



# FIRST NATION URBAN DEVELOPMENT AREA

Commonly referred to as “**Urban Reserves**” based on the SK Experience.

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In order to move away from long standing stigma associated with the term “reserve” throughout this presentation I will refer to Urban Reserves as First Nation Urban Development Areas and encourage collectively we do so moving forward.

## Presentation Focus:

1. What is a First Nation Urban Development Area (FNUDA)?
2. How are land use, servicing, and taxation addressed?
3. What would/could a First Nation Urban Development Area mean for Brandon?

# FIRST NATION URBAN DEVELOPMENT AREA

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## What is a First Nation Urban Development Area (aka "Urban Reserve")?

- A First Nation Urban Development Area is land within an urban area that a First Nation owns and has surrendered to the Crown (the Government of Canada) in order that the land be designated as reserve land for the First Nations.
- Such lands allow for First Nation's business ventures to enjoy the same privileges as those on traditional reserve lands and also place the land under the authority of Parliament (Constitution Act, 1867).

Source: <https://www.aadnc-aandc.gc.ca/eng/1100100034737/1100100034738#ch2>

Though the Federal Government holds title on the land they are not involved in developing the land, day to day operations, vision setting, etc.

Essentially land held by the Crown for the band so they can benefit from privileges set forth in the Treaty Act of 1867

Treaty Act defines Reserve Land as: *"a tract of land, the legal title to which is vested in Her Majesty, which has been set apart by Her Majesty for the use and benefit of a band"*.

## How Are Reserve Lands Different?

- Legal title to reserve lands is held by the Crown rather than by individuals or organizations
- First Nations have a recognized interest in reserve land that includes the right to exclusive use and occupation, inalienability and the communal nature of the interest
- The land cannot be seized by legal process or be mortgaged or pledged to non-members of a First Nation
- The Minister must approve or grant most land transactions under the Indian Act unless the First Nation is recognized under the First Nation Land Management Regime.

*Source: <https://www.aadnc-aandc.gc.ca/eng/1100100034737/1100100034738#ch2>*

First Nation Land Manager – means the First Nation has land codes in place and therefore no longer fall under the Indian Act provisions relating to land management (32 restrictive land administration provisions).

## What Do These Differences Mean For the Municipality?

- Land is under the jurisdiction of First Nation governance not the municipality, impacting tax collection, land use compatibility and by-law compliance.
- Tax benefits set forth in the Indian Act apply to First Nations (Status) operating a business or working in a First Nation Urban Development Area.
- Federal Criminal code is applicable, but Municipal policing is not, unless negotiated as part of the service agreement.

The following are typically negotiated and outlined in a legally binding Municipal Development & Services Agreement

- Municipal tax loss compensation which is typically inclusive of service fees for items such as water, sewer, fire, policing, snow removal, etc.
- By-law compatibility including land use, zoning standards, building standards, business regulations, etc.
- Dispute resolution
- Assessment appeal provision

## Why are First Nation Urban Development Areas pursued by First Nations

- Offer First Nations economic opportunities that are generally unavailable in more remote areas.
- They are a key part of First Nations' path to economic independence and self - governance
- Provide First Nations' businesses the chance to establish themselves and provide employment and training opportunities.
- Job creation for First Nation people

## Two Types of First Nation Urban Development Areas (FNUDA)

1. A FNUDA that was rural but became urban when a neighboring town expanded around them. An example is the Musqueam Reserve in Vancouver;
2. A FNUDA created when a First Nation acquires a block of land in a city and works through the process of acquiring reserve status for the land.

### Vancouver, Musqueam Band sign agreement on city services

JEFF LEE, VANCOUVER SUN | 01.26.2014 |





## Basic Criteria That Must be Addressed for a FNUDA Proposal to Proceed

- ❑ Land has no significant environmental concerns
- ❑ Best efforts have been made to address the concerns of municipal and provincial/territorial governments
- ❑ The proposal is cost-effective and the necessary funding has been identified within operational budgets
- ❑ Third party issues, such as leases and licenses have been addressed and
- ❑ Any public access concerns have been addressed

<https://www.aadnc-aandc.gc.ca/eng/1332267668918/1332267748447>

This is a Federal / First Nation process. But key to the ATR request moving forward is a municipal development and servicing agreement.

Many steps involved but I am only touching on key milestones in the presentation.

