



INFORMATION PACKAGE

Treaty Land Entitlement and Site C Agreement
Land Transfers in Northeast B.C.

Part 2: Questions & Answers

March 11 & 12, 2020

Land Transfers in Northeast B.C.

This Q&A is Part 2 of the Land Transfer Information Package and is not a stand-alone document. [See Part 1: Fact Sheet for an overview of the Land Transfers in Northeast B.C.](#)

The Ministry of Indigenous Relations and Reconciliation has been reaching out to local communities to build awareness and understanding about potential land transfers in Northeast B.C. We have established a Northeast Roundtable with representatives from local government, industry, public interest groups and First Nations following input from a public stakeholder engagement process. We have presented and engaged regarding proposed land transfer areas with the Northeast Roundtable and with local communities at Upper Halfway, Pink Mountain, Rose Prairie, Cecil Lake, and Buick Creek.

This Q&A responds to many questions we received from at these meetings.

Questions & Answers

What types of land transfer agreements is the Province engaging with Treaty 8 First Nations on?

- B.C. is negotiating two types of land transfer agreements with Treaty 8 First Nations:
 - Treaty Land Entitlement Settlement Agreements – to provide lands owing from a treaty signed more than 100 years ago.
 - Site C Land Agreements – to compensate First Nations impacted by the Site C dam, currently under construction.

What are Treaty Land Entitlement Settlement Agreements?

- Treaty Land Entitlements are specific claims against the federal government by First Nations who are signatories to Treaty 8, which are treaties established more than 100 years ago.
- The provincial government is in discussion with five Treaty 8 First Nations in northeast B.C. on compensation for reserve lands they were promised under Treaty 8 but didn't get.
- The provincial and federal governments intend to honour the terms of the historic treaty, and that includes lands that the First Nations are entitled to.
- We want to help right a long-standing injustice and advance reconciliation with Treaty 8 First Nations – fairly and justly – in a way that responds to their communities' needs.
- We are working with the Nations and the federal government to identify Crown lands that could be included in Treaty Land Entitlement settlement agreements.
- Treaty Land Entitlements have been settled with numerous First Nations in other provinces, including Manitoba, Saskatchewan and Alberta.

What are Site C Land Agreements?

- The Province, BC Hydro and some Treaty 8 First Nations have signed Site C Land Agreements that commit to providing a specified amount of Crown land to become land privately owned by each Nation to compensate for the adverse impacts of the Site C project on their treaty rights.
- The specific parcels have not yet been finalized, pending stakeholder and public engagement.
- Doig River, Halfway River and Saulteau First Nations, and McLeod Lake Indian Band have signed Site C Land Agreements. Blueberry River, West Moberly and Prophet River First Nations are also eligible for Site C Land Agreements. Prophet River First Nation has engaged in negotiations for a Site C Land Agreement.

How much land will be transferred to First Nations?

- 65,000 hectares of land is expected to be transferred to First Nations for both Treaty Land Entitlement Settlement Agreements and Site C Agreements.

How was this amount of land decided on?

- The provincial and federal governments and Treaty 8 First Nations carried out research to identify the amount of lands the Nations were entitled to in lands owed for Treaty Land Entitlement.
- In addition, the provision of the Additional Land purchase opportunity was also considered.
- The amount of land for accommodation in the Site C Land Agreements was determined through an assessment of the potential adverse impacts the Site C project would have on Treaty 8 First Nations' treaty rights.

What is the current status of Treaty 8 land transfers?

- No lands have been transferred at this time.
- Under Stage 1 of the provincial land transfer process, First Nations and the Province identified specific Crown land parcels of interest for potential transfer.
- These selections are now in Stage 2, which is the review process. This is a lengthy process, and for Treaty 8, has been ongoing for several years. Stage 2 is expected to conclude over the next number of months, but will only conclude once all stakeholder input is complete and recommendations for making decisions on land transfers have been completed.
- The Province will continue to engage with local governments, tenure and licence holders, other stakeholders and the public before any decisions are made.

What is the process to select and transfer Crown land to First Nations?

- Any transfer of Crown lands to a First Nation is a multi-step process that begins with identifying proposed land parcels of interest. Treaty 8 First Nations identified specific parcels of Crown land that would be suitable for community growth, or because the land has cultural, spiritual, or economic significance.
- Once lands are identified, all existing legal interests, such as overlapping tenures and licences are identified. The review stage is next, which includes engagement with local governments, tenure and licence holders, provincial agencies, and other stakeholders.

How long will any land transfers take?

