

Ref. 40097

Pat Pimm, MLA
Peace River North

Dear Mr. Pat Pimm:

Thank you for the August 19, 2016 recommendations from the MLA Stakeholder Advisory Committee. These recommendations provide feedback to the Province on negotiations with Treaty 8 First Nations where the transfer of Crown land is involved. As you are aware, my ministry has implemented enhanced guidelines for our negotiators to ensure we have a solid understanding of local government and stakeholder interests as we negotiate agreements with First Nations. I have attached the Guiding Principles for Stakeholder Engagement which are in place for all provincial negotiators. Our objective is to reach agreements with First Nations that are well informed, understood and supported by Aboriginal and non-Aboriginal communities alike.

The Province and First Nations are working together on a variety of agreements, negotiations and initiatives. The Province believes these are critically important steps towards reconciliation with Treaty 8 First Nations, ensuring British Columbia meets its legal obligations to Treaty 8 First Nations, and impacts from industrial development to Treaty 8 rights are adequately accommodated. Agreements with First Nations also provide operational clarity for resource development and major projects, and therefore, are key to attracting investment and creating jobs for all British Columbians.

The following is a summary of the types of agreements that might entail land transfers to First Nations in the northeast, and our existing negotiation approaches:

Treaty Land Entitlement

Treaty Land Entitlement (TLE) is the resolution of claims made by Treaty 8 First Nations that they did not receive all of the land they were entitled to under Treaty 8 when it was signed in 1899. TLE settlement agreements are being primarily negotiated between the First Nations and the Government of Canada. An important outcome of TLE settlements is to ensure that the Crown's commitments made under Treaty 8 are upheld.

The parties will typically expect British Columbia to provide land to these settlements. Key objectives for the Province in these negotiations are to ensure clarity of the status of land (ie fee simple or reserve), access provisions, avoidance/mitigation of third party impacts (including local governments), and appropriate fiscal arrangements for the surface and subsurface resources. Stakeholder engagement will be critical in ensuring that we are able to meet these objectives.

Tripartite Land Agreements

The Site C Environmental Assessment Joint Review Panel determined that Site C will have significant adverse impacts on Treaty 8 First Nations treaty rights. In order to meet our legal obligation to accommodate these impacts and provide enhanced certainty for the project, the Province, BC Hydro and participating First Nations are negotiating tripartite land agreements

(TLAs). Once concluded, TLAs will transfer parcels of Crown land to First Nations in fee simple. TLAs may also include land protection measures. Our negotiators will seek to avoid/mitigate third party impacts and will ensure necessary access across the parcels.

Government to Government Agreements

The Province and several Treaty 8 First Nations are in negotiations or have completed government to government (G2G) agreements. G2G agreements have different details and scope, but in general the goal of G2G agreements is to establish a constructive relationship with the First Nation that leads to greater self-sufficiency and improved community health and well-being for a First Nation, and provides more predictability and clarity for the Province, investors, and stakeholders. G2G agreements may provide revenue sharing and economic development opportunities, new land protections or management measures, social and cultural initiatives. Where BC considers Crown land transfers, it is done as fee simple. We first attempt to avoid any stakeholder impacts, or in the second instance, negotiate provision to minimize or mitigate impacts, including access requirements.

Enhanced Stakeholder Engagement Process

The Province is committed to engaging with stakeholders throughout the negotiation process on all agreements. The committee's input is consistent with our approach to stakeholder engagement and negotiations as outlined above. During the earliest stages of negotiations, our negotiators will inform stakeholders and provide an overview of the anticipated topics. We recognize that stakeholder engagement is an important aspect that informs our negotiation strategy, and is key to building a strong understanding of, and support for, an agreement. I can confirm our commitment to transparency called for by the committee.

I also confirm that we will engage and work with the committee as soon as possible once potential lands have been identified in any negotiation. Our negotiators will do this throughout the negotiation process. In addition, the Province will carefully review the information provided through the engagement process and will ensure it is taken into account before a final decision is made. We will continue to negotiate provisions that maintain full and complete access on pre-existing roads, and to Crown land beyond parcels transferred to a First Nation.

It is important to add that there are some instances where confidentiality is required due to the nature of the negotiations. In those situations, our negotiators explore options such as non-disclosure agreements as a means seek input from the appropriate interested parties.

I also want to be clear that while we aim to reach agreements that balance the interest of all parties, it is not always possible to give everyone exactly what they want. BC provides mandates to our negotiators that must balance many interests. However, creative solutions are most often found when all parties, including stakeholders, are informed and flexible. Again, this underscores the importance of stakeholder engagement.

