



Kaska Dena Council

Kaska Dena Treaty
Negotiations

**Building
Treaty
Awareness**



Achieving Certainty
Over Our Land

Volume 2



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Building Treaty Awareness

Achieving Certainty over Our Land

This publication is the second in a series to help Kaska members gain information and understanding about the Kaska Dena Treaty process and the status of our negotiations. The focus of the first publication was *Understanding Treaty and the AIP*, while the focus of this publication is *Achieving Certainty over Our Land*, and provides information on land negotiations in BC as part of the treaty making process. Copies of both publications are available through Kaska Dena Council or may be downloaded from the KDC website: www.kaskadenacouncil.com.

Why are we negotiating?

This is a question that is common to many First Nation peoples in British Columbia who have never ceded or surrendered their lands. However with European settlement, the establishment of Indian Reserves and the introduction of the Indian Act our ability to govern ourselves and manage our lands was taken away.

While Section 35 of the Constitution Act says that aboriginal rights are recognized and affirmed without a treaty, the reality is that without a treaty there is no certainty as to how and where those rights apply. To get certainty we must either prove our title in a court of law, or negotiate a Government to Government



Agreement, such as a treaty. Once we achieve a modern-day treaty we will have legally recognized title to, and governance powers over lands defined in our Treaty. This means we can say what can and cannot take place on Kaska Dena lands, and if we consent to resource or other types of development, we can also benefit economically.

How does the Supreme Court of Canada Tsilhqot'in ruling affect land negotiations?

On June 26th, 2014 the Supreme Court of Canada (SCC) released its decision in *Tsilhqot'in Nation vs British Columbia*. This was historic for Aboriginal people as the Supreme Court ruling provided greater definition of Aboriginal Title.

With the *Tsilhqot'in* ruling, the SCC affirmed that Aboriginal Title can exist over large tracts of land, not just villages or specific sites and that resource development cannot take place on lands where Aboriginal Title is proven without consent of the First Nation that holds the Title. The SCC ruling said that Aboriginal Title includes the rights to:



- ✧ control the land and decide how it will be used;
- ✧ use the land for traditional and modern purposes; and
- ✧ full economic benefit of the lands and resources.

The Supreme Court ruling said that Aboriginal Title can be established through a negotiated agreement (such as Treaty), or by declaration after proving title in court.¹

While it takes a long time to negotiate a treaty, it also takes a long time and great expense to go to court. For example, the Tsilhqot'in court case took 27 years and millions of dollars before there was a court decision. Following the court decision there is still a long period of time where the parties have to address the issues until the court ruling is implemented.

What is the status of Kaska Dena land negotiations in BC?

To negotiate jurisdiction and ownership of land, Kaska Dena negotiators developed a Kaska Dena Land Model to achieve 100% management of Kaska Dena Traditional Territory in British Columbia. This land model was developed to be consistent with the SCC Tsilhqot'in ruling.

The Kaska Dena Land Model was presented to Kaska Dena leadership for their approval, and was then endorsed by the Chief Negotiators for Canada and BC as a process for negotiating Kaska Dena land rights as part of the Treaty.

¹ Tsilhqot'in Nation vs BC, 2014 Supreme Court of Canada, paragraph 90.

Kaska Dena negotiators are in the process of negotiating a land package (lands owned and governed) based on the Kaska Dena Land Model for the purpose of the Agreement in Principle.

What is the Kaska Dena Land Model?

The Kaska Dena Land Model outlines an approach for 100% management of the Kaska Dena Traditional Territory in British Columbia. The Land Model envisions three types of land designation:

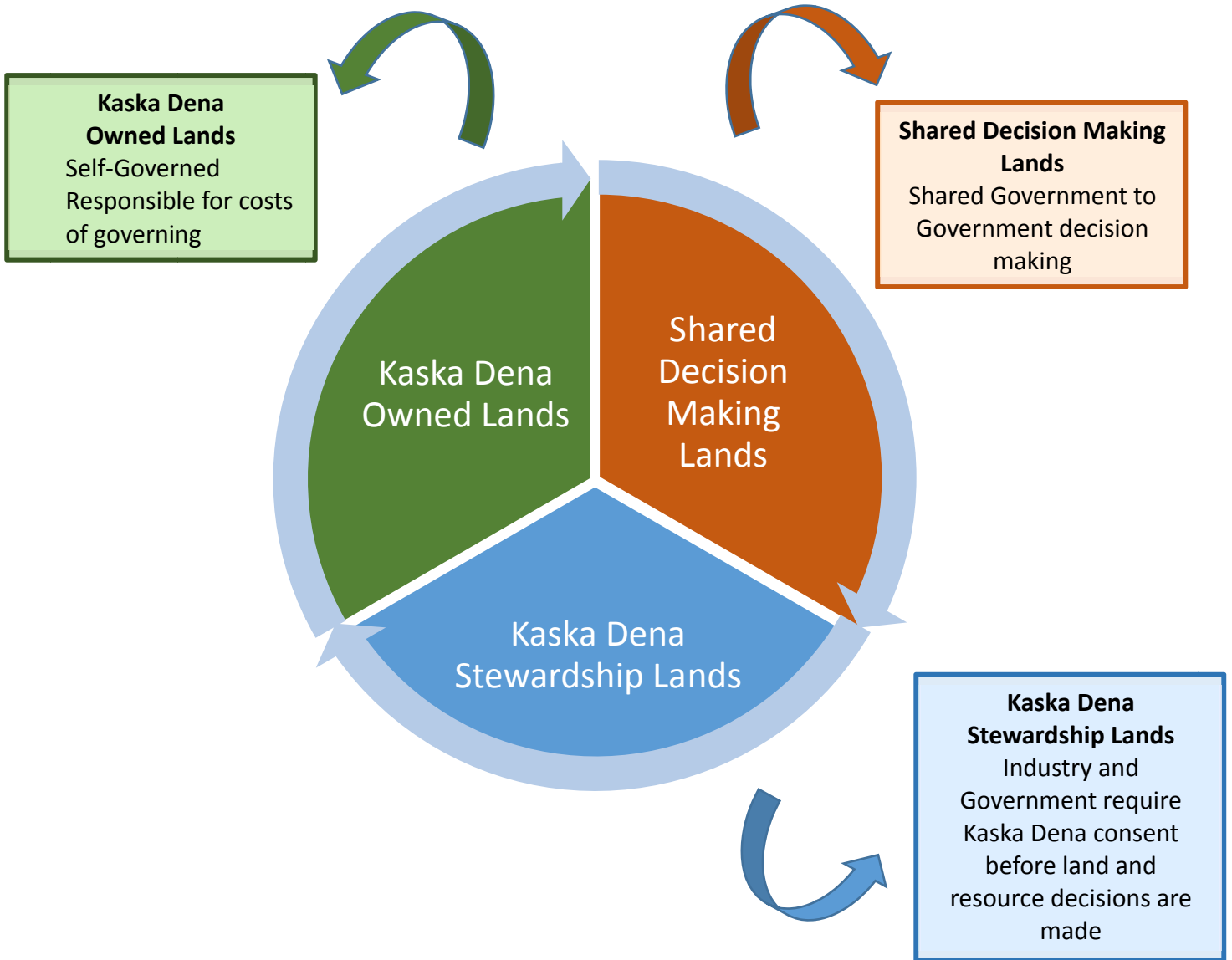
1. Kaska Dena Owned Lands (Kaska Dena lands owned through BC fee simple title on which Kaska Dena laws would apply);
2. Shared Decision Making Lands (such as Kaska Dena currently have with the Strategic Engagement Agreement); and
3. Kaska Dena Stewardship Lands (Lands within the core of the Kaska Dena Traditional Territory. Government and industry would require the consent of Kaska Dena before land and resource decisions are made).

The Kaska Dena Owned Lands will be negotiated at AIP, and the Kaska Dena Shared Area and Stewardship Lands will be negotiated at Final Agreement.





