

# Urban reserves – rationale and development <sup>i</sup>

*Gregory Mason, University of Manitoba*

## ***Abstract***

*For the last fifty years, Canada has been transitioning through a fundamental redefinition of what it means for Indigenous peoples to own land. This transition includes comprehensive land and self-government agreements, also known as “modern” treaties and expanded land and financial management capacity within the so-called historic treaties. Most of these redefined land rights have centred on expanded control of lands with respect to resources as a foundation for increased Indigenous economic welfare.*

*Recently, Indigenous peoples have gained expanded ownership of urban lands in the form of urban “reserves.” The paper explores the processes for creating urban reserves and contends that increased ownership of urban lands offers an important policy tool for concrete reconciliation. Further, at the outset, the organization of urban reserves requires a direct negotiation between First Nations governments and municipalities – the federal and provincial government should play a supporting role. This paper argues that applications for additions to reserve to create urban reserves should be joint between the First Nations and a municipality and after all relevant agreements are in place.*

*Key words: Indigenous Economics, Urban Reserves, Treaties, Aboriginal Property Rights, Municipal Planning, Urban Service Costs, Urban Taxation.*

## **1. Introduction**

As one of the traditional factors of production, land ownership remains an essential element of economic well-being. De-Soto(2000) and (North, 1990), among others, argue that property rights support the path to economic prosperity. The issue under consideration is whether recent transformations in Indigenous land rights in Canada supports increased prosperity. Specifically, will the creation of urban reserves support improved economic well-being for First Nations?

The core argument is that the typical process for extending Aboriginal title to urban areas, should feature individual First Nations and municipalities in “government to government” negotiations. The federal and provincial governments’ role should be to support the financing of lands within municipal boundaries to become urban reserves and transitional support for compensating municipalities for tax and urban cost losses.

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This study explores the rationale for creating urban reserves within urban areas. “Urban reserves” (and I use the term in a generic sense as explained below), have emerged as part of important policies in four forms: Comprehensive Land and Self-Government Agreements or “modern treaties”, Treaty Land Entitlement Agreements, Additions to Reserve (ATR) process, and modifications to existing reserves under the First Nations Land Management Act (FNMLA) and First Nations Financial Management Act (FNFMA) are all methods available to First Nations to either reclaim lands or exert increased control of lands granted under the Indian Act. A core premise of this paper is that resource exploration is not the only, or even the most promising route to increasing economic well being of First Nations – increasing their stake in the urban economy represents an important avenue for raising the incomes and wealth of community members.

### **1.1. Caveats and qualifications**

Several qualifications to this analysis require acknowledgment at the start. The paper uses information derived from the Census of Population. Two critical problems exist with this data source. First, Statistics Canada acknowledges low response rates among residents of some First Nations (Statistics Canada, 2019). Second, as shown in section, a few First Nations with lands close to or even within urban areas lease to non-First Nations households and firms, which results in community data that contains responses by Indigenous and non-Indigenous households.

In this paper, Indigenous economic “well-being” refers to the growth in individual or personal income for registered Indians living on reserve lands defined under the Indian Act. It does not address the economic well-being of registered Indians residing in urban areas. Also, other measures of economic well-being such as wealth, employment, and investment/business incomes are important indicators of prosperity, but since the census offers personal income data for all Canadians and with limitations for most Indigenous communities, it is convenient to use this metric as the indicator of economic well-being.

Although the paper focuses on material measures of economic well-being, it is important to acknowledge Indigenous perspectives may not separate measures income and wealth from the concept of leading a good life. Using the four quadrant medicine wheel concept, “leading a good life” comprises spiritual, emotional, mental, and physical dimensions that some argue are at the core

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of Indigenous concepts of well-being. (Denis et al., 2017). Those operating within this perspective argue that material well-being has little value without fulfillment in the other three quadrants. However, in the absence of measures for other the other dimensions of well-being, this paper retains material measures of economic well-being, while aware of their limitations.

Finally, the paper focuses on First Nations, not to discount any class claims Métis and Inuit may have on urban lands other than as individuals owning land in freehold. However, the nature of Métis land rights remains before the courts and the comprehensive agreement that created Nunavut represents a significant step in reconciliation for the Inuit in Canada.

## **1.2. Urban reserves and First Nations' prosperity**

The academic response to the creation of urban reserves has been generally positive. Popular accounts (Fontaine, 2015; Quesnel, 2016) and more technical studies (Deloitte, 2016) argue for their potential to boost the economic opportunities for both First Nations and surrounding city residents alike (NAEDB, 2015, 2017). Most recently, the OECD (2020) has prepared a detailed report on Indigenous Communities' economic development writing "Secure rights to land can increase autonomy, generate revenues and create economic opportunities".

The subject of how the evolution of treaties and land ownership forms under the Indian Act have affected First Nations income has recently received some recent empirical attention (Aragón, 2015; Aragón & Kessler, 2020). In first study, the author finds that modern treaties (which we define below) that add to reserve land are associated with increased incomes. In the second study, the authors exploit the fact that treaties allow different regimes of property rights and try to show that varying levels of property rights support increased prosperity in the local area around the First Nation. On some dimensions such as homeownership rates and housing condition, increased property rights increase economic well-being, but on measure such as household incomes for the First Nation's status Indians, the conclusion remains qualified, largely because of data limitations.

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## **2. First Nations land ownership**

Indigenous persons receive economic benefits from land in three ways. First, individual Indigenous persons, households, and businesses may own non-reserve land in freehold or fee simple<sup>ii</sup>, just as any Canadian. They enjoy all the rights and economic benefits associated with owning urban and rural land which has appreciated in value for the last 50 years. Second, some Indigenous urban communities, defined either as reserves with historic treaties or modern treaties, have benefited economically by being situated within or close to rapidly growing urban areas or natural resource endowments. Third, some First Nations have added urban areas to their reserves through the Additions to Reserve (ATR) process, the negotiation of a comprehensive land and self-government agreement, or through an adjudication of special claims under the Treaty Land Entitlement (TLE) process. Most of these additions have occurred in relatively remote areas, but some are situated immediately adjacent or within existing urban boundaries. It is this group that forms the focus of this paper.

### **2.1. Treaty history offers context for Indigenous urban communities in Canada.**

Treaties and agreements dating to the mid-18<sup>th</sup> century guided the intertwined paths for how Europeans and Indigenous peoples would use the land. These agreements shifted in tone and intent after 1812 war with the United States. Very roughly one can identify four phases of treaty agreements between governments and First Nations: 1) commercial and military agreements from 1701 to 1812; 2) land and services treaties between 1812 and 1921; 3) 1922-75 a hiatus in treaty making; and 4) post 1975 comprehensive agreement and modern treaties (Jones, 2019; Mason et al., 2021; Miller, 2009)

Treaties with Indigenous peoples date back to early 1700's when France and England signed land military, and trade agreements to support economic and military relations(Canada, 2013b; Promislow, 2014; Todd, 2008). For example, the Maritime Peace and Friendship Treaties (1725 – 1779) applied to present day New Brunswick, Prince Edward Island, and Nova Scotia, while the Upper Canada Land Surrenders covering southern Ontario accommodated the loyalists that fled north after the American Revolution. In British Columbia, the Douglas Treaties signed between 1850 and 1853 covered a few small parts of Vancouver.

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After Confederation, the so-called numbered treaties (Canada, 2013a) signed between 1871 and 1921 defined land and chattel rights for the Prairies, parts of British Columbia, the Northwest Territories, and northwestern Ontario. Finally, the Williams Treaties (1923) added small pockets in Vancouver and Vancouver Island to the set of historic treaties

In principle, these treaties defined land “reserved” for the exclusive use of the signatory First Nations and simultaneously created “space” for settler expansion based on European conception of land law. The term *historic treaty* applies to agreements between the Crown and First Nations, negotiated to 1923, with the numbered treaties between 1871 and 1921 being particularly relevant for this paper.