- The land transfer process generally can take three to five years or longer.

Why are First Nations selecting multiple parcels, instead of one complete parcel?

- First Nations traditionally and currently practice treaty rights throughout the Treaty 8 territory.
- First Nations have selected land parcels in areas of traditional interest to their Nation, and for other reasons, such as economic and community development, conservation and stewardship.
- The Province has interests and considerations in land selections as well, which include addressing existing legal rights such as licences and tenures, and considering natural resource values (e.g. subsurface minerals, timber, and water), BC Hydro transmission lines, and access to lands beyond proposed land selections.

Treaty Land Entitlement Lands

What are the types of Treaty Entitlement Lands and how will they be added to the First Nations' current lands?

- Treaty Land Entitlement Agreements include two types of land transfers: Shortfall Lands and Additional Lands.
- Shortfall Lands are B.C. Crown lands that address the historic shortfall of reserve land that Treaty 8 First Nations were supposed to receive when Treaty 8 was first signed.
- They will be transferred directly to the federal government for Indian Reserve creation.
- Additional Lands are B.C. Crown lands that will be offered to First Nations to purchase at fair market value, to advance reconciliation.
- First Nations may apply to the federal government to have Additional Lands added to Federal Indian Reserve land through the federal Addition-to-Reserve process.

Why is B.C. providing Additional Lands?

- Additional Lands are being offered to advance reconciliation between British Columbia and Treaty 8 First Nations. Our goal is to help right a long-standing injustice – fairly and justly – in a way that responds to the First Nations’ communities’ needs, and this is one way to do that. The Additional Lands will be offered for purchase at fair market value.

What is the value of the Additional Lands being transferred and how is it calculated?

- The purchase of Additional Lands will be based on an appraisal of fair market value.

Will the federal government refund B.C. for the land it is providing as part of these agreements?

- No, the federal government is providing the First Nations with funding to compensate for lost opportunity from the lands in the past, and the Province is providing the land.

What does lost opportunity mean and how is its value determined?

- Lost opportunity is the financial gain that First Nations could have benefited from had they received the full lands they were promised when Treaty 8 was signed.
- Treaty 8 First Nations and the federal government have agreed on the value of lost opportunity, and the federal government will offer a sum of money in the final Treaty Land Entitlement settlement package to compensate First Nations for that loss.

Why were the First Nations not given the full amount of land they were entitled to under Treaty 8?

- Treaty 8 treaties were signed between 1899 and 1900. A federal census done shortly afterward did not accurately capture numbers of people due to many members being away for seasonal activities. Treaty land was allocated on the basis of 128 acres of land per person, or 160 acres per person if they were living away from reserve land – so with members being away, the final allotments were too low.

How many people were missed in the census, and have you reached a final number?

- First Nations were required to complete historical record reviews and genealogies to identify who was missed during the census. That information is confidential – but the count has been determined for the purposes of the Treaty Land Entitlement claims.
- The Treaty Land Entitlement settlements will be final, with no further changes.

Where in the Treaty does it say these lands are owed to the Treaty 8 First Nations as an entitlement?

- There is a section in Treaty 8 which refers to the lands, and states: “Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for such bands as desire reserves...”
- The Treaty expands on how much land will be provided for reserves and other expectations regarding how reserves will be managed.

How will the Treaty Land Entitlement Settlement Agreements be achieved?

- There are two Treaty Land Entitlement agreements in a package that will form the final settlement:
 1. A Settlement Agreement that sets the terms for full and final settlement of Treaty Land Entitlement claims, including the amounts of Shortfall Lands the Nations are entitled to, and
 2. A Lands Agreement that sets out the proposed land selections and the process for completing the land transfers.
- Both agreements will be ratified by each First Nation's community and approved by both the provincial and federal governments, once negotiations have concluded.

Stakeholder Engagement

How will the Province engage with stakeholders on land transfers?

- The Province has and will continue to hold meetings with tenure holders, local governments, stakeholder groups and members of the public. These discussions have been underway since 2016.
- The Northeast BC Community Roundtable, which had its first meeting in September 2018, is a good example. It's a series of regular meetings involving stakeholders, local governments, the provincial government and First Nations. Roundtable meetings serve multiple functions, including:
 - Providing stakeholders with information about the different types of land transfers
 - Encouraging discussion to seek feedback on proposed land parcels for transfer
 - Sharing information about reconciliation
- Stakeholders can also learn about land transfers and provide comments at stakeholder meetings, open houses, and online at govTogether: <https://engage.gov.bc.ca/govtogetherbc/consultation/land-transfers-in-northeast-british-columbia/>

How will the Province consider comments and concerns voiced by stakeholders?