There exists in the ATR process a duty to consult with First Nations within a defined proximity, in Brandon's case this is 70 km, to determine if they have used the land for which the ATR process is being pursued for traditional land purposes (hunting, gathering food, etc.). This is not a veto item, but if there are legitimate concerns they need to be allowed to run due course.

## Establishing a First Nation Urban Development Area

1. **Additions to Reserve** policy
2. **Treaty Land Entitlement** agreements.

*There are over 120 First Nation Urban Development Areas across Canada. Saskatchewan has the greatest number, approximately half of those in Canada, including the oldest First Nation Urban Development Area developed in Saskatoon in 1988.*

Treaty Land Entitlement claims are intended to settle the land debt owed to those First Nations who did not receive all the land they were entitled to under historical treaties signed by the Crown and First Nations.

Settlement agreements are negotiated among First Nations, the Government of Canada and provincial/territorial governments. According to the terms of the agreement, a specified amount of Crown lands is identified and/or a cash settlement is provided so that a First Nation may purchase federal, provincial/territorial, or private land to settle the land debt.

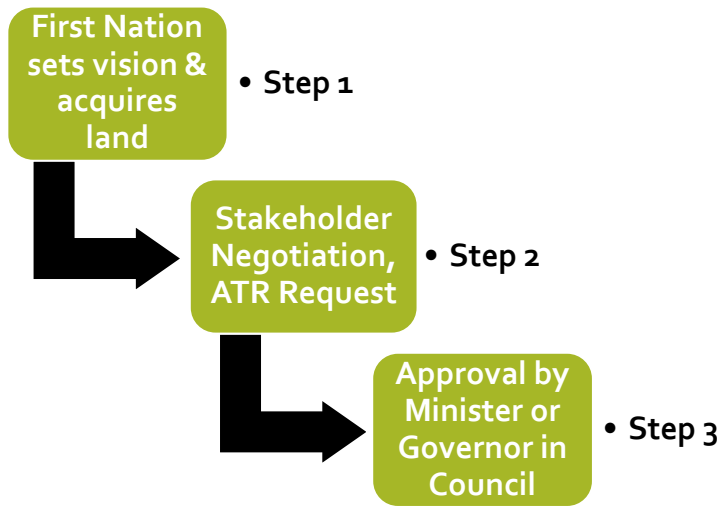
Once selected or purchased, this land can be added to the First Nations' reserve under the Additions to Reserve process.

Currently, approximately 90 per cent of Treaty Land Entitlement transactions take place in Manitoba and Saskatchewan.

Of the 63 First Nations in Manitoba, 29 have Treaty Land Entitlement (TLE) settlement agreements. Under these agreements, the Government of Canada committed to providing over \$190 million, and along with the Province of Manitoba, to set apart up to 1.4 million acres of land as reserve. To date more than 850,000 acres of land have been either selected from provincial Crown land or purchased from willing sellers. All selections and acquisitions are proceeding through the Treaty Land Entitlement and Additions to Reserves processes and are at various stages ranging from initial acquisition/selection to the Federal Order that would set the lands apart as reserve.

\* To date there are six First Nations under the Manitoba TLE Framework Agreement yet to ratify their agreements.

## Typical Additions to Reserve (ATR) Process



- Rigorous and often lengthy process.

- Average 4.2 years to complete an ATR

Source: National First Nations Economic Development Board, 2014

- Case studies show ATRs as quickly as 2 years (SK) and as long as 12 years (MB). Indications that one in MB will be completed within a year.

When a First Nation purchases private land, it is held in "fee simple" – like any other private property - until the land has been declared as a Reserve

- the land is subject to all provincial laws and municipal by-laws
- also subject to taxation

- after Reserve created, land is under the jurisdiction of the First Nation, rather than the City; for example:

- Federal laws such as the Criminal Code continue to apply
- City taxes do not apply; the First Nation becomes the taxing authority on the land
- many City bylaws also do not apply; they are replaced with First Nation jurisdiction

- before land becomes a Reserve, the City and the First Nation negotiate an agreement to address this change in jurisdiction.

- what urban services will be provided; how they'll be paid for (tax loss comp.)
- how to make sure land use on the Reserve, and around it, will remain compatible (urban – one affects other)
- how bylaws will be applied and enforced

## Reasonable ATR Timeline, 12 – 18 months



The timelines assumes everyone involved is a willing partner.