Two points are important. First, much of Quebec, Newfoundland/Labrador, Nunavut and until recently, most of BC, have no treaty arrangements. These are the so called “unceded territories” of Canada where Indigenous groups had, until recently no land defined by any agreement or in Canadian law.<sup>iii</sup> Second, treaties have not guaranteed the rights of First Nation signatories which have experienced sustained violations in both the letter and spirit of the terms of these agreements (Carlson, 1997).

The late twentieth century witnessed Indigenous peoples engaging in legal battles to enforce treaty provisions and to defend traditional territories. Most significant was the 1973 Calder Supreme Court decision (Cruikshank, 2017) that eventually paved the way for the James Bay and Northern Quebec Agreement in 1975. Canada and First Nations have since concluded 24 comprehensive agreements that cover 40% of Canada’s area. Many of the recent comprehensive agreements pertain to large areas of British Columbia, and resulted in the creation of Nunavut.

Such *modern treaties* contain self-government provisions that encompass land codes, control of land, water and natural resources, and support for a wide range of cultural, economic, and fiscal activities that are tantamount to self-government. (Land Claims Agreement Coalition, 2019).

Some First Nations with historic treaties have negotiated expanded land rights under the auspices of the First Nations Land Management Act (FNLMA) and the First Nations Financial Management Act. (FNFMA). Such adjustments to the historic treaties transfer some decision-making over the fiscal governance and land management away from the federal government to the First Nations.

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Two points are important. All the innovations in extending Aboriginal land rights, modern treaties, Additions to Reserves, claims negotiated under Treaty Land Entitlement, and new arrangements within historic treaties under the FNMLA occur within the Indian Act. Canada retains ultimate title to Indigenous lands, as it does with all lands held in freehold by Canadians.

The point of this cursory background is not to settle any of the complex issues of Indigenous land rights, but just to note that land law in Canada, especially as it pertains to Aboriginal peoples continues to evolve. First Nations land title reserves exist in context of historic legal agreements between a specific First Nation and the federal government.

## **2.2. Indigenous property rights reflected the economic base of the community**

Since 1950, with the amendments to the Indian Act that allowed First Nations persons to live off-reserve, Indigenous entities (persons, households, and businesses) have been able to own land in fee simple anywhere in Canada except on Crown land and reserves defined under the Indian Act.

About 89% of Canada is split approximately evenly between federal and provincial governments as crown lands (Neimanis, 2013). Of the remaining 11%, most is fee simple ownership by private individuals and businesses. Crown lands are typically set aside as national and provincial parks, wilderness, specific uses such as office and military bases, and First Nations reserves. With evolving government needs, some lands in the second category become surplus, which becomes a primary source of additions to reserves. First Nations may also acquire land in freehold and apply to have it become part of the reserve lands. Why would a First Nation do that?

Two reasons exist for a First Nation to add to an existing reserve or create a new reserve as opposed to acquiring land in fee simple. First, Section 35 of the Constitution Act creates a government-to-government relationship between a First Nation and federal/provincial/municipal governments. Governments can impose tariffs on imports/exports, but they cannot impose a tax on anyone other than its citizens (including corporations and other businesses). Second, under Section 87 of the Indian Act, the property of a Status Indian is exempt. Income earned by a Status Indian, while employed in an Aboriginal owned business is exempt from income tax. More pertinently, an Aboriginal business located on reserve may be exempt from remitting GST/HST or income tax,

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depending in how “connected” the income is to the reserve (Canada Revenue Agency, 1999, 2005). The issues of taxing Aboriginal businesses located on an urban reserve appears settled, but as these businesses develop multiple locations on and off reserve, establishing the connection of the income flow to the reserve becomes complex and will trigger on-going litigation. Suffice to say, a core rationale for a First Nation preferring to “own” land as a reserve under the Indian Act as opposed to fee simple, is all about taxes. Delving into the implication of this critical feature of urban reserves is beyond the scope of this paper.

Many, if not all First Nations, hold the view that European settlement never extinguished Aboriginal title. Even where treaties and other agreements created accommodations between Aboriginal and European concepts of land title, a common view among First Nations is that these agreements never abrogated their land rights. In this view, traditional Aboriginal title supersedes both the concept of fee simple and crown land.

A common view is that Indigenous perspective on land presents a fundamentally different vision of the “ownership” of land than European law. Very generally it remains correct to say “Aboriginal people's rights to land as defined by the Indian Act are communal in nature, belonging to the group rather than the individual member, and cannot be bargained away except by the group to the crown in right of Canada”(Henderson, 2016). Under the Indian Act, no individual Indigenous person can own property on the reserve where land is communal for the benefit of all members. The concept that all lands are inherently communal aligns with core philosophy of many First Nations. (Liidlii Kue First Nation, 2013). What this also means is that the governance of the First Nation determines how the benefits of “owning” reserve land distribute among community members.

It is incorrect to believe that prior to European settlement Indigenous lands were devoid of any vestiges of private property. As Flanagan et al. (2010) and (Manuel & Derrickson, 2015) argue, Indigenous peoples residing on Turtle Island developed complex and varied systems of individual and collective property rights that aligned with the specific economic base of the community. This idea reflects the economic theory of property rights (Demsetz (1967), Alchian and Demsetz(1973), and Bailey(1992)) that contends all societies align property rights between individual and community first to maximize their chances of survival and then to refine the legal systems balancing collective and individual ownership to enhance economic well-being.

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This perspective suggests that societies that survived through agriculture, aquaculture, and hunting within defined areas tended to remain in fixed settlements, where individuals and families often had claims to specific properties and locations recognized by the community and that were heritable. In these contexts, the economic theory of property rights indicates that the material well-being of the community increases when ownership remains stable and individual households reap the benefits from caring for the land and associated infrastructure such as traplines or fishing weirs. The recognition of individual or family property rights created a basis for land improvement that benefitted the community in the long-term.

In contrast, First Nations that optimised well-being by following herds, land-based property ownership vested in individuals, households, or smaller groups than the community offered little economic advantage and were generally a nuisance. Improving the land upon which vast bison herds grazed and where humans followed the herds, had little value to the individual or the community.

While elements of individual property rights did exist within all First Nations, the written formalization of property rights in European law and the many commercial and land exchange treaties represented a fundamentally different way of “doing business” for Indigenous communities. Europeans viewed the treaties as solid contracts, which did not limit their systematic violation of the terms to the detriment of First Nation. In view of these violations and decisions by the courts over the last several decades, First Nations’ view of these treaties has evolved and they now represent a basic for the agreements from which modern Indigenous property rights are emerging.

### **2.3. The origins of Canada’s First Nations urban communities**

Indigenous urban communities (comprising both urban reserves within the Indian Act and land under a comprehensive agreement) have two origins.

- Communities that were once remote from a city a hundred years ago, may have become engulfed by urban development. These communities may have an existing historic treaty within the Indian Act, a comprehensive land claim and self-government agreement, or neither a treaty nor comprehensive agreement. Note that, comprehensive land and self-government agreements do not fall under the Indian Act. Musqueam Band and Tsawwassen First Nation in the Lower Mainland of BC are examples of urban reserves engulfed by the growth of Vancouver.

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- Second, First Nations may add an urban area to their reserve using the through the additions to reserve (ATR) process (Canada, 2012). These First Nations may elect to retain the framework of an historic treaty or negotiate elements of a modern treaty through the First Nations Land/Financial Management Acts (Canada, 2011b) thereby gaining some control over land use and economic development.