- The Province will review concerns and input from all stakeholders – local government, tenure holders, the public and others – before making any decisions on land transfers. We have committed to sharing a “What We Heard” Report which will:
 - Keep stakeholders informed about the land transfer process
 - Report out on land transfer decisions
 - Provide feedback on how stakeholder's input was considered in the decision-making process.

Tenure Overlap

What will happen to tenure licence- and lease-holders on Crown land transferred to a First Nation?

- Most Crown land in B.C. has some form of tenure, licence or lease on it, and sometimes there are overlaps. Some tenure, licence and lease holders are expected to be affected, and we are seeking mutually beneficial solutions. Our goal is to find solutions that consider everyone's interests.
- Stakeholders will have opportunities to provide input into land selections during engagement sessions. All stakeholder concerns will be taken into consideration before any decisions are made on any specific parcels of land under consideration.
- In the case of tenure holders, the government will work with them to understand their interests in a land parcel and develop approaches to address any overlaps. Examples of approaches could include developing a federal replacement agreement with a tenure holder, reconfiguring a parcel so that it no longer overlaps with an existing tenure, or reaching an agreement with the tenure holder to amend the tenure so that it does not overlap with the land parcel.

How will the Province make sure new tenures don't add to overlaps on proposed land parcels?

- The Province has placed interim *Land Act* protections over the selected parcels so that new tenures are not granted while the land transfer process is underway. These protections will ensure that no new activities will occur until a decision is made on the transfer of land parcels.

Access to land

How will access be maintained to existing infrastructure within a land parcel?

- Any agreement signed by the Province, First Nations and the federal government would ensure continued access to existing infrastructure, such as oil and gas well sites and roads. For example, agreements would stipulate that roads continue to be under provincial jurisdiction or would provide a federal road permit, statutory right of way, or easement on reserve land.

How will service providers access existing oil and gas and other resources following the land transfers?

- Oil and gas companies with existing activities will continue to have the same rights as they currently have on Crown land.
- In the case of oil and gas activities on lands that transfer as federal reserve land, the federal government will negotiate replacement tenures with oil and gas. Replacement tenures are intended to keep companies whole, with all the same rights and access they currently have on Crown land. They are by agreement of government and the tenure holder.

Can the public access the Treaty Land Entitlement lands up to the time of transfer?

- Yes. Parcels with interim protections, such as a Land Act Section 16 or 17, are Crown land and can continue to be used for activities such as hiking, hunting and fishing. The protections simply hold the land in its current state while negotiations and stakeholder engagement are underway.

Can the public still access the lands after transfer?

- Once a parcel transfers it will no longer be public land, and while access through to areas on the other side of the parcel will be maintained, access into the land will be determined by the First Nation. People who are interested in accessing Federal Reserve or private lands would need to ask for permission.

Are existing roads going to be maintained (e.g. Petersen's Crossing)? How will the Province deal with road access to recreational and outdoor sites through land transfer parcels?

- Agreements will be put in place to keep roads that travel through land parcels under provincial jurisdiction or to provide a federal road permit, statutory right of way, or easement on reserve land. The public can continue to travel through these lands to access the provincial Crown lands or private lands on the other side.
- The Province will maintain public roads and provincial recreation trails that cross through lands proposed for transfer.

Why have First Nations selected parcels in these locations, such as around roads?

- In most cases, First Nations have selected areas within territories where they have traditionally practiced their treaty rights, such as hunting or fishing.
- Resource development in this region of the province has been ongoing for the past 118 years, and many areas selected by First Nations now have a variety of development activities including overlapping tenures, licences, roads, hydro lines and more.

If a land parcel contains a public access road or other infrastructure, will First Nations be able to select alternate land to make up for any exclusions from their parcels?

- The Lands Agreement will lay out a process for identifying alternative lands to make up for exclusions that affect the First Nations Treaty Land Entitlement or Site C Agreement land.

Economic impacts

How will the transfer of land parcels to Federal Reserve affect the Peace River Regional District and local municipal governments' tax revenues?

- The lands being transferred are Crown lands, not private land, so municipal tax is not currently generated from those parcels.
- The Province is conducting an analysis of infrastructure for each parcel to determine how taxes may be affected, if at all.
- The Province, First Nations and any affected parties will work on developing an approach that addresses potential loss of tax income.

Are oil and gas subsurface rights included on Reserve Land, and if so, why? Where is it in Treaty 8?