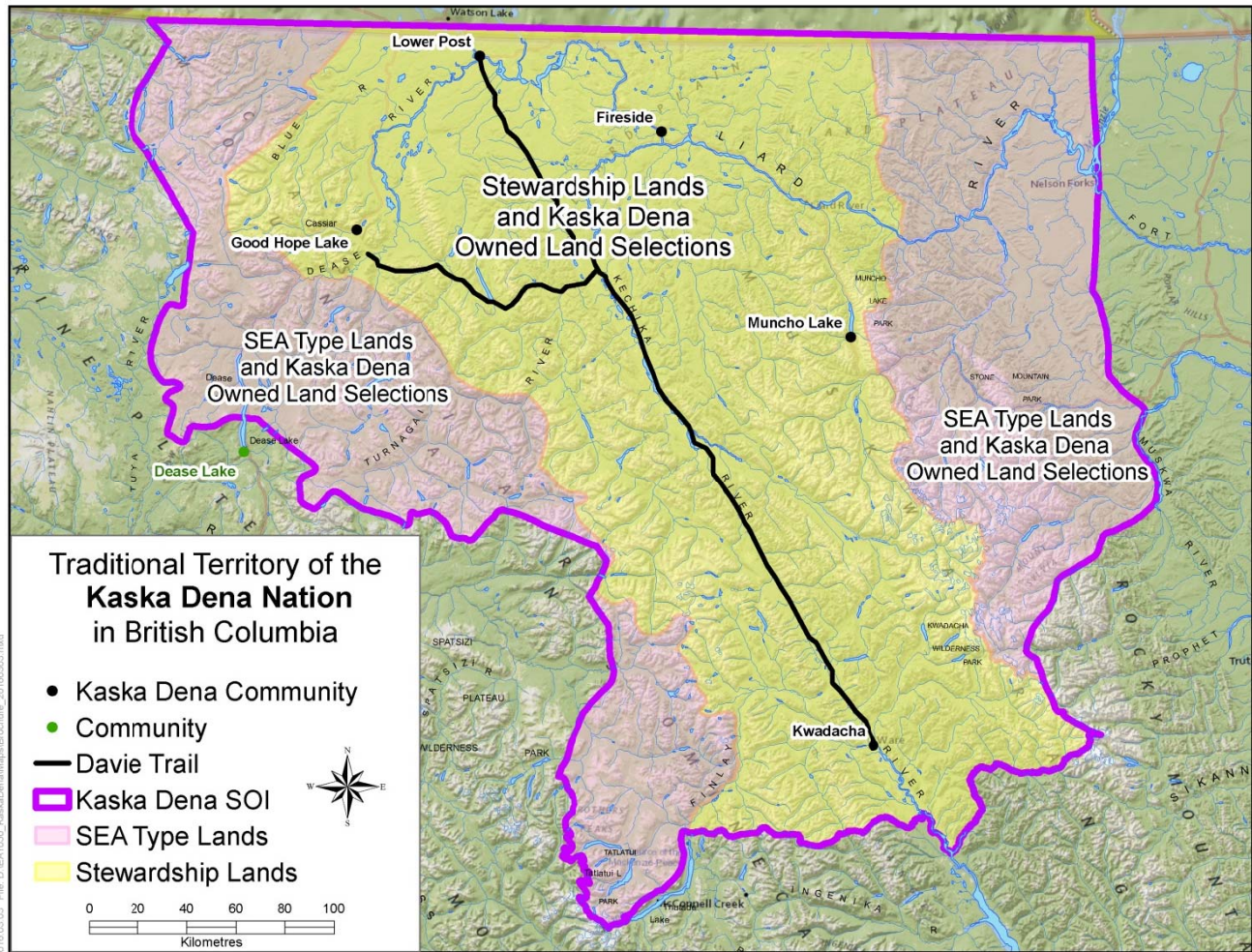
Kaska Dena Land Model 100% Management of Kaska Dena Traditional Territory



Kaska Dena will continue to have the same rights to hunt, fish, gather over entire Traditional Territory after Treaty



Kaska Dena Land Model Applied to Traditional Territory in BC





What are the three types of land designations?

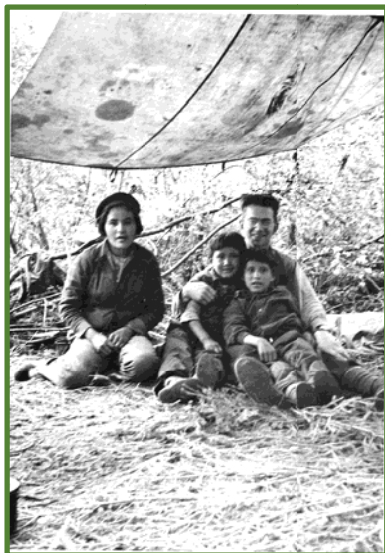
The three types of land designation in the Kaska Dena Land Model for the Kaska Dena Traditional Territory in BC are:

1. Kaska Dena Owned Lands

On Kaska Dena Owned Lands, the Kaska Dena would have the ability to enact and apply their own laws in jurisdictions such as:

- ✧ Taxes (Collection and Payment of);
- ✧ Environmental Management (e.g. Environmental Protection);
- ✧ Roads (Development and Maintenance);
- ✧ Kaska Dena Cultural Heritage Sites (Designation, Protection & Management);
- ✧ Resource Development & Management;
- ✧ Wildlife Management;
- ✧ Forest Management (Including Fires, Insects and Tree Diseases).