First Nations using the ATR process stemming from Treaty Land Entitlement Agreements (TLEA) (AMM, 2017; Canada, 2017; Canada, 2016; Iwama, 2018) have added rural lands to their reserves for resource extraction and agricultural purposes. Relatively little few reserve lands have resulted in urban reserves (See Figure 4 Section 5). The TLEAs recognize that historical injustices have occurred over the last century as governments failed to honour provisions of the eleven numbered Treaties signed between Canada and First Nations. For example, in Saskatchewan and Manitoba (Canada, 2009, 2011a), the federal and provincial governments accepted the arguments advanced by First Nations that, at the time of Treaty 1 and 2, both the population and traditional area reflected a substantial underestimation.

- In Manitoba, the federal and provincial governments committed to allocate 1.1 million acres (about .6% of Manitoba's land area) to additional to reserves and \$76 million to support acquisition of land and other rights (mineral), tax loss compensation for municipalities etc. (Implementation Monitoring Committee, 2020).
- In Saskatchewan, the federal and provincial governments committed almost \$600 million to acquire rights to 2.28 million acres of land or about 1.4% of Saskatchewan's land area (Public Legal Education Association of Saskatchewan, 2011).

The ATR process applies throughout Canada, and as a right of first refusal, First Nations may apply to have surplus Crown Lands transferred to their reserves. First Nations may also apply to the federal government to use funds assigned in the TLEA to include in their reserves land acquired by purchase through the willing-buyer/willing seller provision.

First Nations apply to have eligible lands transferred to a reserve a process that can take several years. Since 2011, the federal government has transferred almost 400,000 acres (about ¼ the area of Prince Edward Island) under the ATR process, in 500 agreements of which urban reserves comprise

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17% of the agreements and 12% of the area. Most the ATR lands are in Manitoba and Saskatchewan. (Appendix A).

Land transfers to reserve status only involve Crown lands only (Federal or Provincial), lands purchased by the federal government on behalf of a First Nation, or lands that become surplus to government need such as a closed military facility. To this point, municipal governments have remained on the sidelines in the formal ATR process, but with urban reserves forming an important economic base for First Nations, this will need to change

Table 1 summarizes the legal bases for First Nations landownership.<sup>iv</sup>

<b>Table 1: The legal bases for First Nations land ownership</b>
<p><i>Historic treaties</i> (Canada, 2008b) created most of the reserves in Canada at least until 1921. Historic treaty lands governed under the Indian Act have restrictive features in that title resides with the Crown, only members of the First Nations have the “exclusive and inalienable and communal interest” (Canada, 2008a), non-members cannot acquire an interest in the land, and the Minister approves most land use and disposition.</p>
<p><i>Modern treaties</i> (Canada, 2008b) are historic treaties modified by provisions under the First Nations Land Management Act (FNMLA). Some 153 (January 2019) First Nations have signed such agreements, which remove some 40 sections of the Indian Act. While provisions vary these agreements include land codes, comprehensive planning processes, and revenue generating mechanisms in the form of taxation and fees. Both historic and modern treaty are reserve lands as defined by the Indian Act and if relinquished by a band, revert to the Crown.</p>
<p><i>Comprehensive land/self government agreements</i> (herein after referred to as “comprehensive agreements”) became a reality after the Calder decision by the Supreme Court in 1973. Used on unceded areas, these agreements provide control over land use, mineral and surface rights, and other activities that are the features of modern government. These are not reserves as defined under the Indian Act.</p>

What makes these growing number of First Nations urban reserves so important? Quite simply, despite the continuing value of resources to Canada’s economy, cities are the locus of present and future economic activity. The mantra for fortune seekers of the 19<sup>th</sup> century – “go west” – has now become “go urban.” The global rural-urban migration towards prosperity applies equally to Indigenous peoples of Canada. Many First Nations are located on remote lands with little economic

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potential; the compelling rationale behind the creation of urban reserves is the toehold they offer to Indigenous persons to participate in the urban economy.

## 2.4. First Nations urban communities show a wide spectrum of prosperity

Census information offers context on the economic well-being of the two case study communities, but two qualifications are important. First, not all First Nations participated in the census and second, and more importantly, census information may include the incomes of non-Indigenous residents. This is particularly so for First Nations that offer residential leases as a component of their economic development plan. This means that the Census data misstates the incomes of First Nations persons.

**Table 2** shows the “top eight” of First Nations in Canada. These include five that lie within or immediately adjacent to a rapidly growing city (shown with an \*). The divergence of median and average income reflects the presence of a fewer number of high earners, most markedly Fort McMurray First Nation. The divergence of average and median incomes for some First Nations indicates income inequality arising from a few high earners.

Name	Pop	% reg Indian	Average Income*	Median Income**	Sources of Income (%)		
					Market Income	Gov't transfers	Other
<a href="#">Fort McKay First Nation</a> Fort McKay, AB	742	86%	\$78,916	\$34,048	84	10	5
<a href="#">Tsleil-Waututh Nation*</a> North Vancouver, BC	1855	18%	\$73,220	\$41,264	86	6	8
<a href="#">Tsawwassen First Nation*</a> Delta (Vancouver), BC	750	27%	\$64,670	\$38,647	39	10	51
<a href="#">Liidlii Kue First Nation</a> Fort Simpson, NWT	1180	67%	\$59,659	\$47,552	86	8	6
<a href="#">Tsuut'ina Nation*</a> Calgary, AB	1645	33%	\$56,185	\$36,621	77	6	17
<a href="#">Tk'emlups te Secwepemc*</a> Kamloops, BC	3025	10%	\$55,676	\$40,288	62	10	28
<a href="#">Fort McMurray First Nation</a> Fort McMurray, AB	320	89%	\$54,675	\$19,584	84	10	5
<a href="#">Musqueam *</a> Vancouver, BC	1660	47%	\$47,492	\$31,560	60	10	30

\* Persons 15 and older. PT reference average income = \$62,778; B.C. = \$45,616; NWT = \$64,586

Source: [https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/search-recherche/lst/results-resultats.cfm?Lang=E&GeoCode=61&Letter=T&G=1&Geo1=&Code1=&SEX\\_ID=1&AGE\\_ID=1&RESGEO\\_ID=1](https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/search-recherche/lst/results-resultats.cfm?Lang=E&GeoCode=61&Letter=T&G=1&Geo1=&Code1=&SEX_ID=1&AGE_ID=1&RESGEO_ID=1)

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Among the top eight, the percentage of income derived from market sources (mostly employment) is generally high with low dependency on government transfers – 10% or less. “Other income” usually means revenues from commercial/residential leasing, an important feature of the economic base for Tsawwassen, Tsuut’ina, Tk’emlups te Secwepemc, and Musqueam. Resource revenues form an important component of personal income for Fort McKay, Liidlii, and Fort McMurray First Nations.

One feature of some these First Nations, especially those located close to or within urban area, is that the “not-a-registered Indian” population exceeds that of the registered Indian population, sometimes by a factor of 5:1. This reflects the effect of residential/commercial leasing that has attracted many non-Indigenous individuals and businesses either to purchase long-term residential leaseholds or become shorter-term tenants. The category “not a registered Indian” includes those persons on the census survey who report either an Aboriginal identity or non-Aboriginal identity. Aboriginal identity includes registered Indians, but many who self-report an Aboriginal identity are not registered Indians. Most of the residents in the top-eight classified as “not a registered Indian” are probably non-Indigenous. This distortion in the census data does not affect the analysis and conclusions of this paper, and in fact reinforces the argument in Section 4.1 on the process urban reserves will use in extracting value from the land.

