

REVOCATION OF 1934 DESIGNATION FOR LEASING AND DESIGNATION FOR LEASING

BACKGROUND:

- A. Lower Kootenay Indian Reserve No. 1C (the "Reserve") in the Province of British Columbia is a reserve within the meaning of the *Indian Act* and has been set apart by Her Majesty the Queen in right of Canada ("Canada", which definition includes those Ministers and officials acting under their statutory or delegated powers), for the use and benefit of the Lower Kootenay Band ("Lower Kootenay"), a band within the meaning of the *Indian Act*.
- B. By instrument of surrender that is not absolute, dated September 5, 1934, a copy of which is attached hereto as Schedule "A", (the "1934 Designation"), Lower Kootenay surrendered for leasing the following lands:
- All those parcels of land and land covered by water in the West division of Kootenay Land District, in the Province of British Columbia, containing together nineteen hundred and twenty acres, more or less, being composed of:
- Firstly: All that portion of the Reserve surveyed as Lot 9999, Group 1, which lies north and east of the right bank of the Kootenay River.
- Secondly: All of Lower Kootenay Indian Reserve No. 2 surveyed as Lot 10000, Group 1.
- Thirdly: All of Lower Kootenay Indian Reserve No. 3, surveyed as Lot 10001, Group 1.
- Fourthly: All that portion of Lower Kootenay Indian Reserve No. 5, surveyed as Lot 10003, Group 1, which lies south of a line drawn east and west approximately 12 chains south of the north boundary of Section 32, Township 8.
- C. The accepting Order in Council for the 1934 Designation cannot be located. However, there are no existing interests, legal or equitable, vested or contingent, now in existence that were granted pursuant to the 1934 Designation. Lower Kootenay wants to revoke the 1934 Designation and designate certain lands in the Reserve to Canada for the purposes set out in this document (the "Designation").
- D. By Resolution dated June 28, 2019, Lower Kootenay's Band Council ("Council") requested that a referendum to determine if the majority of Lower Kootenay's electors voting at the referendum are in favour of revoking the 1934 Designation and assenting to the proposed Designation.
- E. The Minister of Indigenous Services ordered a referendum under section 3(1) of the *Indian Referendum Regulations* on September 4, 2019, to determine if the majority of Lower Kootenay's electors voting at the referendum are in favour of revoking the 1934

Designation and the proposed Designation.

- F. On October 23, 2019, a majority of Lower Kootenay's electors voting at the referendum assented to the revocation of the 1934 Designation and this Designation in accordance with the *Indian Act* and the *Indian Referendum Regulations*.

REVOCAION OF THE 1934 DESIGNATION

1. Lower Kootenay hereby revokes the 1934 Designation.

TERMS OF THE DESIGNATION:

Lands Being Designated

2. Under Subsection 38(2) of the *Indian Act*, Lower Kootenay hereby designates by way of surrender that is not absolute, to Canada, all of the rights and interests of Lower Kootenay and its members required to carry out the purposes of this Designation in those parts of the Reserve described as follows:

In the Province of British Columbia
In Kootenay District, District Lot 9999
In Lower Kootenay Indian Reserve No. 1C

All of Lot 2 for Designation Vote as shown on Plan of Survey 107658 deposited in the Canada Lands Surveys Records, Ottawa, Ontario, containing approximately 2.55 hectares (6.301 acres)

(the "Designated Lands").

3. The Designated Lands exclude all mines and minerals, whether precious or base, solid, liquid or gaseous.
4. The Designated Lands are subject to all third party encumbrances on them at the date of this Designation.

Duration of Designation and Leases

5. This Designation will start on the date that the Minister of Indigenous Services accepts it and will continue for a term of 99 years.
6. The term of any lease or other interest granted or issued under this Designation will end at least one day before the end of the Designation.

Projects on the Designated Lands

7. Any portion of the Designated Lands may be leased by Canada for:

- (a) a residential based healing and treatment centre and a single family residence (the “Approved Projects”); or
- (b) other institutional, residential, commercial, retail and light industrial purposes (“Future Development Proposals”),

and on terms consistent with this Designation. Any such lease may allow assignments, subleases, and mortgages and may be used as security to obtain financing and to secure other obligations related to the Designated Lands or otherwise.