- First Nation
- Municipality
- Property Owner
- Higher levels of Government

# FIRST NATION URBAN DEVELOPMENT AREA EXAMPLES

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Remember:

- Think of First Nation Urban Development Areas as you would any other new development that picks Brandon as home. This is good news, resulting in increased tax revenue and job creation
  - First Nation Urban Development Areas are very important to positively changing the lives of First Nation people
  - Successful First Nation Urban Development Areas have demonstrated additional investment from the First Nation land holder typically follows

## Muskeg Lake Cree Nation, Success Story

- First Nation Urban Development Area in Saskatoon brought up the land values around it.
- Business Portfolio enables Muskeg Lake Cree Nation to provide many of the same services the City of Brandon provides to its residents.
- First Nation Urban Development Area provided means to build their business profile.
  - ✓ Property Management
  - ✓ Fuel Stations
  - ✓ Campground (run similar to a provincial regional park)
  - ✓ Partnership in a Casino
  - ✓ Partnership in a Golf Course

## Muskeg Lake Cree Nation, Saskatoon

- The first First Nation Urban Development Area in Canada, 1988
- 35 acres, over 100,000 sq. ft. of retail, office & light industrial. Comprised of three separate buildings all with 100% occupancy
- ~ 30 businesses, over 600 employees, most full time
- Comprehensive service agreement in place, FN By-Laws are consistent with Saskatoon's and zoning can't be changed without Saskatoon's approval.



## Muskeg Lake Cree Nation, Saskatoon

- Cree Way Gas, a Petro Canada gas bar was established in 2001 in Saskatoon. They also opened a second location on the west side of Saskatoon.
- Full service gas and convenience stores in both locations.



- Gas Stations can be important revenue sources for First Nations.



## Bannatyne Cree Nation, Prince Albert

- 46,500 sq. ft. complex housing a Casino, restaurant, lounge, and smoking room that opened in 1996. 1 M visitors annually.
- 4,500 sq. ft expansion occurred in 2011
- Over 400 employees, one of Prince Albert's largest employers



## Yellow Quill First Nations Development Area, Saskatoon

- Oct. 2014 announced plans to build a \$40 M, class A commercial office complex in downtown Saskatoon.
- Construction will begin once sufficient lease commitments are in place.
- They own the business tower beside site but chose not to convert it to reserve land



Took 4 years to receive reserve status

- Existing office building and parking lot, also in downtown, on 4th Avenue & 20th Street; includes First Nations Bank; Bessborough Hotel is in the background.
- Parking lot transferred to Reserve status in 2014, and an office building is proposed to be constructed on it
- Proceeds from their economic development portfolio are invested in housing & renovations, scholarships, workforce assistance, emergency assistance

## Long Plain First Nation, Winnipeg

- 2.8 acres land includes Yellow Quill College a First Nation Educational Institution and leases space to other businesses as well as Winnipeg's first First Nation Urban Development Area gas station and convenience store
- Vision is to build a 80,000 sq. ft office complex



## Long Plain First Nation, Portage La Prairie

- Gas station, café, office complex, conference and gaming centre
- 500 seat conference hall, 30 seat boardroom, full service catering
- 50 VLTs and a poker room



## Swan Lake First Nation, Headingley

- Swan Lake First Nation gaming centre with 30 VLTs, 9 full time and part time staff
- Small office space, gas bar and convenience store also on site
- Municipal Services Development Agreement signed in 2006



## Swan Lake First Nation, Headingley

- Brand new 55,000 sq. ft. commercial building slated to open summer 2016
- 47,000 sq. ft already leased out to 19 tenants
- Building is financially self sustaining as well as it generates income for the Swan Lake First Nation



Tenants for the most part have signed leases exceeding 5 years, with leases in place since 2015.

Paving on the site starts week of June 7th followed by building out the tenant space. Tenants were able to design their own space.

Tenants include

- south and north First Nation Child and Family Services offices
- DOTC health
- First Nation businesses
- Lawyers
- MB First Nation Education Resource Centre

## Roseau River First Nation, Winnipeg

- 30 hectare site, North of Winnipeg
- \$1.5 million gas bar and convenience store
- Plans expressed in 2007 to erect a for profit medical clinic with pharmacy, car dealership, big box stores. No progress to date.



