KITSELAS

TREATY INFORMATION SOURCE

Kitselas Trusts

BOOKLET 25 | APRIL 2024

Niit dala'waan

This booklet is a part of a series that will explain topic areas or chapters of the Kitselas Treaty; this booklet focuses on the **Kitselas Trusts**.

The Kitselas Treaty Office hopes to provide a general understanding of what the Treaty will contain and what the Kitselas People and future Kitselas Government will have to do to prepare for the Treaty.

We expect to sign (initial) the full draft Treaty, including Appendixes, in June 2024, marking the end of all negotiations. We anticipate a Treaty vote (ratification) in early 2025.

A Treaty will result in control over our future, true self-governance and freedom from the constraints of the *Indian Act*.

This booklet updates Citizens on Kitselas Trusts.

The Treaty will:

- **recognize Kitselas land title and rights;**
- **return Kitselas to self-government with co-existence of Crown and Kitselas Government and Laws;**
- **unlock economic development opportunities and ensure a true sharing of prosperity;**
- **build a new nation-to-nation, government-to-government relationship; and**
- **revitalize Indigenous languages and cultures.**

Broadly, the offer that Kitselas Members will vote on includes the following:

- **ownership of 95,000 acres (40,000 hectares),**
- **a large financial settlement,**
- **law-making authority over our land, and**
- **certainty.**

Treaty Settlement Funds

After 30 years of treaty negotiations, including revenue sharing and fiscal transfer agreements, Kitselas will receive $139 million as Treaty Settlement Funds from Canada and BC.

This money will compensate Kitselas for our outstanding Land Claims and broken promises under historic laws and agreements.

Tentatively, we are proposing a two-part plan:

1. a treaty benefit distribution (payment) to every Kitselas Citizen on the Effective Date; and
2. investing the remaining funds in trusts to generate significant annual interest for the long-term benefit of the people, community, and Nation.

This plan needs to be solidified in the coming months.
Why the urgency? Your decisions will be included in the Constitution and cannot be changed or altered by future elected representatives.

Community Treaty Payout

On the Effective Date, the tentative plan is to make a one-time treaty benefit payment to every Kitselas Citizen enrolled in the Kitselas Treaty, regardless of where they live. No decisions have been made on the amount. It would probably be between $10,000 and $25,000 for each person, at a total cost of $7 —$18 million. For youth, funds would be held by Kitselas Nation and paid once our youth reach adulthood (the exact age is not yet decided).

Kitselas Elders (65 years old+) will also continue to receive their monthly pension. The Treaty allows us to consider increasing the amount and will provide the ongoing funds to make the pension a permanent offering. Currently, the $2 million of capital or principal set aside for the Elder pension guarantees payments for approximately 20 years.

Trusts Funds

Similar to the Nisga'a and other Treaty nations, monies from the Treaty Settlement Funds will be deposited in trusts to generate annual interest payments, which can be used for the benefit of the people (new or expanded programs), community (major projects like the new Hall), and Nation (land purchase to expand Treaty Settlement Lands).

From the $139 million, we could generate approximately $6 million per year of interest through low-risk investments. These annual interest payments could be available to support the ongoing process of strengthening our people, culture, and communities, including economic development. Trusts, as required by the Kitselas Constitution, will ensure Treaty Settlement Funds support the long-term benefit of the Nation and our people, including future generations of Kitselas Citizens.

Kitselas Trusts 101

What is a Trust?

- A trust is a legal relationship between Kitselas and the organization we appoint to accept the responsibility for following the rules of the trust (the Trustees)
- Trusts are designed to protect and provide long-term benefits for the Nation (the Beneficiary)
- Trustees have legal authority and a legal responsibility (called fiduciary duty) to prudently or conservatively manage trust money or assets for Kitselas' long-term benefit
- Only Kitselas will benefit from any money or other assets held by the Trust
- A Trust Agreement will set out all rules and legal obligations that the Trustee must follow, with serious legal consequences for failure to adhere to the Trust Agreement
- The Legislature (currently Chief and Council) will not be able to spend any of the Treaty Settlement Funds principal or capital (the original $139 million) without a full community referendum (approval vote). The Legislature will be able to use annual interest payments for the benefit of the Community.

