



**Kaska Dena Council**

**Kaska Dena Treaty  
Negotiations**



**AIP  
NEGOTIATIONS  
PROGRESS  
REPORT**



**July, 2016**



# BUILDING A BETTER FUTURE

## Agreement in Principle Progress Report

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### Introduction

Building a Treaty begins with the negotiation of an Agreement in Principle (AIP). This is a progress report of Kaska Dena AIP chapter negotiations to July, 2016.

We are at stage 4 in the BC Treaty process where we negotiate the chapters in an Agreement in Principle (AIP). The AIP chapters cover three main areas: Lands and Resources, Governance and Financial Matters. We have negotiated 95% of the AIP chapters and are negotiating the remaining outstanding issues.

At the AIP stage we are also negotiating Kaska Dena Owned Lands,<sup>1</sup> the first category of lands in the Kaska Dena Land Model. This is being done in consultation with leadership and community members. The AIP will be considered complete when initialled by the Chief Negotiators, signaling it is ready to be taken to Kaska Dena for approval. The completed AIP will be comprised of three elements:

1. The AIP Chapters;
2. Kaska Dena Owned Lands; and
3. Capital Transfer Fund

The completed AIP will be brought to Kaska Dena for review and approval. If approved, then negotiations will commence for a Final Agreement.

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<sup>1</sup> For information on Kaska Dena Owned Lands and the Kaska Dena Land Model see [\*Treaty Awareness – Achieving Certainty Over Our Lands\*](#), KDC, March 2016

*It is important to remember that the AIP Chapters used to prepare these summaries are **DRAFT** chapters and are still in negotiation. Following is a summary of the key points in each chapter including the differences it would make to our current situation.*

## Draft AIP Chapters

### General Provisions

This is a very important chapter in a Final Agreement. It deals with the general and highly legal aspects of the Treaty, such as Aboriginal Rights and Title and the application of Kaska Dena, federal and provincial laws. After Treaty the *Indian Act* will no longer apply except to determine who is an “Indian”. This chapter says that Kaska Dena will keep Indian Status, and will continue to receive the programs and services provided by Indigenous and Northern Affairs Canada (INAC). Aboriginal rights will continue under the Treaty. Kaska Dena will be eligible for the programs and services that all Canadians are entitled to.





## Lands

The Lands Chapter says that when Treaty comes into effect, we will own Kaska Dena Lands as laid out in an appendix to the Final Agreement in fee simple title. We will have law making powers over land decisions and the ability to designate lands for different uses or protection. We will also own and control all mineral resources and mineral royalties that were owned by the Crown on Kaska Dena Lands.

*Kaska Dena owned and occupied our Traditional Territory for tens of thousands of years before the European settlers came. Currently legal title (legally recognized ownership) of our land is held by Canada and BC. Even our reserve lands do not belong to us. They are owned by Canada (reserved for Indians) and are held “for the use and benefit of” e.g. Kaska Dena Nations. This is unacceptable to Kaska Dena. Our goal is to have 100% management of Kaska Dena Traditional Territory in BC.*

## Lands Title Registration

Once we have private ownership of land we can register our land with the BC Land Registry free of charge. Registered land has higher values and provides certainty.



## Subsurface Resources

In the current situation under the *Indian Act* Kaska Dena do not own any subsurface resources (minerals, oil, gas, etc.) anywhere in our Traditional Territory. We do not own or have any legal claim to any subsurface resources under our Reserves. The Subsurface Chapter says that Kaska Dena will own subsurface resources on Kaska Dena Owned Lands and will have the authority to control and charge fees to anyone who wants to drill or mine on Kaska Dena Owned Lands.

## Forest Resources

Currently, all forest resources in the Kaska Dena Traditional Territory in BC are owned and controlled by British Columbia. This chapter states that after Treaty Kaska Dena will own the timber resources on Kaska Dena Owned Lands and will have law making powers with respect to Forest Resources, Forest Practices, and Range Practices on Kaska Dena Owned Lands. All rights granted by BC to harvest timber on Kaska Dena Owned Lands will cease to be valid on the date the Treaty takes effect. Kaska Dena are negotiating for access to forest tenures (including area based tenures) and will share in the revenue from forestry activities.