It is tempting to think that the higher the number of “not a registered Indian” resident on the reserve, the higher the income, but the story is more complex. Tsawwassen and Musqueam have a majority of “not a registered Indian” residing on the reserve. But most (81%) Fort McKay’s residents, the community with highest individual incomes, are registered Indians as is the case for Fort McMurray. Proximity to natural resources is the dominant feature of the economy of these two communities. Of course, the waning fortunes of the oil and gas economy could affect this economic status.

**Table 2** reveals how economic development and incomes benefit from proximity to large dynamic urban areas. Consider the Musqueam Band, which lies entirely within the City of Vancouver and has always been an urban community becoming an urban reserve recently within the B.C Treaty Process. Consequently, Musqueam is situated on prime Vancouver real estate. Similarly, as shown below, Tsawwassen also enjoys favourable location, partly in terms of upscale residential opportunity, plus

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strategic location with respect to logistics opportunities as demonstrated by the recently announced Amazon warehouse. Finally, Tk'emlups te Secwepemc near Kamloops B.C. has forestry businesses, a large industrial park, and significant residential leasing in the heart of one of Canada's fastest growing retirement areas.

In contrast, as **Table 3** shows, the First Nations involved in the Kapyong Lands have much lower incomes than the top eight in Canada. The most affluent of the seven, Peguis First Nation has an income that is less than average of First Nations in Canada. Market (employment) incomes are lower for this group than that of the top eight, with higher dependency on government, and negligible income from other sources. This results in a much smaller divergence of average and median incomes. Note also that most of the residents of these First Nations are registered Indians.

Name	Pop	% reg Indian	Average Income*	Median Income*	Sources of income (%)		
					Market Income	Gov't transfers	Other
<a href="#">Peguis First Nation</a>	2685	97%	\$22,355	\$15,616	68	29	3
<a href="#">Brokenhead Ojibway Nation</a>	515	92%	\$19,106	\$15,424	68	28	4
<a href="#">Swan Lake First Nation</a>	345	100%	\$18,147	\$11,584	68	29	3
<a href="#">Fort Alexander (Sagkeeng) First Nation</a>	1905	97%	\$17,408	\$12,624	60	36	4
<a href="#">Long Plain First Nation</a>	1235	98%	\$15,351	\$9,632	58	39	3
<a href="#">Sandy Bay First Nation</a>	2515	99%	\$14,123	\$5,972	55	43	2
Roseau River Anishinabe First Nation	670	100%	9,700	\$5,188	51	45	4
* Persons 15 and older. Provincial average income = \$43,767							
Source: <a href="https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/search-recherche/lst/results-resultats.cfm?Lang=E&amp;GeoCode=61&amp;Letter=T&amp;G=1&amp;Geo1=&amp;Code1=&amp;SEX_ID=1&amp;AGE_ID=1&amp;RESGEO_ID=1">https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/search-recherche/lst/results-resultats.cfm?Lang=E&amp;GeoCode=61&amp;Letter=T&amp;G=1&amp;Geo1=&amp;Code1=&amp;SEX_ID=1&amp;AGE_ID=1&amp;RESGEO_ID=1</a>							

### 3. Two case studies illustrate the scope of economic development of urban First Nations.

Two cases offer insights into the range and nature of economic opportunity offered by First Nations urban lands in Canada – Tsawwassen First Nation just south of Vancouver and the former land occupied by Kapyong Barracks (now referred to as the Kapyong Lands) in the heart of Winnipeg. It

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is important to note that Tsawwassen First Nation operations within the auspices of a comprehensive land and self-government agreement, outside the Indian Act, while the still developing Kapyong Lands is an urban reserve within the Indian Act and an example of a modern treaty.

### **3.1. Tsawwassen First Nation (TFN):**

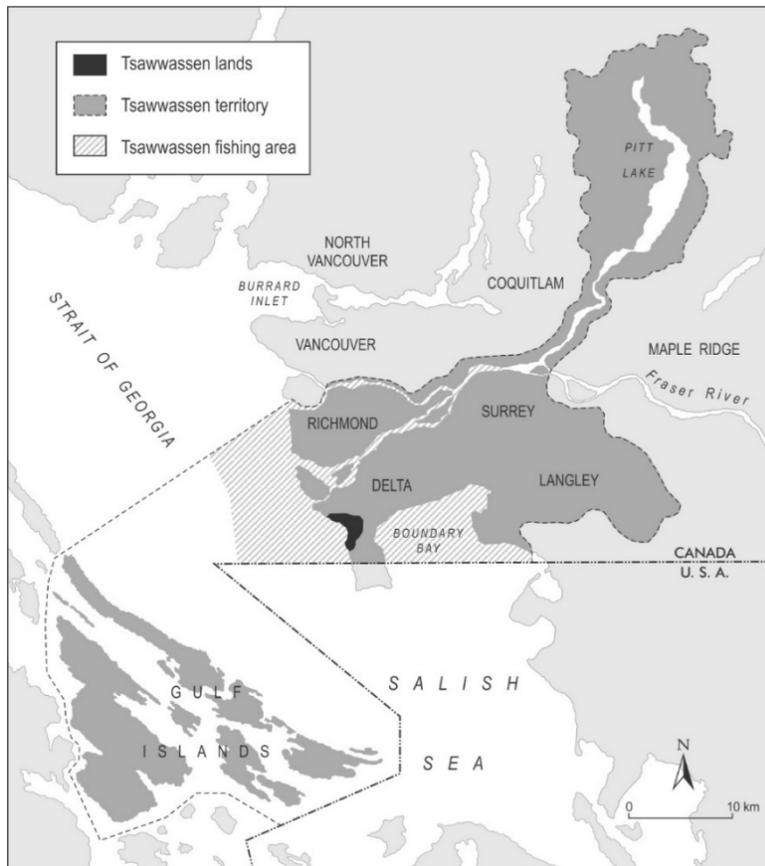
The traditional territory of the Tsawwassen First Nation (TFN) stretches north from beyond the USA border south of Vancouver, to include Vancouver, across the Straight of Juan de Fuca to Victoria and some Gulf Islands. Importantly, it also includes the waterways, which formed an integral part of the entity for coastal Indigenous populations (Tsawwassen First Nation, 2019b). Currently TFN has 493 members, with 215 living in the community near Vancouver and the remaining split between the interior of BC and northern Washington state.

In 1871 with the entry of British Columbia into Confederation, the Tsawwassen community did not exist within a formal treaty. For many years after the establishment of Vancouver TFN existed as an isolated small coastal fishing village with no proximate urban development. The province had no system of treaties addressing Indigenous rights until 1992 with the creation of the BC Treaty Commission.

Figure 1 shows the traditional territories (land and fishing) and the current community boundaries for TFN. The Comprehensive Land Claims and Self Government Agreement signed in 2009, pertains only to the present-day Tsawwassen Lands.

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Figure 1: Traditional and Current Lands of Tsawwassen First Nation



The first important change for this community was the construction of the ferry terminal linking Vancouver to Victoria in 1958. Next came the Roberts Bank Superport in 1968 that eventually created a 113-hectare island shipping coal overseas primarily to China. As was typical of the time, neither the federal nor provincial consulted TFN, despite the potential for environmental harms and destruction of cultural and religious infrastructure. However, these construction projects were harbingers for a brighter economic

future for the TFN.(Tsawwassen First Nation, 2019a).

Since the signing of Tsawwassen First Nation Final Agreement in 2009, key developments for TFN have included:

- Creation of 110 hectares of commercial and residential development
- Creation of residential subdivisions
- 25-year agricultural leaseholds with local farms
- Warehouse, cardlock truck fueling, warehouse, etc.
- Major sewage treatment plant
- Opening of Tsawwassen Mills, a 1.2 million sq. ft. shopping mall
- Logistics facilities and container inspection facilities.

