



# Town Hall Meeting

RDOS Area F/Rural Penticton

13 April, 2010

Michael Brydon

Director, Electoral Area F, RDOS

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Lyndi Cruickshank

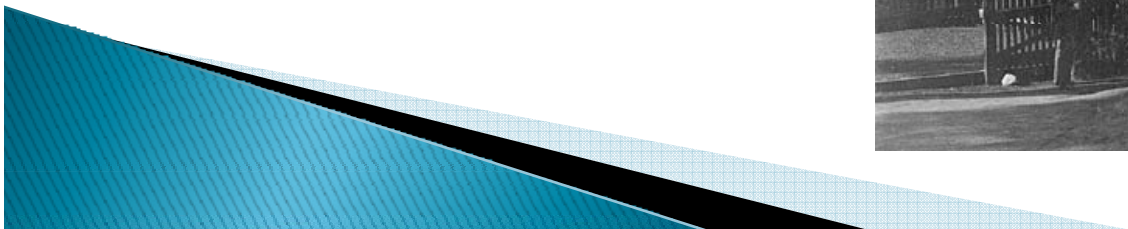
Alternate Director, Electoral Area F, RDOS

Mark Woods

Manager of Community Services, RDOS

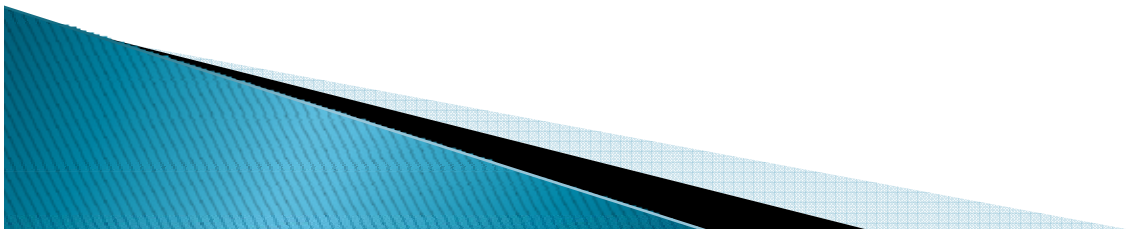
# Agenda

- ▶ KVR transfer
  - What we know
  - How we know it
  - The role of the RDOS
  - Questions

