

**DEPARTMENT OF ABORIGINAL AFFAIRS AND
NORTHERN DEVELOPMENT**

NOTICE OF REFERENDUM

TAKE NOTICE THAT, on Thursday, July 23, 2015, a vote will be held by secret ballot to determine if a majority of the electors of the Lower Kootenay Indian Band are in favour of:

- the Absolute Surrender, pursuant to sections 38 and 39 of the *Indian Act*, of all rights and interests of any kind to and in Lot 68 of Creston Indian Reserve # 1.

A summary of the main features of the Absolute Surrender and related transactions may be found in the attached Information Document. The form of Absolute Surrender (which may need to be amended depending on negotiations with the Regional District of Central Kootenay or the Province) is attached to this Notice of Referendum as Appendix "A".

Electors are members of the Lower Kootenay Indian Band who are at least 18 years of age on the date of the referendum, which is July 23, 2015.

AND FURTHER TAKE NOTICE THAT the question to be submitted to the electors is as follows:

"As a Voter of the Lower Kootenay Indian Band, do you

- (a) **assent to** absolutely surrender, pursuant to sections 38 and 39 of the *Indian Act*, all rights and interests of any kind to and in all of Lot 68 of Creston Indian Reserve # 1 as shown on Canada Lands Surveys Records Plan 103795 containing about 8.28 hectares; and
- (c) **authorize and direct** present and future Chiefs and Councils of the Lower Kootenay Indian Band to act on behalf of the Lower Kootenay Indian Band and its members, to sign all documents and take all necessary measures as required to give effect to the absolute surrender?"

AND FURTHER TAKE NOTICE THAT the referendum will be held on Thursday, July 23, 2015 and the electors may vote between the hours of 9:00 a.m. and 8:00 p.m., local time, at a polling station located at:

Lower Kootenay Band Administration Complex
830 Simon Road
Creston, British Columbia

AND FURTHER TAKE NOTICE THAT:

1. Electors may vote either by a mail-in ballot or in person at a polling station, **but not both**.
2. A mail-in ballot package (including a Notice of Referendum, mail-in ballot, and information package, including the Settlement Agreement) will be mailed or delivered to electors who reside off reserve and for whom an address has been provided by the Band to the electoral officer.

At the request of an elector who resides on the reserve, the electoral officer will provide the elector with these documents.

3. If a mail-in ballot was mailed, delivered or provided to an elector, the elector may only vote in person at a polling station if:
 - a) the elector returns the mail-in ballot to the electoral officer or deputy electoral officer; or
 - b) where the elector has lost the mail-in ballot, the elector provides the electoral officer or deputy electoral officer with a written affirmation that the elector has lost the mail-in ballot, signed by the elector in the presence of the electoral officer, deputy electoral officer, a justice of the peace, a notary public or a commissioner for oaths.

AND FURTHER TAKE NOTICE THAT an Information Meeting will be held on July 9th, 2015 at the Lower Kootenay Indian Band Gymnasium, 830 Simon Road, Creston BC, at 5 p.m. local time.

AND FURTHER TAKE NOTICE THAT a list of electors is being posted at the same time and at the same location as this Notice of Referendum. Upon request, the electoral officer or deputy electoral officer will confirm whether or not the name of a person is on the list of electors. Any application for a change to the list of electors may be made to the electoral officer at the address listed below.

DATED at Vancouver, British Columbia, this 10th day of June, 2015.



Richard Horne, Electoral Officer
Aboriginal Affairs and Northern Development Canada
600 - 1138 Melville Street
Vancouver, B.C. V6E 4S3
Richard.Horne@aandc.gc.ca
Direct Phone: 604-666-5401

APPENDIX "A" FORM OF ABSOLUTE SURRENDER

ABSOLUTE SURRENDER

WHEREAS:

- A. Creston Indian Reserve No. 1, in the Province of British Columbia, is a reserve within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended (the "*Indian Act*"), and has been set apart for the use and benefit of the Lower Kootenay Indian Band ("LKB");
- B. LKB desires that Lot 68 within Creston Indian Reserve No. 1 be absolutely surrendered under the *Indian Act* to Her Majesty the Queen in right of Canada and her heirs and successors (collectively, "Canada") for transfer to the Regional District of Central Kootenay for future landfill and ancillary uses; and
- C. In accordance with the *Indian Act* this absolute surrender has been assented to by a majority of LKB's electors,

NOW THEREFORE WITNESS THAT, pursuant to the *Indian Act*, LKB hereby absolutely surrenders to Canada all the rights and interests of LKB and its members in the land described as follows:

All of Lot 68 of Creston Indian Reserve No. 1 as shown on Canada Lands Survey Records Plan 103795 containing about 8.28 hectares,

save and except all mines and minerals (to the extent that Canada has any interest in any mines and minerals), whether precious or base, and whether solid, liquid or gaseous, including any coal, petroleum, and any gas or gases, which may be found in, under or upon the lands referred to above

(the "Lands")

TO HAVE AND TO HOLD the Lands unto Canada forever, commencing upon the acceptance of this absolute surrender by the Governor General in Council.