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- A new Amazon warehouse facility.(Tsawwassen First Nation, 2019b).

From one perspective one may see TFN as a unique hybrid of real-estate development corporation and municipal government. TFN has created a modern planning and land use regulation system as well as invested in substantial municipal upgrades – water, sewer, animal control, etc., deriving significant rental/lease revenues from governments, industry, and individual households. However, it is much more accurate to view the economic development of TFN as reflecting the inherent potential when a First Nation gains land and financial rights through a comprehensive land claims and self-government approach.

### **3.2. Naawi Oodena (Kapyong Lands):**

In contrast to TFN, which is a single community with a common tradition and governance style, a “consortium” of seven First Nations most within Treaty 1 have received approval to add the former Kapyong Lands as an urban reserve. None of these First Nations have a specific historical claim to the Kapyong Lands and gained access to these federal lands under the Treaty Land Entitlement Agreement process that gives rights of first refusal to First Nations when federal/provincial lands become surplus.

The decision by the Department of Defence to close Kapyong Barracks in 2004 and move the Princess Patricia Light Infantry to Shilo, Manitoba, triggered the potential for the property to become an urban reserve. Currently, this new urban reserve comprises a large (160 acres) area within the heart of an affluent area of Winnipeg (Figure 2)<sup>v</sup>. It is a large open space and so is a “blank slate” ripe for development with favourable locational advantages within a modern metropolis. Of special note is that 50 acres of the area remain owned by Canada Lands Corporation, which will be a powerful “silent” partner in the development of this reserve. This important asset will likely not exist for many urban reserves.

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Figure 2: Kapyong Lands (Naawi Oodena)

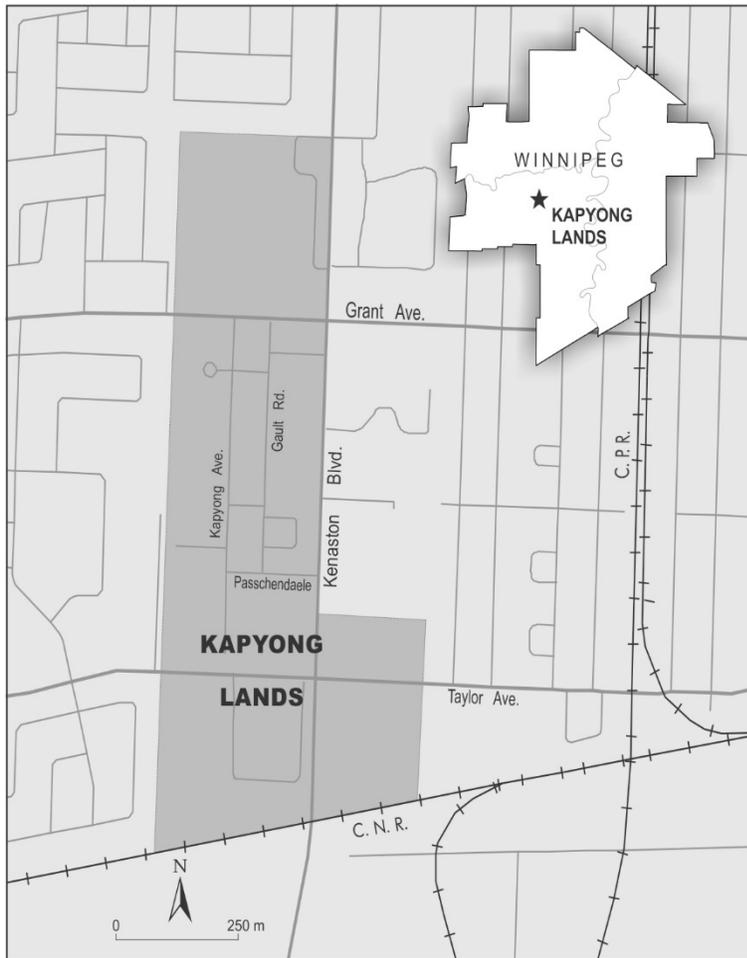
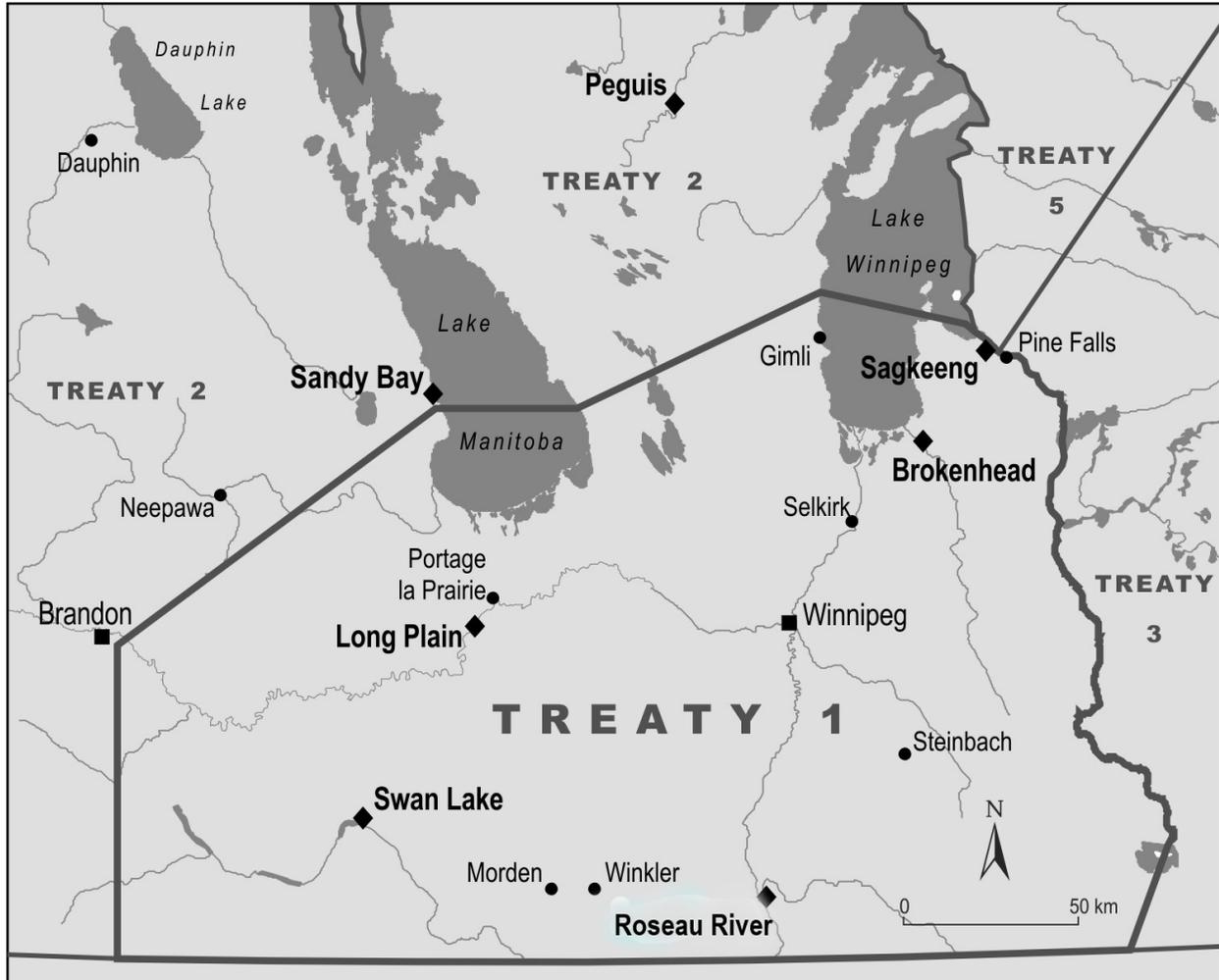


Figure 3 shows the consortium of First Nations (Peguis, Sandy Bay, Long Plain, Swan Lake, Roseau River, Broken Head, and Sagkeeng) within Treaty 1 that has entered into the agreement with the federal government to create this new urban reserve.