## Timber for Domestic Use

This chapter addresses the right of Kaska Dena to harvest timber for domestic uses, free from BC stumpage or other fees, from an agreed upon area within the Kaska Dena Traditional Territory (outside of Kaska Dena Owned Lands), according to a Harvest Agreement.

The Harvest Agreement and the identification of which species apply will be negotiated prior to Effective Date of the Treaty.



## Access

Presently, we don't have a say as to how and where the public can access land in our Traditional Territory. This chapter sets out the ways in which Kaska Dena Government can regulate public access to Kaska Dena Owned Lands and sets out the purposes and conditions under which agents of Canada or BC can access Kaska Dena Owned Lands and the ways in which agents of Kaska Dena Government can access Crown Lands to undertake their duties.

## Crown Corridors

Kaska Dena Roads on Kaska Dena Owned Lands will be the responsibility of Kaska Dena Government. Crown roads will remain the responsibility of Canada or BC. The chapter also sets out how Kaska Dena and BC/Canada will work together in relation to Crown Corridors and Kaska Dena Roads.

## Water

The water chapter deals with both surface water and groundwater, and includes provisions in respect of an allocation of water for Kaska Dena to ensure that we always have enough water not just for personal use but for possible commercial use as well. It also talks about the role of Kaska Dena in water management and protection.



## Migratory Birds

Kaska Dena will have the right to hunt ducks and geese for food throughout Kaska Dena Traditional Territory as we have always done, and will have the rights to trade and barter ducks and geese among ourselves or with other Aboriginal people in Canada. Kaska Dena Government will have management authority and law making rights with respect to migratory birds.

## Parks and Protected Areas

Kaska Dena right to harvest, trap, and gather in Parks and Protected Areas will continue and those rights are protected under this chapter. Kaska Dena will have a role in the planning and establishment of parks outside of Kaska Dena Lands. Proposed Parks or Protected Areas that are on Kaska Dena Owned Lands would require our consent.

## Gathering Plants

While our rights to gather plants for traditional and cultural uses are currently protected under Section 35 of the Canadian Constitution, this Chapter further protects our rights to gather plants for our medicinal, cultural and food uses within the Kaska Dena Traditional Territory in British Columbia.

## Environmental Assessment

Kaska Dena will have guaranteed participation in provincial or federal assessment processes of major projects where Kaska Dena rights or Lands might be affected. No federal or provincial projects, wholly or partially on Kaska Dena lands, will be able to take place without Kaska Dena consent.



## Environmental Protection

The term “Environmental Protection” in this chapter refers to the application of laws, regulations, and standards to protect the environment. Kaska Dena will have law making powers applicable on Kaska Dena Owned Lands to manage, protect, preserve, and conserve the Environment, but Federal or Provincial Law will prevail if there is a conflict with Kaska Dena Law.

## Heritage, Artifacts and Place Names

This chapter provides for Kaska Dena Government authority and involvement in aspects of Kaska Dena culture and heritage including Kaska Dena Heritage Sites, Artifacts, Human Remains, language, place names, and documentary records.

## Collaborative Management

After Treaty, Kaska Dena laws will apply on Kaska Dena Owned Lands, and we will generally be responsible for making decisions about the lands and the resources on Kaska Dena Owned Lands.

For the rest of our Traditional Territory, we are negotiating for a Government to Government Collaborative Management Agreement, which would follow the Kaska Dena Land Model. The Kaska Dena Land Model would result in 100% management of our Traditional Territory: Kaska Dena laws on Kaska Dena Owned Lands, shared decision making on Shared Area Lands, and consent based decisions on Stewardship Lands in the core area of our Traditional Territory. The Collaborative Management Agreement defining how BC and Kaska Dena Government will work together in making decisions will be negotiated during Final Agreement negotiations.

## Kaska Dena Government

Currently, Band Councils operate under the authority of INAC and the Indian Act. All the policies that the Band Councils must follow are made by INAC. Under our own Kaska Dena Government, we will be self-determining and no longer be under the authority of INAC or the Indian Act. We will develop our own Kaska Dena Constitution which will allow us to build our own government structure, make laws, decide on our own rules for elections, and define how our government will operate in British Columbia.

After the Treaty takes effect, Daylu Dena Council, Dease River First Nation and Kwadacha First Nation would no longer be Indian Act Band Councils, they would be First Nation Governments as per the Treaty.