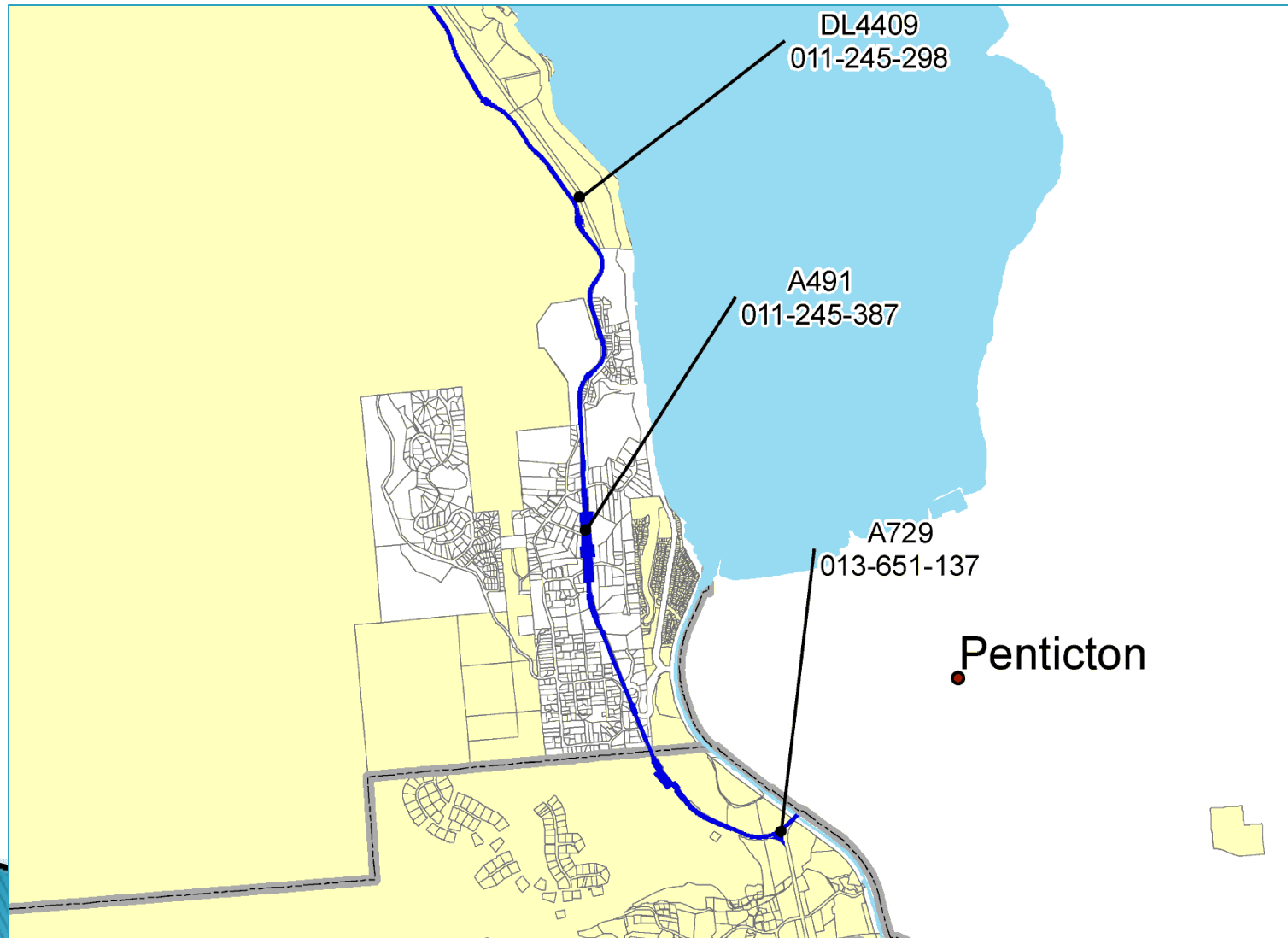


# Some requests...

- ▶ There will be time for questions and discussion following the presentation
- ▶ During questions, please:
  - Wait to be recognized by the Chair
  - Stand and state your name
  - Speak loudly and clearly so all can hear
  - Remain respectful of your neighbors
  - Restrict your comments to the matter at hand
  - Be concise as possible—2 minutes maximum so everyone has an opportunity to speak

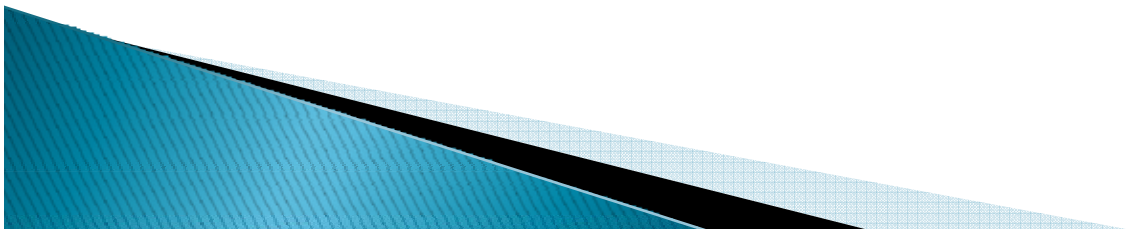


# What We Know: The KVR Transfer



# Timeline

- ▶ 1889: Indian Reserve No. 1 (IR#1) created
- ▶ 1910-15: Land on IR#1 acquired for KVR (then CPR)
- ▶ 1913-1916: McKenna-McBride cut-off
- ▶ 1979: CPR ceased rail operations on KVR; transferred land to Marathon Realty
- ▶ 1981: PIB sued CPR for return of land to IR#1
- ▶ 1985: BC Supreme Court judgment
- ▶ 1986: BC Court of Appeal judgment
- ▶ January, 2010: Letter from INAC requesting comments from RDOS