Kaska Dena would be responsible for the costs associated with the enactment and application of these Kaska Dena laws.



2. Shared Decision Making Lands

This designation would apply to shared area lands and shared decision making would be similar to what we have in our current Strategic Engagement Agreement:

- ✧ Government to Government shared decision making in an appropriate forum to discuss and make decisions regarding land and resources;
- ✧ Kaska Dena Government responsibility to sit down in a G2G forum to discuss and make decisions regarding land and resources.

3. Kaska Dena Stewardship Lands

Stewardship Lands would lie within the core area of the Kaska Dena Traditional Territory, an area which Kaska Dena believe would meet the Supreme Court of Canada test for Aboriginal Title:

- ✧ Kaska Dena Government responsibility to discuss land and resources in a Government to Government forum;
- ✧ Kaska Dena Government would have to provide consent as to how land and resources are managed. In other words, the BC Government and Industry would require Kaska Dena consent before they could commence any type of development on Kaska Dena Stewardship Lands;
- ✧ Scope of land and resource matters and resource profit and revenue sharing to be negotiated;
- ✧ BC would be responsible for costs of land and resource management and liabilities.



What about our hunting rights?

Kaska Dena will have the same rights to hunt, gather and fish anywhere in the Kaska Dena Traditional Territory.

Hunting rights do not change after treaty.



What are the pros and cons of the Kaska Dena Land Model?

Each of the proposed land designations in the Kaska Dena Land Model has pros and cons for Kaska Dena to consider. The tables below outline some of the pros and cons for each of the proposed land designations:

Kaska Dena Owned Lands

PROS

- ❖ Law making powers over land decisions;
- ❖ Ability to designate lands for different uses or protection;
- ❖ Ownership and control of mineral resources and mineral royalties that were owned by the Crown on Kaska Dena Lands;
- ❖ Ability to designate and protect Kaska Dena cultural heritage sites;
- ❖ Ability to apply restriction of public access.

CONS

- ❖ Kaska Dena Government responsible for the costs of governing and managing Kaska owned lands (These costs are currently paid for by the province of British Columbia through taxes);
- ❖ Responsibilities & costs would include:
 - managing forests on Kaska Dena lands (i.e.: fires, insects and tree diseases);
 - environmental management such as wildfires & reclamation;
 - Road development & maintenance;
- ❖ Liability.

Note: The greater the land owned by Kaska Dena Government, the greater the liability. Kaska Dena must select lands that are affordable and manageable by the Kaska Dena Government.



Kaska Dena Shared Decision Making Lands

PROS

- ✧ Kaska would participate in a Government to Government (G2G) process to make recommendations or decisions with respect to stewardship of the land;
- ✧ Opportunity to benefit economically from resource development on Kaska Dena Stewardship Lands.

CONS

- ✧ Province will have the final decision;
- ✧ Potential costs associated with G2G process.

Kaska Dena Stewardship Lands

PROS

- ✧ Establishment of G2G process for engaging with government re: land and resource decisions on Kaska Dena Stewardship Lands;
- ✧ Land and resource decisions cannot be made on Kaska Dena Stewardship Lands without consent of Kaska Dena;
- ✧ Opportunity to benefit economically from resource development on Kaska Dena Stewardship Lands.

CONS

- ✧ Potential costs associated with G2G process.

What is the process for land negotiations?

Kaska Dena negotiators table priority lands at the Treaty Side Table based on feedback from leaders and community members. Once these priority lands have been tabled, BC will status and review the lands that are to be negotiated by the parties.

BC and Canada will then make a land and cash offer. If the land and cash offer, and the chapters of the AIP are acceptable to the Kaska negotiators, the AIP will be initialled by the Chief Negotiators and brought back to Kaska Dena for review and approval.



If the AIP is approved, then negotiators will begin negotiating the Final Agreement. Negotiations for the Final Agreement will, among other things, address the Shared Decision Making Lands and Kaska Dena Stewardship Lands.