- 8. Canada may grant or issue easements, permits, rights-of-way, licences of occupation, or other interests that may be necessary for, or in aid of, the primary purposes of any lease or of any uses of the Reserve adjacent to the Designated Lands.
- 9. Canada may enter into any commercially reasonable agreements in aid of the primary purposes of any lease.
- 10. The terms and conditions of any lease, interest, or agreement granted, issued, entered into, or amended by Canada under this Designation require the consent of Council by way of resolution.
- 11. Any resolution given to Canada from Council under this Designation constitutes conclusive evidence to Canada that the resolution is valid and the information contained in it is true.

Rent

- 12. An appraisal of the Designated Lands was prepared by E.K. Appraisals and dated September 21, 2018. It appraised the fair market value of the Designated Lands at \$385,000 for the entire term of the lease.
- 13. Appraisals of the portions of the Designated Lands to be used for Future Development Proposals have not yet been conducted. Those portions will be valued when more specific projects are identified and information about value will be provided to Lower Kootenay electors at that time.
- 14. All leases of the Designated Lands must be at fair market rent, except that any lease to a corporation, limited partnership, or other entity 100% beneficially owned by Lower Kootenay (a “Nation Entity”) may be for less than fair market rent. For any lease, rent can either be fully prepaid, paid annually, or paid by some other method acceptable to Canada and Council.
- 15. Under a lease to a Nation Entity for less than fair market rent, the Nation Entity and not Canada must ensure that any subleases are for fair market rent.

Acknowledgments of the First Nation

16. Lower Kootenay acknowledges and agrees that, under a lease to a Nation Entity, the following are some of the risks involved:
- (a) Sublease revenues will be paid directly to the Nation Entity and Canada will not monitor subleases, ensure that sublease rents to a Nation Entity are at fair market value, or receive sublease rent revenues on Lower Kootenay's behalf.
 - (b) For leases at less than fair market rent, the amount of money that is the difference between what could have been received under the lease (that is, the fair market rent) and what will be received under the lease (which is usually a "nominal rent", which is essentially zero) will not be paid to Canada and administered under the *Indian Act* but will instead be managed by the Nation Entity.
 - (c) Although the Nation Entity is to be beneficially owned by Lower Kootenay, a Nation Entity is a separate entity from Lower Kootenay and has different legal rights and obligations, such as (but not limited to) the following:
 - (i) For activities on the Designated Lands, a Nation Entity may be a taxable entity, while Lower Kootenay is not.
 - (ii) A Nation Entity will have overhead expenses, such as salaries to its employees, directors, and officers, which may reduce the amount of money available for distribution as profits or for use on other company projects.
 - (iii) If a Nation Entity gives security (such as a mortgage) and does not make the required payments, then a lender could possibly appoint an entity or a person who is not a member of Lower Kootenay to manage the Nation Entity for debts owed and could possibly seize and sell the Nation Entity's assets (including its interest in any leases and subleases).
 - (iv) Lower Kootenay members have a right under the *Indian Act* to elect Council but may not have a similar right to elect directors of a Nation Entity.
 - (v) Canada does not ensure the proper operation of a Nation Entity and, as in any business, the Nation Entity's operations carry risk. There is a risk that part or all of the benefit of a less than fair market rent lease may be lost through the business activities of the Nation Entity and any anticipated profits may not flow through to Lower Kootenay.
 - (vi) Canada will not monitor, and is not responsible for the administration of, the Nation Entity, including but not limited to any collection, distribution, or use of monies earned, held, or used by a Nation Entity or any trust associated with a Nation Entity.

- (vii) Canada has not reviewed or approved any trust agreements or business structure of or related to any Nation Entity.
- (d) Lower Kootenay has relied on its own independent legal and financial advisors. It has not relied upon Canada in the formation of the Nation Entity and any trust, and will continue to rely on its own legal and financial advisors and not Canada in the administration of any Nation Entity and any trust.

Deposit of Rent and Fees

17. All payments made to Canada under any lease or other interest granted or issued under this Designation will be credited to Lower Kootenay as Indian moneys, except for any payments that are reimbursements of moneys spent by Canada, Canada's administrative fees identified in the lease or interest, or other similar payments.