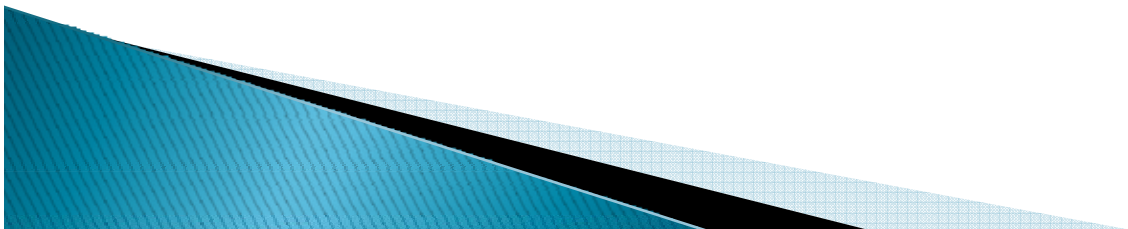




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# 1985 Court Decision

- ▶ “The restraint against alienation [in the Railway Act] is clear. The conveyance to Marathon is thus, as I say, illegal.”
- ▶ “And I think, by necessary implication, that as the lands are no longer necessary for the use of the railway, and thus are not used for the purposes of the railway, the lands must be restored to the Crown.”



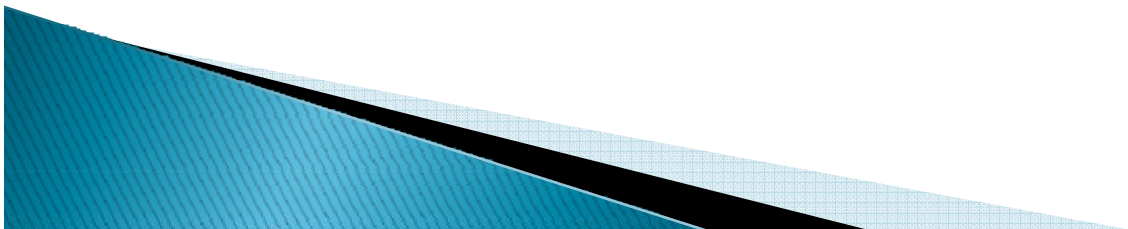
# Additions to Reserve (ATR) Policy

1. Request from Band
2. Categorization
3. Check site-specific criteria
4. Consult everyone
5. Recommendation by regional INAC committee
6. Deputy Minister review
7. Ensure conditions on transfer are satisfied
8. Forward recommendation to Minister
9. Minister review
10. Order in Council to grant reserve status

[http://www.collectionscanada.gc.ca/webarchives/20071127101315/http://www.ainc-inac.gc.ca/ps/lts/pdf/ch10\\_e.pdf](http://www.collectionscanada.gc.ca/webarchives/20071127101315/http://www.ainc-inac.gc.ca/ps/lts/pdf/ch10_e.pdf)

# Categorization of ATR Request

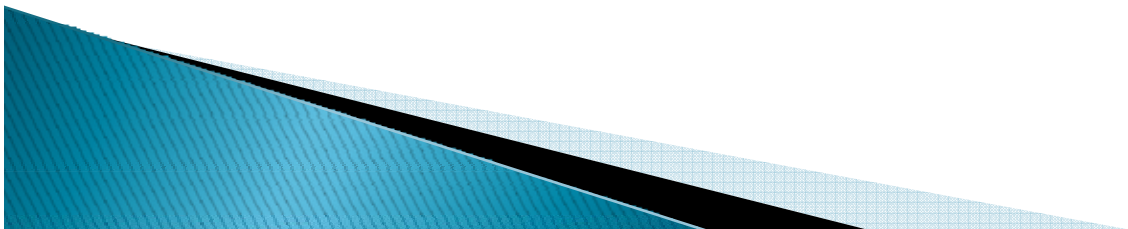
- ▶ Section 5.1 of ATR Policy:
  - Legal Obligations: "This category recognizes that Canada must fulfill its legal obligations to First Nations [...] INAC will normally recommend reserve status for proposals based on this category."
  - iii) Legal Reversions: "[...] covers non-discretionary reversions of former reserve land where the original expropriation/transfer documentation included a specific and express reversion clause providing for the return of the land to Canada for the purpose of granting reserve status when the land is no longer required for the stated purpose (e.g., for railways, roads, etc.)."



