of lands.
 - iii. The federal requirement for First Nations to resolve all third-party interests prior to the acquisition of new lands, which continues to be a significant barrier to completing ATR applications.
- J. In December 2022, the Minister of CIRNAC, Marc Miller, told First Nations-in-Assembly that "the (ATR) process is largely broken, glacial in its pace, and a terrible way to get land back."

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Direct the Assembly of First Nations (AFN) to call on the Government of Canada to co-develop with First Nations a clear, effective, and transparent process to restore, reacquire, and/or remedy the historic dispossession of reserve lands, including fully implementing outstanding legal obligations to create or add to existing reserves or other land tenure systems.
2. Direct the AFN to engage with First Nations on the restitution of lands to First Nations, including through the review and re-design of the Additions to Reserve (ATR) policy and process, and to develop a comprehensive report that:
 - a. Identifies the many priorities First Nations have respecting ATR.
 - b. Provides an analysis of the existing policy framework for ATR.
 - c. Proposes potential policy and legislative solutions for consideration by the First Nations-in-Assembly at an upcoming Assembly.