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Figure 3: Location of the Seven First Nations Comprising Naawi Oodena (Sandy Bay, Peguis, Sagkeeng, Brokenhead, Long Plain, Swan Lake, Roseau River)



Two features of this new reserve condition the creation of future urban reserves. First, the creation of a consortium of First Nations who are “remote” from the specific site, breaks the standard claim of recovering traditional lands. Here seven First Nations have created a land development company, quite distant from their communities. The notion that First Nation could create a reserve in another community, has precedent. Both Long Plain and Pequis First Nations have created urban reserves in Winnipeg, but these feature single “owners” and are at a much smaller scale than Naawi Oodena.

Second, this new urban reserve did not emerge because of the standard additions to reserve process. Once Canada declared the Kapyong Lands as surplus in 2004, several First Nations petitioned to acquire the property as an urban reserve. The federal government ignored these requests, as well as

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several other special claims for additions to reserve. In 2012, the Federal Court determined that Canada had failed in its “duty to consult” and the judge even went so far as to characterize Canada’s behaviour as “egregious”(Long Plain First Nation v. Canada—Federal Court, 2012). The federal government lost its appeal (Canada vs Long Plain, 2017), and at that point the Harper government decided to cease its opposition to the creation Naawi-Oodena.

As a first step to development, these seven First Nations have created the Treaty One Development Corporation with a mission “to advance the economic and social well-being of the citizens of Treaty One”. The corporation has staffed with professionals, initiated an on-line presence, and developed an initial masterplan, shared with the surrounding community. The federal government has removed the previous military infrastructure and started environmental remediation started; likely in early 2022 development of the lands will begin in earnest, pending finalization of all relevant agreements with the City of Winnipeg.

As an aside, the fact that Canada Lands Corporation retains ownership of 50 acres of the 160 acres of the previous Kapyong Barracks, offers Treaty One Development Corporation a powerful partner, with years of experience in land development.

#### **4. Institutional requirements that support the economic viability of urban reserves**

Examination of the web sites of the top eight First Nations listed in **Table 2** suggests three institutional factors, contribute to the economic prosperity of these urban First Nations communities: 1) formal recognition within a modern treaty or amendments through the FNLMA and FNFMA that creates land codes and concomitant financial control; 2) developments in land law legislation that monetizes the value of land by offering non-community members time limited interests in land; and, 3) development of the “legal and planning infrastructure” that manages risk, both political and financial, for the First Nation and its clients/investors.

1. *Modern treaties and comprehensive agreements stabilize land rights.* Modern treaty and comprehensive agreements stabilize and clarify the boundaries for the First Nation lands and create the basis for legal relationships with surrounding municipalities and agencies. These new legal arrangements greatly expand the authority for a First Nation to enter into agreements without the oversight of the federal government.

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However, while a modern treaty with land management rights or comprehensive agreements are necessary, they are not sufficient conditions for urban land development by First Nations. Also critical are the appropriate governance structure and creating effective agreements with the municipality

2. *Evolution and innovation in land management law creates value for “unsaleable” land.* Leaseholds, rental income, and Indigenous owned businesses anchor the incomes “top eight” for First Nations situated within or close to large urban centres. Musqueam, Tsawwassen, and Tsuut’ina Nation in particular, draw major revenues from commercial and residential leasing to Indigenous and non-Indigenous individuals and businesses. How much business development and entrepreneurship contributes to the revenues a First Nation may generate in its urban reserve will vary among First Nation. For many, optimizing the value of the urban reserve through leasing, without yielding ownership becomes the central challenge for an urban reserve.
  
3. *Development of the institutional (planning, regulatory and fiscal) infrastructure to manage risk:* Institutional infrastructure refers to the regulations governing land use, building codes, environment, taxation etc. that frame and condition economic activity within a jurisdiction. Again, using the web sites of the top eight First Nations communities, it is apparent they are all “open for business.” In many ways, their institutional infrastructure closely resembles that of progressive municipal governments seeking to attract businesses and residents.

## **5. Revising the ATR process for urban reserves.**

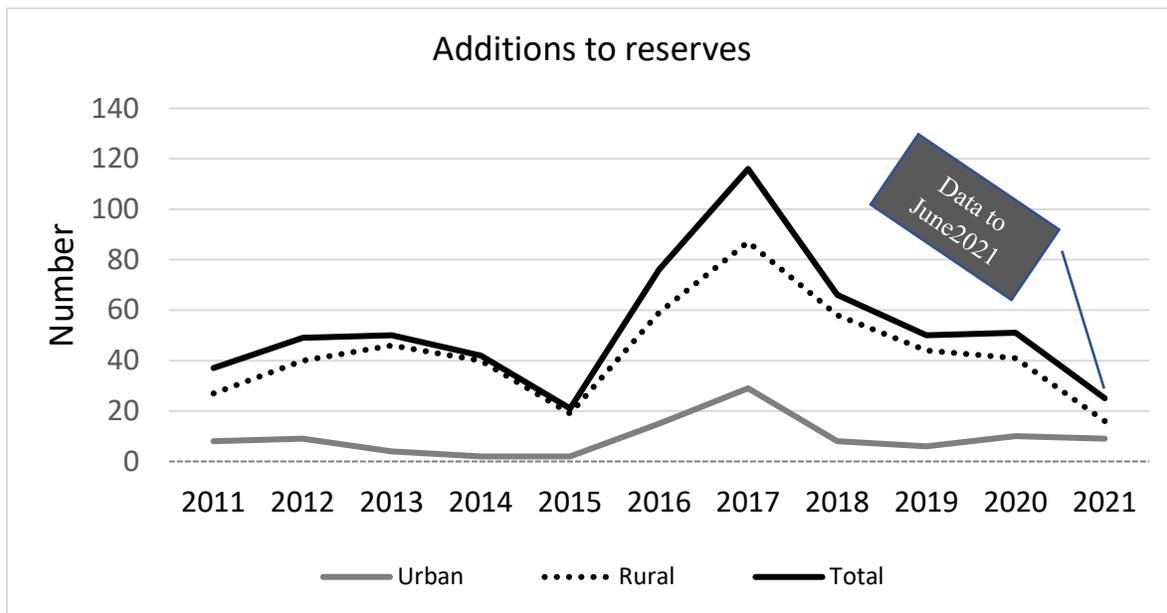
The process for acquiring land under the ATR process involves application by a First Nation to the Government of Canada (G. of C. I. and N. A. Canada, 2016b). These additions may be contiguous (adjacent) or non-contiguous (remote by an undefined amount) and in either rural or urban settings. Typically, these additions proceed to settle special claims and settlement of treaty obligations. On occasion such as the case with Kapyong Lands, the government loses in court, and decides to support the addition.

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Approval for the addition is conditional on there being no environmental issues, completed consultation with provincial/municipal governments, the proposal being “cost-effective” with operational costs integrated into the applicant’s budget, leases/easements and other encumbrances managed, and public “concerns” addressed. Clearly considerable latitude exists in the interpretation of these conditions.

The ATR process, has resulted in 558 new parcels added to reserve lands since 2010, when the process started. As Figure 4 shows, the process reached a peak in 2017 and since then has slowed quite sharply<sup>vi</sup>.

