

Cabinet Decision Document

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MINISTER:

Geoff Plant, Attorney General and Minister Responsible for Treaty Negotiations

IDENTIFIER NUMBER:

DATE:

June 12, 2002

TITLE:

Land protection Treaty Related Measure (TRM) with Yale First Nation (YFN).

ISSUE:

Pursuant to Cabinet’s December 5, 2001 approval of a mandate for the Treaty Negotiations Office (TNO) to negotiate a land protection treaty related measure (TRM) with Yale First Nation (YFN) and Canada, TNO is returning for final Cabinet approval for implementation of the TRM through:

1. A Memorandum of Understanding (MOU) with YFN; and
2. Establishing the Yale Designated Area under Part 13 of the *Forest Act* to implement part of the MOU.

RECOMMENDATIONS:

- Provide approval of the terms of the MOU with YFN to implement a land protection Treaty Related Measure and sign an Order-in-Council establishing the Yale Designated Area under Part 13 of the *Forest Act* to implement part of the land protection. The other parts of the land protection – a *Mineral Tenure Act* no-staking reserve and a *Land Act* reserve - require Ministerial Orders and will be implemented later.

BACKGROUND:

On December 5, 2001, Cabinet approved a mandate for TNO to negotiate a land protection TRM with YFN for up to 350 hectares of the Hills Bar site.

A Land Protection TRM sets aside a parcel of land so that it will be available for future treaty settlement. The TRM does not transfer ownership of the land or provide access to resources on the land to YFN. The TRM respects the terms and conditions of existing tenures, but it prevents the sale of the land in question and the issuing of new tenures on the land. In order to consider land protection the Province must know that the parcel of land is considered essential by YFN for achieving treaty settlement. YFN asserts that it requires the Hills Bar lands for a number of reasons:

1. The area is in the heart of YFN's land interests and is integral to their requirements.
2. The area is the only significant piece of flat, accessible crown land in YFN's area of interest.
3. The gravel and timber resources in the area are essential for YFN's economic success.
4. The area contains YFN's most important archaeological site on the Fraser River.

The proposed land protection TRM relates to the agenda, principles and priorities of government in three key areas:

1. Commitments "to negotiate fair, honourable treaty settlements...[and] fast track treaty talks" (Office of the Premier Press Release, June 5, 2001 regarding new structure for government, and the New Era Agenda as outlined in the Premier's letter to Minister Plant, June 25, 2001) by ensuring that land essential for treaty settlement is available for treaty settlement;
2. "Turning the province around economically" (Premier's letter to Minister Plant, June 25, 2001) by increasing certainty regarding land and resource ownership; and
3. The Deregulation Program by "minimising unnecessary barriers to investment and job creation" (Office of the Premier Press Release, June 5, 2001 regarding new structure for government) through reaching agreement with Yale First Nation to allow crown land development activities to proceed expeditiously and to minimise the risk of aboriginal rights and title litigation.

One of the conditions of Cabinet's December 2001 approval is that TNO must return to Cabinet for final approval once an MOU has been negotiated that meets all of the specified conditions of approval. In addition, implementation of part of the MOU requires Cabinet approval for an Order-in-Council. All of Cabinet's conditions have been met in full. Annex 1 summarizes how each of Cabinet's conditions was met within the text of the MOU.

SUBSURFACE OWNERSHIP AND VALUATION:

A key issue at the YFN treaty table is the presence of potentially marketable subsurface resources. It is expected that the Hills Bar site contains significant marketable deposits of gravel and placer gold. However, the deposits are unproven.

The land protection TRM has been designed so that BC retains all subsurface rights and revenues during the protection period. TNO has also included a condition in the MOU that the land protection agreement makes no commitment to offer subsurface resources as part of a future treaty package. TNO will have to address the issue of subsurface ownership and valuation during upcoming land selection negotiations.

The mining industry has particular interests in this land. Discussions are occurring between Yale and private interests about the possibility of a joint venture. If these are successful, the MOU will be amended to reflect such partnership arrangements.

IMPLEMENTATION:

Implementation of the YFN land protection measure for the Hills Bar lands occurs via three steps:

1. Implementation of a temporary withdrawal of the Hills Bar lands from disposition under section 16 of the *Land Act*. This prevents sale of the lands or the issuing of new *Land Act* tenures over the lands. This is implemented by a Ministerial Order (Minister of Sustainable Resource Management).
2. Implementation of a “no staking” reserve over the Hills Bar lands under section 22 of the *Mineral Tenure Act*. The Hills Bar lands are currently fully tenured. However, in the event that an existing tenure expires, the reserve would prevent new placer or mineral claims from being staked. This is also implemented by a Ministerial Order (Minister of Energy and Mines).
3. Designation of the Hills Bar Lands under Part 13 of the *Forest Act* to restrict the issuance or approval of any permit, licence or plan (except those that are required pursuant to the exercise of existing *Mineral Tenure Act* tenures and existing *Mines Act* permits and associated maintenance of rights-of-way in or adjacent to the Designated Area). This designation of the Yale Designated Area” requires Cabinet approval for an Order-in-Council (see Annex 2) and a subsequent Ministerial Order (Ministry of Forests).