The Province appreciates the input provided by the committee and looks forward to further engagement with stakeholders in the northeast. Moving forward, please coordinate any future engagement of your MLA committee through my office and we will be happy to hear your feedback and provide you with information on the negotiations occurring in the northeast. As I

mentioned in our telephone conversation, Cam Ehl, Chief of Staff, will regularly check in with you regarding our engagement with the committee.

Sincerely,

John Rustad
Minister

2 Attachments included below:

1. Appendix 1. Guiding Principles for Stakeholder Engagement
2. Appendix 2. Land Selection Criteria

Appendix 1. Guiding Principles for Stakeholder Engagement

1. **Communication:** early and open engagement.
 - a. Communicate early with stakeholders on what the Province is negotiating or engaging in with First Nations, the reason for engagement and the expected benefit to all British Columbians that flows from success within First Nations communities.
 - b. Communicate plans and actions in a way that provides openness to receive and respond to feedback, and to listen to the concerns and expectations of surrounding communities.
 - c. Communicate stakeholder interests at the negotiating table with First Nations to support successful agreement ratification and implementation.
 - d. Put in place mechanisms that support openness with stakeholder groups (e.g. non-disclosure agreements).
2. **Transparency:** clear information and feedback processes.
 - a. Share with stakeholders information that is clear, timely, sufficient and accessible to support meaningful participation in engagement opportunities.
 - b. Clearly state at the outset the specific objectives and expectations about what can and cannot be influenced, the constraints or boundaries within which the Province is operating (i.e. policy, legislation, time, resources), and the level of engagement being asked of stakeholders.
3. **Collaboration:** working cooperatively to seek mutually beneficial outcomes.
 - a. Identify and pursue opportunities for collaboration as part of meaningful engagement that strengthens stakeholder support for what is being negotiated.
 - b. Collaborate with other ministries and agencies for consistent messaging and support for agreements being negotiated.
 - c. Collaborate with First Nations, in advance of sharing information with stakeholders about agreements and invite First Nations to participate in the consultation process.
4. **Inclusiveness:** recognize, understand and involve stakeholders early and throughout the process.
 - a. Make efforts to reach out to third parties to engage in a meaningful way. All parties with a significant interest in the issue should have an opportunity to be involved in the engagement process.
 - b. Make adequate time available for engagement to be effective.

5. ***Integrity:*** conduct engagement in a manner that fosters mutual respect and trust, and establish a realistic understanding of potential outcomes.
 - a. Value and respect the needs and interests of stakeholders and their ability to contribute to the Province's decision-making process.
 - b. Recognize the need for the Province to be responsive to community engagement and to communicate how stakeholder input has been considered.

6. ***Lasting Commitment:*** maintain engagement throughout the negotiation and implementation process.
 - a. Document engagement efforts with stakeholder groups throughout the process to support follow-up and communicating how stakeholder input has been considered.
 - b. Share promising and best practices to inform or improve future engagement and agreement components.

Appendix 2. Land Selection Criteria

This appendix presents general guidelines for land selection as it relates to transfers of Crown land to First Nations. These criteria are presented as guidance only and are subject to the outcomes of negotiations.

1. The land will be subject to a detailed review to identify existing land use conflicts and non-compatible land use factors that define pre-existing encumbrances that would make the land not open for selection.
2. Areas subject to pre-existing uses, e.g. areas with long term leases, approved forestry plans, special use permits, map notations and environmentally restricted zones such as areas prone to flooding or slope failure, will be considered on a case-by-case basis and may be sufficient to preclude selection. The Province is not prepared to expropriate or compensate pre-existing users in order to free up land for the purposes of land settlement.
3. The land to be transferred will be untitled provincial Crown land.
4. The land is not a provincial Park and Protected Area.
5. The land is situated within the traditional territory of the Nation.
6. The land possesses resource values, including forests, that are representative of the overall geography found within the traditional territory of the First Nation.
7. Intended use(s) of the land is consistent with the Land and Resource Management Plan and other land use objectives.
8. Isolated parcels without permanent road access should be avoided. As well, areas associated with river and lake margins, lands subject to flooding and environmentally sensitive areas (e.g. critical wildlife habitat, sensitive soils) should also be avoided.

9. The land should be accessible from a publically maintained highway or industrially maintained Forest Service road. Where residential or commercial use is contemplated, the selection should take advantage of existing infrastructure (e.g. power, phone and other services such as school bus transportation).
10. Parcels involving extensive lakeshore frontage should be avoided where possible. Land selection that effectively denies public or third party access to a lake with high recreational value should be avoided.
11. Land selections that would restrict future or existing access corridors should be avoided.
12. Lands contiguous with other lands held by the First Nation and in the proximity of the First Nation's community are preferable.
13. Lands should be transferred in fee simple and subject to provincial jurisdiction, including municipal jurisdiction if applicable, as of the date of transfer.
14. Parcels meet the criteria for lots that can be surveyed and registered under the Land Title Office.