# What Our Lawyers Say

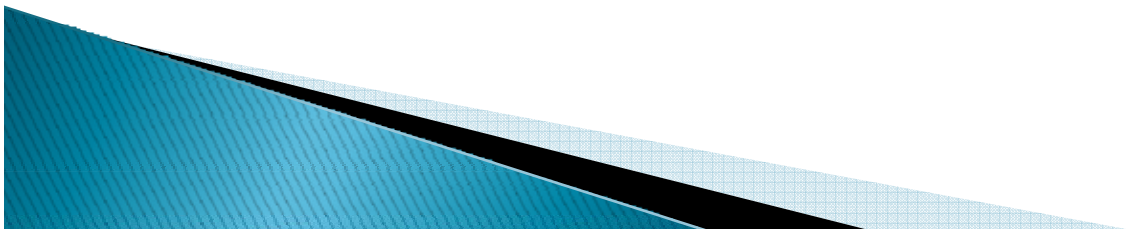
- ▶ “We don’t think there is any capacity on the part of the federal Crown, much less any duty, to make these lands available to the RDOS or any other party [...]”

Young, Anderson  
February 12, 2010



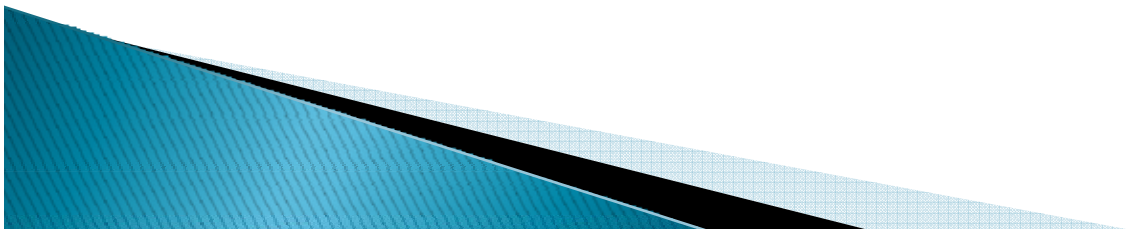
# The Role of the RDOS

- ▶ Section 12.1 of the ATR Policy
  - “In recognition that First Nation communities and non-First Nation communities live side by side, the federal government promotes a “good neighbour” approach. This involves First Nations and municipalities sitting down together to discuss issues of mutual interest and/or concern. [...] there is a requirement to negotiate arrangements in such areas as joint land use planning/by-law harmonization, tax considerations, service provision and future dispute resolution.”



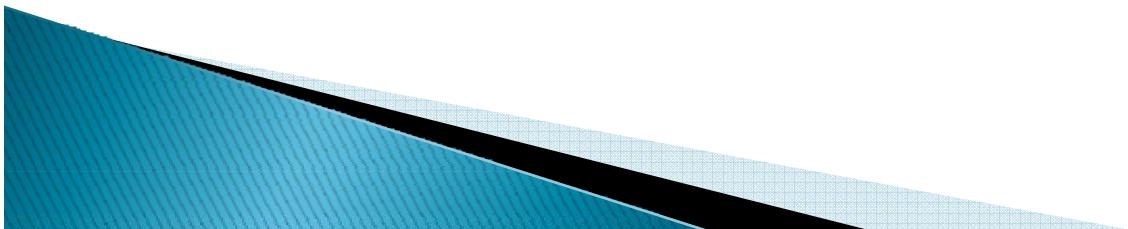
# The Role of the RDOS

- ▶ Section 12.2 of the ATR Policy
  - “The potential requirement to negotiate in these areas means that both parties must engage in discussions based on good will, good faith and reasonableness. Note that the need for discussion may be with respect to ATR proposals within the boundaries of a municipality [...] where consultation/negotiations leading to an agreement may be necessary [...]”