## Peguis First Nation & Assiniboia Downs

- Peguis First Nation and Manitoba Jockey Club partnering to turn Assiniboia Downs (36 acres) into a First Nation Urban Development Area.
- Plans to keep existing track & build 2 new hotels, convention centre and retail space. Project valued at \$100 M
- Master Plan accepted Jan. 2016, to subdivide land into three separate lots



Also purchased 1.4 hectares at 1075 Portage Avenue, including the former Motor Vehicles Branch building, 69,000 sq ft in Winnipeg in 2014.

Completed extensive business case analysis then invested significant funds into renovations and improvements and secured 80% occupancy agreements before moving forward. Tenants will be Band community organizations as well as other First Nation companies.



## Opaskwayak Cree Nation, The Pas

- Otineka Shopping Mall - 250,000 sq. ft. 3 level mall. Located on a 13 acre parcel of land
- Mall started out as a grocery store concept and expanded over time to today's shopping mall
- 60 room hotel including a lounge, restaurant, banquet facilities



# ADDRESSING LAND USE, SERVICING, AND TAXATION

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## Common Municipal Concerns

### Common Concerns

- Loss of tax base
- Inconsistencies of land use
- Conflicts in land use
- Coordination of by-laws
- Provision of services
- Enforcement mechanism

### Negotiated Agreements Address

- Compensation for loss of municipal and school taxes
- By-law compatibility, including land use
- Servicing agreements
- Dispute resolution process

A properly executed municipal development and service agreement addresses all common concerns.

# Commonly Voiced Neighbouring Property Owner Concerns

## Commonly Cited Concerns

- Stigma attached to word “reserve”
- Fear of property and business value depreciation (Not in My Backyard mentality)

## What to do about it

- Public education about what First Nation Urban Development Areas are and are not
- Changing the terminology we use, eliminate reference to “reserve”
- Keep communication open, often, and factual

With a fair and equitable service agreement in place, common concerns are addressed.

## Common Agreements

- Municipal Development and Services Agreement
- Police Services Agreement (when Police Board exists)

## Municipal Development & Services Agreement

The following are typically negotiated and outlined in a Municipal Development & Services Agreement:

- Municipal tax loss compensation (fire, policing, emergency response, snow removal, etc.)
- Service fees (water & sewer)
- Bylaw compatibility
  - Land use, development, building & fire standards
  - Public health & safety
  - Business regulations
- Dispute resolution

- First Nations negotiate separately with school divisions – lump sum payment

**WHAT COULD A  
FIRST NATION URBAN  
DEVELOPMENT AREA  
MEAN FOR BRANDON?**

## Benefits of a First Nation Urban Development Area

- Strengthens City of Brandon and First Nation relations
- Aligns with Municipal, Brandon Urban Aboriginal Peoples Council, Brandon Chamber of Commerce and higher level of Government First Nations engagement initiatives
- Encourages the creation of new First Nation businesses in Brandon
- Improves the financial picture for new and existing First Nation businesses
- Profits realized by the project support First Nation programming which in the long term benefits Brandon overall

Brandon's population is roughly 11% Aboriginal with 6.3% First Nations and 4.7% Metis.

### 2011 Census

First Nations = 2,830

Metis = 2,115

Inuit = 60

Multiple Aboriginal identity = 20

Total Aboriginal population = 5,040



## Benefits of a First Nation Urban Development Area

- Additional supports may be available on reserve for First Nation business and labour force development.
- Creates potential for increased and more lucrative employment opportunities for First Nations due to the income tax exemption. This can result in more discretionary income being spent in Brandon businesses and a better quality of life for the First Nation individual.
- Provides a culturally relevant business environment for First Nation members to interact.

## Benefits of a First Nation Urban Development Area

- Catalyst to transform systemic racism against First Nations
- Increased Brandon business to business dealings
- Enhances Brandon's tax base (develops vacant land in Brandon)
- Increased municipal revenue from service agreement (water & waste water)

## Benefits of a First Nation Urban Development Area

- Creates construction activity in the community, which benefits local businesses
- Brandon's overall labour market will benefit from First Nations' people becoming engaged in the workforce and having their skills upgraded

## Need to Remember....

- A municipality does not have legal veto power over a First Nation Urban Development Area. The Additions to Reserve Directive sets forth a policy requirement for a service agreement to be negotiated in good faith between the municipal government and the requesting First Nation group.

# QUESTIONS?

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## Contact

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[www.Brandon.ca/firstnationurbandevlopmentarea](http://www.Brandon.ca/firstnationurbandevlopmentarea)