What needs to be considered when creating a Trust?

- What is the community's vision?
- Are there any types of investments that Kitselas does not wish to invest in? (e.g. oil)
- What can the interest be used for? Who will be involved in decision-making? How will decisions be made?
- How will the funds benefit our citizens and community?
- How will the Trustee report, be accountable, and engage with the community and elected leadership?
- Kitselas will probably set up several different trusts, with different goals, but all trusts will operate in a similar manner.

The Trust Agreement

The Trust Agreement sets the legal duties and responsibilities of the Trustees or Trust Administrators. At the highest level, the Trust Agreement will instruct or guide Trustees to protect and protect the assets/wealth for future generations of Kitselas Citizens.

The Trust Agreement sets out specific details, such as:

- security and permanence of the trust, regardless of changes in elected leadership or administration;
- professional and knowledgeable handling of the day-to-day administration of the funds;
- strict accountability to the community as outlined in the terms of the trust agreement; and
- access to objective, third-party expertise when competing interests arise within community.

How will we benefit from money held in trusts?

The original Trust Agreement will set out clear rules for the use and distribution of trust funds – both interest and principal.

- Principal or capital withdrawals will require a full community referendum of all eligible voters.
- When we set up Trusts, we can choose to have the interest fund any specific programs, services, or areas we explicitly choose(e.g. our Elder's Pension).
- The Kitselas Legislature would have authority to spend the remaining trust interest on community or Nation priorities; however, care must also be taken to ensure some interest is retained so that the overall value of the trust fund is not reduced by inflation over time.
- The Trust Agreement will also set out different legal rules for both discretionary (Trustee may help decide) or non-discretionary (Trustee must follow instructions) withdrawals.
    - For non-discretionary withdrawals, Trustees must follow the rules set out in Trust Agreement.
    - For discretionary withdrawals, multiple levels of approval and documentation may be required to demonstrate a proper exercise of that discretion. For example, Kitselas might create a Business Development Program to support Kitselas entrepreneurs, but trust interest is only paid out if applications for business development funding are received and approved by a third party, such as the Kitselas Development Corporation.

Who might Kitselas appoint as trustees?

No decisions have been made yet, but it is anticipated that a professional financial organization, such as a bank or trust company will act as the Trustee, given the complex legal requirement that Canadian law places on Trustees to protect the Trust Beneficiary.

It is expected that the Trustee will, in turn, rely on professional financial investors and advice from Kitselas Advisory Committee

Kitselas Trust Advisory Committee

A community Trust Advisory Committee will be established to consult, advise, and provide direction to the Trustee on various items, as laid out in each Trust Agreement itself. Nisga'a has a similar committee that meets twice a year.

This five- or seven-member committee will consist of a majority of Kitselas Citizens, as well as professionals, such as accountants or lawyers, to complete the committee membership.

The community committee members will be selected based on a certain level of financial / investment knowledge.

What are the Trustee(s) Duties?

Trustee duties are far more complex than simply providing investment advice and must include:

- ensuring investments are managed in accordance with the terms of the Trust Agreement to safeguard the investments for the long-term benefit of Kitselas - failure to do this has severe legal and professional consequences for the Trustees;
- confirmation that all (legal) trust requirements have been met before releasing any interest or capital/principal money to the Nation;
- document all requests, applications, decisions, and payouts or disbursements;
- comply with all reporting requirements set out in the Trust Agreement in order to be accountable to the Nation. Standard reporting methods include written quarterly and annual reports, in-person meetings with elected leadership, and regular community meetings;
- consideration of all tax implications of income earned in the trust;
- acting honestly, in good faith, and in the best (long-term) interests of Kitselas;
- avoiding conflicts of interest.

Interested in being a part of the Kitselas Trust Advisory Committee?
Please contact Joan Mason at treaty.engagement@kitselas.com to learn more about this opportunity.

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Stay in touch with the Treaty Team:

Kitselas Treaty Office
4562 Queensway Drive
Terrace, BC V8G 3X6

250-635-8882
info@kitselastreaty.ca
kitselastreaty.ca
Kitselas Treaty Office