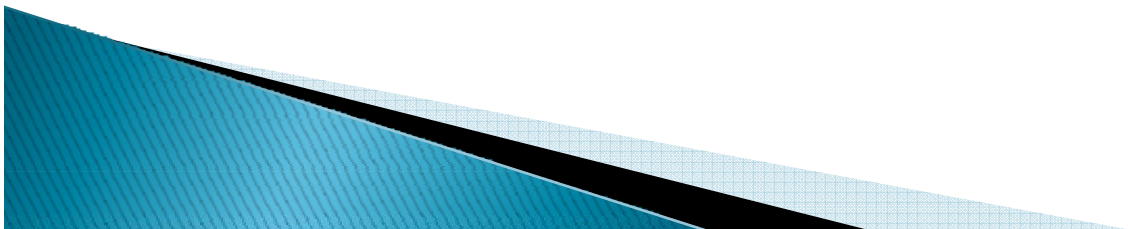
# The Role of the RDOS

- ▶ Section 12.3 of the ATR Policy
  - “While municipalities must be consulted in accordance with this policy, they have no general or unilateral veto with respect to reserve proposals.”



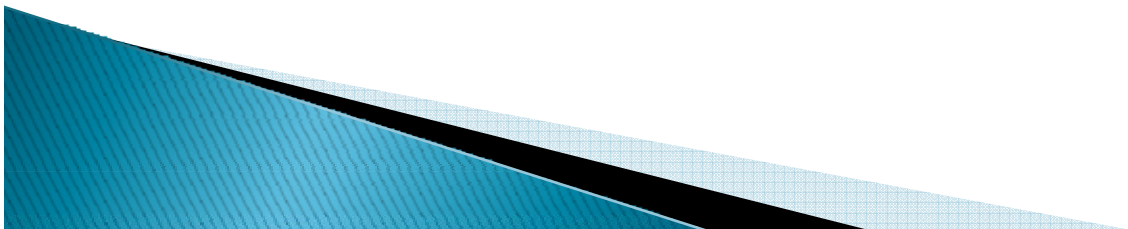
# Protections

- ▶ 7.1 “Where third party land would be “landlocked” by the addition to reserve [...], legal access over the proposed reserve is to be negotiated, as a legal conveyancing requirement, by the First Nation before agreement in principle is granted [...]”
- ▶ 13.2.b: “There is a reasonable expectation on both the municipality and the First Nation that the ‘good neighbour’ principle is used to negotiate in good faith throughout this process.”



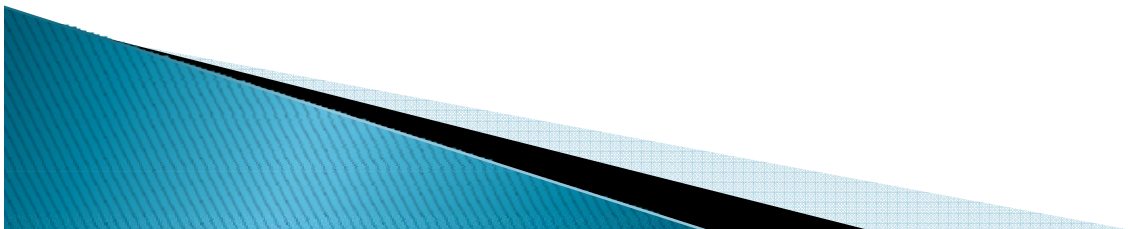
# So What Does This Mean?

- ▶ The transfer of the KVR lands to the PIB is a legal issue, not a political issue
- ▶ Mechanisms are in place for right-of-ways, roads, crossings, utilities, etc.
- ▶ The RDOS will have an opportunity to negotiate with the PIB around land use and bylaw harmonization
- ▶ The Federal Government will oversee the entire process at multiple levels



# What Do Area F Residents Want?

- ▶ Security
  - What does this mean?
  - How can it be achieved given our constraints?
- ▶ Linear park/Trans-Canada Trail
  - Many opportunities for ties with Summerland, Bonin Park, to PIB and Okanagan River Channel
  - Win-win?
  - Development and maintenance costs?
- ▶ Other?



# Thank You

More information on the Area F website:  
<http://areaf.rdos.bc.ca/KVR>

Questions?