- Subsurface rights are being included for Shortfall Lands.
- Treaty 8 does not reference subsurface directly, but the federal government has included subsurface rights in many historic Indian Reserves, so they are included here as well.
- The federal government will manage subsurface resources under Federal Reserve land using the Indian Oil and Gas Commission.

Will the value of subsurface rights be considered by the Province as a credit toward lost opportunity?

- No, the value of subsurface rights is for current and future value, upon transfer.
- The federal government has already considered past economic losses the First Nation sustained for not having had the land for over 100 years.

What is the timeframe for subsurface royalties to be provided to the First Nations for lands transferring to Federal Reserve?

- The First Nations will receive royalties for oil and gas sub surface rights once land is transferred into Federal Reserve, which is managed by the federal Indian Oil and Gas Commission.

Regulatory Considerations

What would happen to Agriculture Land Reserve (ALR) areas that overlap Treaty Land Entitlement parcels?

- ALR designation will remain in place on Fee Simple (private) lands. ALR does not apply to land under federal jurisdiction, so the parcels that become Federal Reserve land would no longer be a part of the ALR.

What regulations will apply to the Treaty Land Entitlement fee simple (private) land?

- The fee simple land will remain under provincial jurisdiction and be subject to the same laws and regulations as any other private land parcels.

How will wildlife and the environment be dealt with in the land transfer process?

- Environmental assessments will be completed for each parcel to identify if there are any areas with contaminated sites that need to be addressed. The Province will carry out ecological and wildlife assessments on proposed land parcels to support decision-making. The federal government has existing environmental requirements that must be followed on Federal Reserve Lands.
- Many of these lands have been identified for cultural and traditional purposes, which means they will be maintained in their current wild state.
- The Northeast is a vast area, and Treaty Land Entitlement will not have a substantive impact on wildlife habitat or populations.

Other Questions

Will the Province expropriate land from private land owners for First Nations?

- No. The Province will not expropriate private land for agreements with First Nations. All Treaty 8 settlement lands will come from Crown land, not private property.

Is there any other land transfers being considered or anticipated for Treaty 8 Nations?

- There are times when land transfers may be negotiated. For example, if resource development activity impacts Treaty 8 First Nations' rights, land can be used to accommodate a Nation for adverse impacts.

How does Federal Reserve land differ from private land owned by a First Nation?

- Private land owned by a First Nation is subject to provincial laws, local bylaws, zoning regulations and property taxes - the same as any other private property.
- Reserve lands are officially owned by the federal government for the exclusive use and benefit of First Nations. They are generally not subject to provincial laws or local bylaws that regulate land use or land ownership, such as zoning and property tax. Reserve lands are subject to federal laws and regulations.

Has one particular political party been responsible for proposing these land transfers?

- Negotiations to address this historic shortfall of Treaty 8 land have spanned multiple federal and provincial governments since 2004, and are not based on any one political party's views. The goal is to right a long-standing injustice.

What is reconciliation?

- Reconciliation addresses the ongoing effects of colonial policies and practices on Indigenous peoples and seeks to establish and maintain a mutually respectful relationship between Indigenous and non-Indigenous peoples and close the economic and social gaps that continue to exist.
- One important way the B.C. government is advancing reconciliation is enacting legislation to recognize in law the human rights of Indigenous peoples. The *Declaration on the Rights of Indigenous Peoples Act* provides a path forward on reconciliation for everyone in B.C., which will help create stronger communities, good jobs and economic growth everywhere.
- Conflict and court cases have created uncertainty on the land base. Moving forward with collaboration and respect is how we create more certainty and predictability that leads to opportunities for Indigenous peoples, businesses, communities, and families everywhere.
- Providing lands to settle Treaty Land Entitlement claims and to accommodate for the adverse impacts of the Site C project are examples of reconciliation. Once Treaty Land Entitlement is settled, there will not be any more Treaty Land Entitlement claims in B.C., again supporting greater certainty.

How to provide feedback

Members of the public are invited to provide written comments about how they may be impacted by proposed land transfers for both Treaty Land Entitlement Settlements and Site C Land Agreements. Comments may be submitted by letter or e-mail to:

Ministry of Indigenous Relations and Reconciliation

370-10003 110th Avenue

Fort St. John, B.C. V1J 6M7

E-mail: MIRR.Northeast@gov.bc.ca

How will my feedback be considered?

We will compile your feedback in a detailed record, which will be taken into consideration before decisions are made on the transfer of Crown lands through Treaty Land Entitlement Settlements and Site C Land Agreements.