ORDER-IN-COUNCIL UNDER PART 13 OF THE *FOREST ACT*:

The Ministry of Forests advises that:

1. Forest development and planning, other than by existing mining interests and associated maintenance of rights-of-way, should be restricted by seeking a Part 13 designated area under the *Forest Act*, executed through an Order-in-Council and a Ministerial Order.
2. Volume from the proposed land protection area contributes to the timber supply in the Fraser TSA. Section 173 of the *Forest Act* allows the Chief Forester to consider making a temporary Allowable Annual Cut (AAC) reduction in the timber supply area for the term of the Part 13 designation. However, the AAC contribution to the TSA from the proposed land protection area is minimal. Therefore, the land protection TRM is not expected to have any impact on the AAC of the TSA or on any forest licensee in the TSA. As such, no impact on provincial revenue is anticipated.

FISCAL MANAGEMENT CONSIDERATIONS:

The December 5, 2001 Cabinet Submission set out the expected fiscal management implications of the TRM. In summary, the TRM will likely not impact the provincial budget.

OPTIONS

LAND PROTECTION TRM

Option 1: Approve the land protection MOU and sign the Order-in-Council.

Evaluation:

This option is recommended because it:

- meets government's interests;
- meets YFN's interests in having this land set aside for treaty; and
- respects the terms and conditions of the existing placer tenures;

Option 2: Do not approve the land protection MOU or sign the Order-in-Council.

Evaluation:

This option is not recommended because it:

1. Will make a treaty with YFN unlikely and may precipitate litigation;
2. Has a broader negative impact on the treaty process; and
3. May delay both gold and gravel permitting processes, if aboriginal rights and title litigation ensue.

RECOMMENDED DECISIONS:

Option 1. Approve the land protection MOU and sign the Order-in-Council.

SIGNATURE:

KEY CONTACT: Gordon Douglas, Negotiator, 356-8685

ANNEXES

1. Status of conditions set by Cabinet with respect to a Land Protection Treaty Related Measure for the Hills Bar Lands
2. Order-in-Council under Part 13 of the *Forest Act*.

Annex 1

Status of Conditions set by Cabinet for a Memorandum of Understanding (MOU) with Yale First Nation (YFN) with respect to a Land Protection Treaty Related Measure for the Hills Bar Lands

	Condition	Status
1.	Finalization of a cost sharing understanding with Canada.	Agreement signed by Canada and British Columbia May 8, 2002.
2.	Terms and conditions of existing tenures will be respected.	The land will continue to be subject to all existing tenures and interests.
3.	No new tenures will be issued.	The land is withdrawn from disposition under the <i>Land Act</i> ; cutting authorities under the <i>Forest Act</i> are suspended and a “no staking” reserve under the <i>Mineral Tenure Act</i> is implemented.
4.	The amount of land protected will not exceed the parameters set out in the Province’s Treaty Related Measures policy.	The area to be protected is 181 hectares which is less than the maximum set out in the Province’s Treaty Related Measures policy.
5.	The protected land will exclude the BC Hydro right of way and all private land, including CN Rail property.	Private land, including the CN Rail right of way and the BC Hydro right of way are excluded.
6.	The term of the TRM be two years; with renewal conditional on progress at the treaty table. Renewal would also be subject to appropriate cabinet and ministerial approvals.	The term of the MOU is two years or less from the date of implementation of the protection measures; renewal is at the discretion of all three parties.
7.	YFN agrees to accept the parcel if it is offered as part of a settlement.	YFN agrees to accept the parcel if it is offered as part of an acceptable settlement.
8.	YFN agrees not to litigate with respect to aboriginal rights and title or leave the treaty process during the term of the TRM.	The MOU will terminate if treaty negotiations are suspended or terminated or if YFN commences litigation which in the opinion of Canada or BC precludes effective treaty negotiations.
9.	YFN must agree to participate with Provincial referral processes so as to not unreasonably obstruct activities in their asserted traditional territory.	Yale agrees to this requirement.
10.	YFN will agree to a non-derogation clause to protect the interests of other First Nations	The rights, if any, of other First Nations are preserved.
11.	Agreement from YFN that it will resolve overlap issues relating to the Hills Bar lands prior to Final Agreement.	YFN agrees to use best efforts to resolve overlap issues prior to the Final Agreement.

	Condition	Status
12.	Consultation with the Fraser Valley RAC and TAC should continue and local input should be addressed.	Third party and local government interests were consulted - interests were identified and accommodated.
13.	YFN must understand that the Province may not offer sub-surface resources, including gravel, as part of a treaty settlement package.	The MOU states explicitly that BC may not offer the subsurface as part of a Final Agreement.
14.	Third party impacts should be mitigated, if possible.	Terms and conditions of existing tenures are explicitly honoured.
15.	TNO will return to Cabinet for final approval of the TRM.	The MOU will not come into effect until approval from the provincial Cabinet is received and notice is given to YFN and Canada that BC has implemented the land protection measures set out in the MOU.

Annex 2

Order-in-Council under Part 13 of the *Forest Act*