Figure 4: Additions to reserve



Source: (Source: Approved additions to reserve - 2011 - 2021 (June)  
<https://sac-isc.gc.ca/eng/1466532960405/1611939046478>)

The process of creating Naawi Oodena reveals an important limitation in the process for creating an urban reserve. Based on personal communication, prior to the announcement of the intent to create an urban reserve, only cursory discussions occurred among the federal government, the City of Winnipeg and the applicant First Nations. In hindsight, a strategy of only involving the federal government and First Nations, may have made sense. Kapyong was federal land, that had existed since WW II. It had over 50 buildings and at any point could have housed several hundred military

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personnel. It was (and remains) reasonable to anticipate that development would not sharply or immediately diverge from the surrounding area in terms of impact on services and traffic patterns.

More important, is that the concept of an urban reserve remains novel and potential exists for misunderstanding for a large-scale project such as Naawi-Oodena. Many smaller urban reserves exist, especially in western Canada, where most “fly below radar”. As examples, two pre-existing urban reserves in Winnipeg comprise a gas station/office complex on a single block (Long Plain First Nation) and an office/retail complex in two building (Peguis First Nation). Most residents are unaware these are reserves defined under the Indian Act.

As Naawi Oodena develops and pending conclusion of viable municipal development services agreement (MDSA) an opportunity opens for First Nations and municipalities to initiate applications for an addition to reserve within municipal boundaries. The term “viable” is critical because an urban reserve be, at a minimum have a neutral impact on the municipality. Ideally, it should add value to the municipal culture, society, and economy.

Many municipalities have developed partnerships with First Nations (Alcantara & Nelles, 2016), usually expressed in agreements to provide services such as sewer and water, but on occasion agreements to develop joint cultural and social events, and critical infrastructure such as hospitals. Considerable intellectual capital exists in the development of municipal service agreements (Federation of Canadian Municipalities, 2011).

Important conditions attend the creation of an urban reserve, such as financing the land acquisition. Municipalities might be loathe to donate large tracts of surplus land, when an option exists to sell privately. Agreements to supply services are straightforward, but foregoing property taxes may be more difficult for municipalities to accept.<sup>vii</sup>

Four types of agreement support the development of an urban reserve. First, are the financing arrangements to acquire land from the municipality. Federal or provincial crown lands may or may not have a significant alternative use have willing private buyers. Lands recovered under special claims or treaty land entitlement obviously should not cost anything for the First Nation. However, municipal lands declared surplus or obtained by tax sales will have significant alternative use, and

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willing private buyers. Donating such lands to become a reserve means the municipality gives up the revenues from the sale and the future stream of property taxes. In some instances, a municipality may be prepared to yield this revenue, but usually a senior level of government must be involved, or the band willing to assume a mortgage.

Second, most municipalities have some form of long-term or “master” plan. While some language about ensuring land use compatibility between reserves and adjoining areas, more explicit memoranda of understanding seem a sensible precaution to avoid needless litigation.

Third, and possibly the easiest is the agreements for payment for services. Many templates exist for such agreements (Federation of Canadian Municipalities, 2011).

Fourth, if the Naawi Oodena model is to become a model, where groups of First Nations secure reserves within municipalities, capacity and trust building must ensue. In this, the onus falls on any consortia of communities to create the structures for joint decision-making such as Treaty One Development Corporations. While obligations fall on municipal (and senior governments) to support the development of planning, urban land used, and financial management, the First National managers of existing urban reserves have responsibilities in building capacity.

Provided these conditions exist, and they are not that onerous, joint applications between First Nations and municipalities for additions to reserves in urban areas could represent a powerful mechanism for land recovery by First Nations.

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## 6. Conclusion

This paper has examined the potential for urban reserves to support increased economic well being for Registered Indians who are members of bands who signatories to existing treaties. It demonstrates that creating an urban reserve offers First Nations an opportunity to advance their economic wellbeing by creating a stake in the urban economy. Key institutional requirements for urban reserve to contribute to First Nations' well being include: having a modern treaty allows First Nations to plan development without federal oversight; changed legal requirements to support long-term leaseholds; and, the creation of modern planning and financial management capacity by the First Nation. Equally important are effective working relationships with municipalities, where failure to negotiate mutually acceptable taxation and fee structures could quickly sour and limit the development of the urban reserve.

Naawi Oodena offers a model for remote First Nations to create a consortium to acquire lands in urban areas. Joint applications by consortia of First Nations and municipalities to create urban reserves could rejuvenate the ATR process and offer to remote communities the benefit of participating in an urban economy. This paper argues that the application for the creation of urban reserves through the ATR process should be joint, between First Nation(s) and the municipality.

## References

- Alcantara, C., & Nelles, J. (2016). *A quiet evolution: The emergence of indigenous-local intergovernmental partnerships in Canada*. University of Toronto Press.
- Alchian, A. A., & Demsetz, H. (1973). The Property Right Paradigm. *The Journal of Economic History*, 33(1), 12.
- AMM. (2017). *TLE Information Toolkit*. Association of Manitoba Municipalities.  
<http://www.amm.mb.ca/download/guides/TLE-packageFINAL.pdf>
- Canada vs Long Plain, 2015 FCA 177 (Federal Court of Appeal August 14, 2017).  
<https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/111232/index.do?q=Kapyong>
- Aragón, F. M. (2015). Do better property rights improve local income?: Evidence from First Nations' treaties. *Journal of Development Economics*, 116, 43–56.  
<https://doi.org/10.1016/j.jdeveco.2015.03.004>

[Type here]

- Aragón, F. M., & Kessler, A. S. (2020). Property rights on First Nations reserve land. *Canadian Journal of Economics/Revue Canadienne d'économique*, 53(2), 460–495.  
<https://doi.org/10.1111/caje.12434>
- Bailey, M. J. (1992). Approximate Optimality of Aboriginal Property Rights. *Journal of Law & Economics*, 35, 183–198.
- Canada. (2008a, November 3). *Land Management* [Promotional material]. <https://www.aadnc-aandc.gc.ca/eng/1100100034737/1100100034738#ch9>
- Canada. (2008b, November 3). *Treaties and agreements* [Administrative page]. <https://www.rcaanc-cirnac.gc.ca/eng/1100100028574/1529354437231>
- Canada. (2009, March 27). *Treaty Land Entitlement in Saskatchewan* [Fact sheet]. <https://www.aadnc-aandc.gc.ca/eng/1100100034825/1100100034826>
- Canada. (2011a, May 13). *Treaty Land Entitlements in Manitoba* [Fact sheet]. <https://www.aadnc-aandc.gc.ca/eng/1305306991615/1305307177471>
- Canada. (2011b, September 28). *First Nations Land Management Act* [Promotional material; reference material]. <https://www.aadnc-aandc.gc.ca/eng/1317228777116/1317228814521>
- Canada. (2012, March 20). *Additions to Reserve* [Administrative page]. <https://www.aadnc-aandc.gc.ca/eng/1332267668918/1332267748447>
- Canada. (2013a, February 15). *The Numbered Treaties (1871-1921)* [Reference material].  
<https://www.rcaanc-cirnac.gc.ca/eng/1360948213124/1544620003549>
- Canada. (2013b, September 26). *Historic Treaties and Treaty First Nations in Canada Infographic* [Reference material]. <https://www.rcaanc-cirnac.gc.ca/eng/1380223988016/1544125243779>
- Canada, G. of C. I. and N. A. (2016a, June 13). *Land Management Manual, Chapter 10—Additions to Reserve/Reserve Creation—2016* [Guide; policy; resource list]. <https://www.aadnc-aandc.gc.ca/eng/1465827292799/1465827347934#mm>
- Canada, G. of C. I. and N. A. (2016b, June 21). *Approved Additions to Reserve proposals* [Guide; policy].  
<https://www.aadnc-aandc.gc.ca/eng/1466532960405/1466533062058>
- Canada, G. of C. I. S. (2012, March 20). *Additions to Reserve* [Administrative page]. <https://www.sac-isc.gc.ca/eng/1332267668918/1611930372477#chp2>
- Canada Revenue Agency. (1999, November 1). *Information on the tax exemption under section 87 of the Indian Act* [Service description]. Aem. <http://cra2018.cutetax.com/en/revenue-agency/services/aboriginal-peoples/information-indians.html>

[Type here]

Canada Revenue Agency. (2005, July 1). *GST/HST and Indigenous peoples* [Service description].

