



## BRIEFING NOTE FOR INFORMATION

**Date:** June 17, 2019

**Prepared For:** Kaye Krishna, Deputy Minister of Municipal Affairs and Housing

**Title:** Crown Land Selections for the Kitselas and Kitsumkalum Treaty Negotiations

**Issue:** Ministry of Indigenous Relations and Reconciliation requests that the Ministry of Municipal Affairs and Housing agree with the land selection and that relevant issues have been satisfactorily addressed, or actions are being taken to resolve outstanding issues.

### SUMMARY:

- **The Ministry of Indigenous Relations and Reconciliation (MIRR) would like agreement from Ministry of Municipal Affairs and Housing (MAH) on the land selections for the Kitselas and Kitsumkalum Treaty Negotiations.**
  - **The Deputy Minister, MIRR, routinely requests support from various Deputy Ministers for Crown land parcels under consideration for treaty settlement lands.**
  - **To proceed with this transfer, MIRR is requesting DM support for lands previously identified in maps and Land Analysis Tables provided to MAH.**
  - **MAH can advise MIRR that it is not aware of any critical local government issues or barriers to proceeding with the land for Treaty Offer**
- s.13
- **MAH remains supportive of treaty and other agreement processes that help the Province achieve reconciliation with Indigenous people.**

### BACKGROUND:

MIRR negotiates treaties and other agreements with First Nations to improve quality of life for Indigenous people that typically include land provided by the Province. As part of the treaty process, Canada provides the cash component and the Province provides the land component. These tripartite negotiations between Canada, British Columbia and First Nations are based on the six-stage treaty process. MAH is involved in stages 4 (Agreement-in-Principle, or AIP) and 5 (Final Agreement) on intergovernmental relations and in the land selection process. For more information on the six-stage treaty process see Appendix One.

Throughout negotiations, MAH staff review the land selection to identify potential local government-related matters and provide comments to MIRR. Once ratified by the First Nations' members, and provincial and federal governments, the Final Agreement (FA) passes into law becoming a treaty.

In 2015, AIPs were signed by the federal and provincial governments and with both the Kitselas and Kitsumkalum First Nations, and FA negotiations began.

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Lands may become treaty settlement lands (TSL) upon a treaty's effective date. As well, they can also become an addition to reserve (ADR), through a separate, federal process. As either TSL or ADR, lands are effectively removed from local government jurisdiction (if jurisdiction existed previously).

MIRR is seeking MAH to "agree that the...land statusing has identified all relevant issues and those issues have been satisfactorily addressed, or actions are being taken to address the issues".

**DISCUSSION:**

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While MIRR is seeking routine DM sign-off to support the lands becoming part of a treaty settlement package and “agree that the...land statusing has identified all relevant issues and those issues have been satisfactorily addressed, or actions are being taken to address the issues”, the Province of British Columbia has established a legislative framework for local governments that recognizes they are democratically elected, autonomous, responsible and accountable within their jurisdiction. This is important as MAH may not be aware of, and cannot predict, what is happening ‘on the ground’ at the local government level. Therefore, MAH will continue to recommend that MIRR consult with any affected local governments to address concerns and minimize possible disruptions to local government and First Nation relations.



Given MIRR's commitment to on-going consultation with local government, MAH's response can advise that the Ministry is not aware of any local government issues or barriers to proceeding with the land for Treaty offer and recommend that MIRR continue to consult directly with local government :

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**Appendices:**

1. BC Treaty Commission – Description of the Six Stages
2. s.13,s.16

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**DATE APPROVED:**

June 17, 2019



## APPENDIX 1: BC Treaty Commission – Description of the Six Stages

The BC Treaty Commission website (<http://www.bctreaty.ca/six-stages>) provides descriptions for the six stages of the BC Treaty process as follows:

### Stage 1: Statement of Intent to Negotiate

A First Nation files with the Treaty Commission a statement of intent (SOI) to negotiate a treaty with Canada and BC. The SOI must identify the First Nation's governing body for treaty purposes and the people that body represents and show that the governing body has a mandate from those people to enter the process. The SOI must describe the geographic area of the First Nation's distinct traditional territory and identify any overlaps with other First Nations.

### Stage 2: Readiness to Negotiate

The Treaty Commission must convene an initial meeting of the three parties within 45 days of accepting a statement of intent. For most First Nations, this will be the first occasion on which they sit down at a treaty table with representatives of Canada and BC. This meeting allows the Treaty Commission and the parties to exchange information, consider the criteria for determining the parties' readiness to negotiate and generally identify issues of concern. The meeting usually takes place in the traditional territory of the First Nation. The three parties must demonstrate that they have a commitment to negotiate, a qualified negotiator, sufficient resources, a mandate and a process to develop that mandate and ratification procedures. The First Nation must have begun addressing any overlaps. The governments of Canada and BC must have a formal means of consulting with third parties, including local governments and interest groups. When the three parties have everything in place, the Treaty Commission will declare the table ready to begin negotiating a framework agreement.