## Eligibility and Enrollment

This Chapter sets out the criteria or requirements one must meet in order to be enrolled under the Kaska Dena Treaty. It does not affect your Canadian Citizenship or the right to be registered as an Indian under the Indian Act.

## Fiscal Relations

BC and Canada will provide funding for agreed-upon programs and services through Fiscal Financing Agreements. Kaska Dena will continue to be eligible for all programs and services available to all “Indians” in Canada and will also be eligible for any program and service available to any citizen of British Columbia.



## Capital Transfer and Negotiation Loan Repayment

As part of the AIP, and ultimately the Final Agreement, Canada will provide cash under what is called a Capital Transfer Fund. The amount of this fund has not been negotiated yet. This payment may be provided as a lump sum on Effective Date or in intervals. The cash payment is not a replacement for core funding, which will continue through Fiscal Financial arrangements.

## Taxation

This chapter sets out the taxation authority of the Kaska Dena Government. Taxation will not come into effect until 8 – 12 years after the Treaty has come into effect.

Kaska Dena will directly benefit from the property, income and sales tax paid by Kaska Dena and anyone else living on Kaska Dena Owned Land. The tax money will be a source of revenue for Kaska Dena government and will be used to improve programs, services and the quality of life for Kaska Dena.

**Example: If the Effective Date of Kaska Dena Treaty is 2021, Sales Tax would come into effect 8 years later (2029) and Income/Property tax 12 years later (2032).**

## Local Government Relations

This chapter deals with the relationship(s) between Kaska Dena Government and BC-based Local Governments, specifically the Regional Districts and the Regional Hospital Districts. It says that Kaska Dena Government does not form part of any Regional District. Kaska Dena Government may enter into agreements with Local Governments with respect to Local or Kaska Dena Government services.

## Indian Act Transition

This chapter describes how Kaska Dena First Nations will be phased-out from being Kaska Dena Indian Act Bands and become Kaska Dena First Nation Governments. All current rights, titles, interests, assets, etc. of the Kaska Dena Indian Act Bands will be transferred to Kaska Dena First Nation Governments. It also sets out the section of the Indian Act that will continue to apply, which is the section on who is an “Indian”. After Treaty, there will still be status cards. It is important to remember that phasing out of the Indian Act does not mean phasing out of program and services funding. (Refer to Fiscal Relations Chapter).





## Approval of the Agreement in Principle

In order to move onto negotiating a Final Agreement, all three parties (Kaska Dena, BC and Canada) must approve the AIP. This chapter sets out what is considered an approval by each party. The AIP is not legally binding, and therefore doesn't have the same approval criteria as the Kaska Dena Treaty does (See Ratification of Kaska Dena Treaty chapter).

If the AIP is approved then Kaska Dena negotiators begin negotiating the Treaty.

## Ratification of the Kaska Dena Treaty

This chapter sets out the process that Kaska Dena, BC and Canada will follow to achieve the Treaty. It establishes voter eligibility criteria and establishes a Ratification Committee which has representatives from Kaska Dena, BC and Canada. The Treaty will not be legally binding until ratified by Kaska Dena, BC and Canada. The Final Treaty needs 50 percent plus one of eligible voters to be formally ratified by Kaska Dena.

## Dispute Resolution

This chapter establishes a process for resolving disputes between Kaska Dena, Canada and BC.

## Implementation

This chapter is to set out a plan to implement the Treaty leading up to and continuing after the Effective Date. The Implementation Plan would be up to 10 years and may be renewed or extended if the Parties agree.

## Amendment

This chapter specifies that any of the three Parties may propose an amendment to the Final Agreement, and lays out a staged process for seeking and acquiring consent of all Parties to the proposed Amendment.

## When is the AIP Considered Complete and Ready for Kaska Dena review?

The AIP will be ready for review by Kaska Dena when:

- AIP chapters have been completed at the Treaty Side Table, and have been thoroughly reviewed by Kaska Dena legal counsel.
- A land (Kaska Dena owned lands) and Capital Transfer offer has been made.
- When this has been initialled by the Chief Negotiators for Kaska Dena Council, Canada and BC the AIP will be considered complete and ready for Kaska Dena review.



If you have further questions or would like more clarification please contact Michelle Miller, the KDC Treaty Coordinator at [kdexecdir@northwestel.net](mailto:kdexecdir@northwestel.net).

Check out the KDC website at [www.kaskadenacouncil.com](http://www.kaskadenacouncil.com).