<https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses/charge-collect-indigenous-peoples.html>

Carlson, K. (1997). A Legacy of Broken Promises. In *You are Asked to Witness: The Sto:lo in Canada's Pacific Coast History*. Sto:lo Heritage Trust.

Cruikshank, D. A. (2017). Calder Case. *The Canadian Encyclopedia*.

<https://www.thecanadianencyclopedia.ca/en/article/calder-case>

de Soto, H. (2000). *The Mystery of Capital*. Basic Books.

Deloitte. (2016). *BCTC Final Report: Socio-economic Benefits of Modern Treaties*. BC Treaty Commission.

<http://www.bctreaty.ca/sites/default/files/Deloitte-BCTC-FinalReport.pdf>

Demsetz, H. (1967). Toward a Theory of Property Rights. *The American Economic Review*, 57(2), 347–359.

Denis, J. S., Duhaime, G., & Newhouse, D. (2017). *Indigenous Conceptions of Well Being: Rejecting Poverty, Pursuing Mino-Bimaadizivin*. 10(2), 124–146.

Federation of Canadian Municipalities. (2011). *First Nations-Municipal Community Infrastructure Partnership Program: Service agreement toolkit*.

Flanagan, T., Le Dressay, A., & Alcantara, C. (2010). *Beyond the Indian Act: Restoring Aboriginal Property Rights*. MQUP.

<http://uml.idm.oclc.org/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=403790&site=ehost-live>

Fontaine, T. (2015, March 13). *Demystifying urban reserves* | *CBC News*. CBC.

<https://www.cbc.ca/news/canada/manitoba/demystifying-urban-reserves-1.2993051>

Henderson, W. B. (2016, October). *Indigenous Peoples in Canadian Law*. The Canadian Encyclopedia.

<https://www.thecanadianencyclopedia.ca/en/article/aboriginal-people-law>

Implementation Monitoring Committee. (2020). *The Manitoba Framework Agreement*.

<http://www.tleimc.ca/index.php/mfa/the-manitoba-framework-agreement-treaty-land-entitlement-mfa>

Indigenous and Northern Affairs Canada. (2017). *Audit of the Additions to Reserve Process* (p. 28).

Crown-Indigenous Relations and Northern Affairs Canada. <https://www.rcaanc-cirnac.gc.ca/eng/1506686798147/1536849538309>

Iwama, D. (2018). *On the Road to the New Reserve: Considering Canada's Preferred Path to Land Restitution* (p. 4). Yellowhead Institute.

[Type here]

Jones, S. (2019). *Let the People Speak: Oppression in a Time of Reconciliation*. J.Gordon Shillingford Publishing.

Land Claims Agreement Coalition. (2019). *What is a Modern Treaty?*  
<https://landclaimcoalition.ca/modern-treaty/>

Liidlii Kue First Nation. (2013, April 2). *Liidlii Kue First Nation—Governance*. Liidlii Kue.  
<https://www.liidliikue.ca/leadership/governance>

Long Plain First Nation v. Canada—Federal Court, 2012 FC 1474 (Federal Court of Canada December 20, 2012). <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/61712/index.do?q=Long+Plain+First+Nation+>

Manuel, A., & Derrickson, R. (2015). *Unsettling Canada: A National Wakeup Call*. Between the Lines.

Mason, G., Jones, S., & Helgason, W. (2021). A Modern Annuity for Canada: Concrete Reconciliation. *Journal of Aboriginal Economic Development*, 12(1).

Miller, J. R. (2009). *Compact, Contract, Covenant. Aboriginal Treaty-Making in Canada*. University of Toronto Press.

NAEDB. (2015). *Improving the Economic Success of Urban Additions to Reserves: Achieving Benefits for First Nations and Local Governments Stage 2*. National Aboriginal Economic Development Board.  
<http://www.naedb-cndea.com/en/publications/>

NAEDB. (2017). *Additions-to-Reserve: Lessons Learned From First Nations*. National Aboriginal Economic Development Board. <http://www.naedb-cndea.com/en/publications/>

Neimanis, V. P. (2013, December). *Crown Land* | *The Canadian Encyclopedia*.  
<https://www.thecanadianencyclopedia.ca/en/article/crown-land>

North, D. C. (1990). *Institutions, Institutional Change and Economic Performance*. Cambridge University Press.

OECD. (2020). *Linking Indigenous Communities with Regional Development in Canada*. OECD.  
<https://doi.org/10.1787/fa0f60c6-en>

Promislow, J. (2014). Treaties in History and Law. *U.B.C Law Review*, 47(3), 1085–1183.

Public Legal Education Association of Saskatchewan. (2011). *From Dream to Reality*. Office of the Treaty Commissioner (Saskatchewan).  
[http://www.otc.ca/public/uploads/resource\\_photo/FromDreamToReality1.pdf](http://www.otc.ca/public/uploads/resource_photo/FromDreamToReality1.pdf)

Quesnel, J. (2016, August). *Urban reserves can spur First Nation economic development*. Fraser Institute.  
<https://www.fraserinstitute.org/blogs/urban-reserves-can-spur-first-nation-economic-development>

[Type here]

Statistics Canada. (2019). *Aboriginal peoples technical report: Census of population, 2016*.

[http://publications.gc.ca/collections/collection\\_2019/statcan/98-307-x/98-307-x2016001-eng.pdf](http://publications.gc.ca/collections/collection_2019/statcan/98-307-x/98-307-x2016001-eng.pdf)

Todd, R. (2008). Aboriginal Peoples and the Land: Ownership, Understanding and Development.

*British Journal of Canadian Studies*, 21(1), 105-128,152.

Tsawwassen First Nation. (2019a). *TFN History and Timeline* | *Tsawwassen First Nation*.

<https://tsawwassenfirstnation.com/general-info/tfn-history-and-timeline/>

Tsawwassen First Nation. (2019b). *TFN Vision & Mandate* | *Tsawwassen First Nation*.

<http://tsawwassenfirstnation.com/general-info/tfn-vision-mandate/>

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## Notes

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<sup>ii</sup> The terms freehold and fee simple are interchangeable in this paper.

<sup>iii</sup> The term “unceded” is problematic since it implies that sections of Canada with treaties resulted in the land being “ceded”, an interpretation disputed by many First Nations.

<sup>iv</sup> To reiterate, any individual member of a First Nation can own land in freehold, meaning most importantly they are free to sell the land and retain the proceeds.

<sup>v</sup> Of the total, Canada Lands Corporation retains ownership to 50 acres.

<sup>vi</sup> Authors calculations based on data from Crown-Indigenous Relations and Northern Affairs Canada ((G. of C. I. S. Canada, 2012)

<sup>vii</sup> Under Section 35 of the Constitution Act, as governments, First Nations do not pay property tax to the municipality. Further, Aboriginal businesses located on reserve and Aboriginal employees of these businesses may be exempt from HST/GST and income taxes depending on specific circumstances.(Canada Revenue Agency, 2005)