PROVIDED THAT Canada and the Regional District of Central Kootenay conclude a purchase and sale agreement for the Lands on terms acceptable to Canada in its sole discretion including compensation for the transfer of the Lands payable by the Regional District of Central Kootenay to Canada for the benefit of the LKB.

It is acknowledged and declared that the results of the referendum vote are as follows:

The number of Electors entitled to vote _____

The number of Electors who voted _____

The number of Electors who voted in favour _____

The number of Electors who voted against _____

The number of rejected ballots _____

The vote was taken by secret ballot.

IN WITNESS WHEREOF the undersigned Chief and Council of the Lower Kootenay Indian Band have executed this document on behalf of LKB and its members this _____ day of _____.

SIGNED, SEALED AND DELIVERED by the Chief and Council of the **LOWER KOOTENAY INDIAN BAND**

(Printed Name of Chief)

(Printed Name of Councillor) _____
(Signature of Councillor)

(Printed Name of Councillor) _____
(Signature of Councillor)

(Printed Name of Councillor) _____
(Signature of Councillor)

(Printed Name of Councillor) _____
(Signature of Councillor)

in the presence of:

(Signature of Witness as to all signatures)

(Printed Name of Witness)

(Position of Witness)

INFORMATION DOCUMENT

FOR: The members of the Lower Kootenay Indian Band (“LKB”) as represented by its duly elected Council.

FROM: CURTIS WULLUM, DIRECTOR OF DEVELOPMENT SERVICES

DATE: June 10, 2015

REGARDING:

The Creston Landfill Settlement

“Absolute Surrender of Lot 68 of Creston IR #1”

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1. INTRODUCTION

The Regional District of Central Kootenay (RDCK) operates a solid waste landfill and resource recovery facility for the benefit of the residents of the RDCK Electoral Areas A, B, C, the Town of Creston and the Lower Kootenay Indian Band. The landfill is located on Provincial Crown land adjacent to and upslope of Creston IR#1 (see attached map in Appendix A and CLSR Plan 103795 of Lot 68). It is operated by the RDCK under a License of Occupation.

A Phase 2 Environmental Site Assessment conducted in 1999 and subsequent environmental investigations identified some surface and groundwater contamination of Lot 68. A contaminated groundwater plume also extends west across Highway 21. However, recent testing indicates the overall contamination situation is improving. Lot 68 is directly adjacent to the landfill which curtails any future uses of Lot 68 for band purposes in the foreseeable future.

In December 2010, following approximately 15 years of discussions regarding the Creston Landfill, the BC Government began to facilitate a multi-party interest based discussion to assist the parties in developing a solution that would address the interests of all the parties. Following 18 months of focused, respectful and collaborative discussions, a multi-faceted, multi-phased solution that will secure the long term operation of the Creston Landfill was developed.

The following parties with interests in the outcome of these discussions have all been involved in the development of the proposed solution:

- a) Regional District of Central Kootenay,
- b) East Kootenay Waste Management Committee,
- c) Town of Creston,
- d) Lower Kootenay Indian Band,
- e) Ktunaxa Nation Council,
- f) Ministry of Environment,
- g) BC Ministry of Forests, Lands and Natural Resource Operations,
- h) BC Ministry of Aboriginal Relations and Reconciliation, and
- f) Aboriginal Affairs and Northern Development Canada.

All of the parties participating in the development of the proposed solution agree that the entire footprint of the landfill should be held by the operator under a single ownership. The landfill footprint includes the landfilling area and all surrounding buffer areas. The RDCK is the permitted operator of the landfill. An engineering study has been prepared for the RDCK that shows how continued operation on the current landfill site could be significantly extended and the environmental impacts reduced. The RDCK

has confirmed that Lot 68 will operate as a “buffer zone” for the existing landfill. In order to achieve the long-term, environmentally sound and economically efficient management of the landfill, the RDCK needs to acquire ownership of:

- (a) **Lot 68 of Creston IR#1** having an area of about **8.28 hectares** (about 20.46 acres) as shown on CLSR Plan 103795 and downslope of the landfill as per the attached map in Appendix B and hereinafter known as the “Lands”;

and

- (b) BC Crown land parcels (shown as “B”, “C” and “D”) surrounding the remaining perimeter of the landfill as per the attached map in Appendix A.