If the Final Agreement is ratified by Kaska Dena members, the Final Agreement will become our Treaty and will be legally binding and protected. The Treaty will give us constitutionally protected jurisdiction over the governance and management of our lands and resources.

What progress has been made to give legal title to Kaska Dena lands?

Through an Incremental Treaty Agreement (ITA), Kaska Dena Council treaty negotiators negotiated the early transfer of 10 parcels of land to Kaska Dena so that we will have legally recognized title (BC fee simple title) to these lands in advance of our Treaty. These lands are intended for economic development, including revenue and jobs for Kaska.

These land parcels are first surveyed by British Columbia and then transferred to a Kaska Dena land corporation. Ten parcels of land were negotiated to be transferred over four years. Three parcels have been transferred to date; Troutline In-take, Troutline Powerhouse and Kwadacha North. The Lower Post Mill Site at five mile has been surveyed and can be transferred by the province if requested to do so. In 2014 Turnagain, and Finbow were surveyed and will be transferred in 2016. Obo Lake, Old Faddy, and Rapid River were surveyed in 2015 and will be transferred in 2017.

A 10th parcel is still outstanding. The initial parcel that was identified for the ITA could not be transferred as it was later determined to be in an area of instability (flood plain). This 10th parcel will be identified for survey and transfer prior to the signing of the AIP.

The following table below lists the ITA Lands that have been negotiated to date:



Kaska Dena ITA Lands

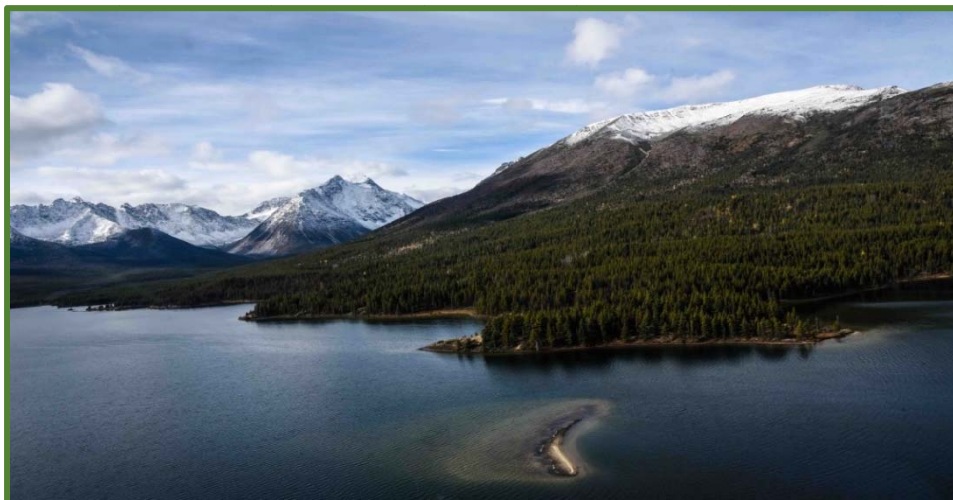
Description	Survey	Potential Use	Transfer
Troutline In-take	2013	Alternative power source	2014
Troutline Powerhouse	2013	Alternative power source	2014
Lower Post Mill (5 Mile)	2013	Forestry	TBD
Kwadacha North	2013	Community expansion	2014
Finbow	2014	Multiple Use	2016
Turnagain	2014	Multiple Use	2016
Rapid River	2015	Tourism	2017
Obo Lake	2015	Tourism	2017
Good Hope Lake New site to be considered	TBD	TBD	2017
Old Faddy	2015	TBD	2017

How are ITA lands being protected and managed?

Each of the BC Kaska Dena Nations will have an ITA Land Corporation to hold and manage their ITA lands. The shareholders are the band members of Daylu Dena Council, Dease River First Nation and Kwadacha Nation. The shares are held in the names of the Chiefs of Dease River First Nation, Kwadacha Nation and the Deputy Chief of Daylu Dena Council on behalf of their members. A fourth Kaska Dena ITA Land Corporation is being set up to hold ITA lands that are held collectively, such as the Turnagain ITA land.

The shareholders agreements stipulate that ITA lands cannot be sold or used as collateral and are to be held for the benefit and enjoyment of future generations. The shareholders agreements also stipulate the type of development that can occur on ITA lands.

Obo Lake





Negotiation of Kaska Land Model - Milestones





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

Check out the KDC website at: <http://www.kaskadenacouncil.com> and attend treaty awareness meetings in your community.