### Stage 3: Negotiation of a Framework Agreement

The framework agreement is, in effect, the "table of contents" of a comprehensive treaty. The three parties agree on the subjects to be negotiated and an estimated time frame for stage four agreement-in-principle negotiations. Canada and BC engage in public consultation at the regional and local levels. A municipal representative sits on the provincial negotiation team at each treaty table.

### Stage 4: Negotiation of an Agreement in Principle [MAH involved here]

This is where substantive treaty negotiations begin. The three parties examine in detail the elements outlined in their framework agreement. The goal is to reach agreement on each of the topics that will form the basis of the treaty. These agreements will identify and define a range of rights and obligations, including: existing and future interests in land, sea and resources; structures and authorities of government; relationship of laws; regulatory processes; amending processes; dispute resolution; financial component; fiscal relations and so on. The agreement in principle also lays the groundwork for implementation of the treaty.

### Stage 5: Negotiation to Finalize a Treaty [MAH involved here]

The treaty formalizes the new relationship among the parties and embodies the agreements reached in the agreement in principle. Technical and legal issues are resolved at this stage. A treaty is a unique constitutional instrument to be signed and formally ratified at the conclusion of Stage 5.

### Stage 6: Implementation of the Treaty

Long-term implementation plans need to be tailored to specific agreements. The plans to implement the treaty are put into effect or phased in as agreed. With time, all aspects of the treaty will be realized and with continuing goodwill, commitment and effort by all parties, the new relationship will come to maturity.



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## **APPENDIX 2: Proposed Kitselas and Kitsumkalum First Nation Treaty Land Maps**

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## BRIEFING NOTE FOR INFORMATION

**Date:** June 25, 2019  
**Prepared For:** Kaye Krishna, Deputy Minister of Municipal Affairs and Housing  
**Title:** Recording of Residential Tenancy Branch Dispute Resolution Hearings  
**Issue:** Record Dispute Resolution Hearings for internal quality assurance purposes  
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### KEY MESSAGES:

- **The Rental Housing Task Force has recommended the recording of all dispute resolution hearings to improve, 'fairness and consistency' of the hearing process**
- **Recording hearings for quality assurance**<sup>s.13</sup>  
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- **In February 2018, RTB began recording information service call for quality assurance purposes**  
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### BACKGROUND:

During the Rental Housing Task Force (the Task Force) consultation, several stakeholder groups recommended the recording of all Residential Tenancy Branch (RTB) hearings. Both landlord and tenant stakeholders have observed that because hearings are not recorded, there is little accountability when parties feel an arbitrator's approach to their hearing has been unfair. When there are concerns about a hearing's fairness, the only way to review is to look through the decision notes. When the Task Force released their full recommendations in December 2018, recommendation 13 was to, "improve fairness and consistency of the Residential Tenancy Branch dispute resolution hearing process by recording all hearings."

Other jurisdictions who do record their hearings have different processes for parties accessing the recordings. In Ontario, all parties to a hearing may request a copy of the recording to the branch. They receive a CD of the recording for approximately \$16, Quebec follows a similar process. In Alberta, parties must make a request to the branch, the branch sends the recording to a transcription company who the party pays directly for the transcript.

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### DISCUSSION:

Implementing the recording of hearings for internal quality assurance purposes could allow government to respond to the recommendation<sup>s.13</sup>

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This will significantly reduce the storage costs. RTB staff are currently working with Records Management to develop a new Operational Records Classification Systems (ORCS), which when implemented could reduce the required retention schedule for recordings and reduce the costs initially quoted.

RTB staff have discussed recording hearings for quality assurance purposes with key stakeholders including the Tenant Resource and Advisory Centre (TRAC) and Community Legal Assistance Society (CLAS) who were strong advocates for recording hearings.

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The Ombudsperson is very eager to see government move forward with this recommendation. As the RTB is within the jurisdiction of the Ombudsperson, they receive complaints from the public about the RTB. Conduct during hearings is a common complaint to the Ombudsperson. They also feel access to recordings would also help to protect arbitrators against groundless allegations when the Ombudsperson is able to have access to the recordings during their investigation.

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## FINANCIAL IMPLICATIONS:

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### Attachment:

1. Cost of Recording for Internal Purposes

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#### DATE APPROVED:

June 25, 2019





**ATTACHMENT 1: Cost of Recording for Internal Purposes**

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Service	Description of service	Cost per recording over lifecycle	Estimated Monthly cost	Estimated yearly cost
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