The LKB Chief and Council must hold a referendum under the *Indian Act* to get approval for the Absolute Surrender and to request Aboriginal and Northern Development Canada (AANDC) to authorize the sale and eventual transfer of the Lands to the RDCK.

The date of the referendum is set for Thursday, July 23, 2015.

The electoral officer for the referendum is Richard Horne or an alternate electoral officer from AANDC. His contact information is Richard.Horne@aandc.gc.ca or 604.666.5401.

2. SURRENDER AND SALE OF LOT 68:

1. RDCK has provided LKB with a Letter of Offer dated September 18, 2014 (please see www.lowerkootenay.com/referendum) to purchase the Lands that are adjacent and down slope of the Creston landfill. Canada as the ultimate landowner will also need to enter into an agreement with RDCK to transfer Lot 68.
2. The Lands have been appraised by an independent land appraiser to determine the Fair Market Value. The appraiser was agreed to by the Regional District and the LKB Chief and Council.
3. Based on the independent appraisal, the RDCK has offered the greater of \$300,000 or \$ 33,700/hectare which is considered current Fair Market Value.
4. In addition to Fair Market Value for the Lands the RDCK has offered to provide up to an additional \$300,000 to sponsor the activities of a joint LKB - RDCK Economic Development Committee to examine and expand opportunities for LKB's community economic initiatives.

3. The Ktunaxa Incremental Treaty Agreements

The BC Provincial Government has offered 176 hectares of Crown Land located at Burden's Cut and LaFrance Creek on Kootenay Lake through an Incremental Treaty Agreement (ITA) signed by the Province on October 9, 2014. The transfer will provide for the fee simple ownership of the combined 176 hectares to a band corporation wholly owned by LKB. This corporation will own the lands in fee simple until the effective date of the treaty with the Ktunaxa Nation, at which time the lands will become Ktunaxa Lands. In the event that a treaty is never signed, the Lands will remain fee simple lands held by the LKB Band Corporation. The ITA is currently signed by the Ktunaxa Nation Council Society, on its own behalf and on behalf of the Ktunaxa Nation, St. Mary's Indian Band, Tobacco Plains Indian Band, Lower Kootenay Indian Band and ?Akisq'nuk First Nation.

In addition to several other conditions precedent in the ITA section 5.2, section 5.2 (d) states that payment and transfer of the ITA land will occur once the LKB membership has voted in favour of the Absolute Surrender of the Lands and Canada has accepted the Lower Kootenay Band's Absolute Surrender by way of Order in Council.

4. VOTING PROCESS

A vote will be held to determine if a majority of the electors of the Lower Kootenay Indian Band are in favour of the Absolute Surrender of Lot 68 of Creston IR #1.

The vote will be held in accordance with the requirements of the Indian Act and the Indian Referendum Regulations. Both on-reserve and off-reserve members of the Lower Kootenay Indian Band will be given an opportunity to vote.

Prior to the vote, this Information Document will be circulated to the electors of the LKB, and at least one information meeting will be held to give LKB members as much information as possible about the Settlement Agreement, and the Absolute Surrender of Lot 68 of Creston IR #1.

Richard Horne or another employee of Aboriginal and Northern Development Canada will act as the electoral officer and oversee the vote.

The Absolute Surrender can only be done by holding a referendum vote. A "majority of a majority" vote is required. That is, a majority of those eligible voting members must vote and a majority of those must vote yes to authorize Canada and Chief and Council to proceed with the Absolute Surrender of Lot 68.

If less than a majority of eligible voters vote but a majority of those voters vote in favour of the revocations, the Minister may call a second vote. At this second referendum only

a simple majority of eligible voters that voted is required to authorize the Absolute Surrender.

5. SUMMARY OF DOCUMENTS

All documents are available for review by contacting Curtis Wullum at 250-428-6394 or Norm Allard, Community Planner at the LKB Administration Office during regular office hours.

Alternatively you may download this document or view all the documents from the Lower Kootenay Website at the link below: www.lowerkootenay.com/referendum;

1. RDCK Letter of Offer dated September 18, 2014;
2. Ktunaxa Nation Council Society/LKB Incremental Treaty Agreement;
3. PDF of ITA Community Presentation;
4. Appraisal of Lot 68 on Creston IR #1; and
5. Notice of Referendum and attached Form of Absolute Surrender (which may need to be amended depending on negotiations with the RDCK or Province).

Appendix A, Lot 68 Creston IR No. 1

Lower Kootenay Band
27/05/2015