Further Ratification Required for Leases for Future Development Proposals

18. The following terms apply to leases that include Future Development Proposals:
- (a) If Canada is requested to execute a lease for a specific project or a specific and limited use (in the reasonable opinion of Canada), then, before Canada executes the lease, Council must deliver a resolution to Canada declaring that Lower Kootenay's electors have approved, by a vote conducted in accordance with subparagraph (f), the rent payable, the term of the proposed lease, the portion of the Designated Lands to be leased, and the project or purpose for which such lands will be leased.
 - (b) If Canada is requested to execute a lease where the Future Development Proposals are not considered to be specific projects or specific and limited uses (in the reasonable opinion of Canada), then the lease must contain the following requirements:
 - (i) Before any works can be constructed under the lease on any of the Designated Lands relating to the Future Development Proposals, Council must deliver a resolution to Canada declaring that Lower Kootenay's electors have approved, under a vote conducted in accordance with subparagraph (f), a specific project or specific and limited use (in the reasonable opinion of Canada) to be developed, the portion of the Designated Lands to be constructed upon, and the rent attributable to that portion of the Designated Lands.
 - (ii) Before a sublease of the Designated Lands relating to the Future Development Proposals can be granted under the lease, Council must deliver a resolution to Canada declaring that Lower Kootenay's electors have approved, under a vote conducted under subparagraph (f), a proposal for a specific project or a specific and limited use (in the reasonable opinion of Canada) to be developed, the portion of the Designated Lands

to be subleased, the rent payable (except with respect to a sublease that is derived from a lease where fair market rent is payable), and the term.

- (c) If Canada is requested to amend a lease granted under this Designation that reduces the rent payable, increases the term, increases the area of Designated Lands to be leased, or changes the project or the purposes for which such lands are to be leased, then, before Canada amends the lease, Council must deliver a resolution to Canada declaring that Lower Kootenay's electors have approved the amendment under a vote conducted in accordance with subparagraph (f).
- (d) If a sublease is granted under the process set out in subparagraph (b) and an amendment proposes to increase the term of the sublease, increase the area of the Designated Lands to be leased under the sublease, or change the project or the purposes for which such lands are subleased, then, for that amendment to be valid, Council must first deliver a resolution to Canada declaring that Lower Kootenay's electors have approved the amendment under a vote conducted in accordance with subparagraph (f).
- (e) For the purposes of voting on rent under subparagraphs (a) to (c) (except with respect to a sublease that is derived from a lease where fair market rent is payable), Council must provide <Lower Kootenay>'s electors with reasonable evidence of the fair market value of the particular portion of the Designated Lands and, in the case of rent payable that is less than fair market value, the information set out in paragraph 16 and Council's reasons for wanting less than fair market rent.
- (f) To obtain the informed consent of Lower Kootenay, any vote of Lower Kootenay's electors required under this Designation is to be called and conducted by Council, which will establish and enforce the rules and procedures for the vote and any appeals arising from the vote, subject to the following requirements:
 - (i) The vote must include both on and off-reserve electors, who must be provided with an information package about the proposed specific project or specific and limited use, as the case may be, and, in the case of off-reserve electors, a mail-in ballot (and a postage-paid return envelope for the ballot) capable of being returned without identifying the elector and within time for the vote, or such other method of voting consistent with methods allowed by the *Indian Referendum Regulations*.
 - (ii) The vote is conclusively deemed to be successful if 50% plus 1 of the eligible votes cast are in favour of the proposal or question to be voted upon.

Revocation of Designation

19. To the extent that Lower Kootenay needs to indicate its wish to revoke this Designation from any or all of the Designated Lands, Council may make such indication, by way of

resolution, if there are no existing rights or interests issued under this Designation on such Designated Lands.

Amendment of Designation

20. Council may request, by way of resolution, an amendment of this Designation to correct a typographical or manifest error, but, if there are any rights or interests existing under this Designation, then, either the rights or interests must not be affected by the amendment, or the holders of the rights or interests must have agreed to the amendment.

Recommendation of Designation

21. Under section 39.1 of the *Indian Act*, Council hereby recommends to the Minister of Indigenous Services the acceptance of this Designation.

This Designation is executed on _____, 2019.

SIGNED AND DELIVERED BY
Lower Kootenay's Chief and Council
at a duly convened meeting in the
presence of:

)
)
)
)
)

Chief

)
)
)
)
)

(Signature of Witness as to all
signatures)

Councillor

)
)
)

(Name of Witness)

Councillor

)
)
)

(Position / title)

Councillor

)
)
)

Councillor

)

)
)
)

Councillor

Know all Men by these Presents

THAT WE, the undersigned Chief and Principal men of

The Lower Kootenay Band of Indians

resident on our Reserve

in the Province of
 _____ British Columbia _____ and Dominion of Canada,
 for and acting on behalf of the whole people of our said Band in Council
 assembled, Do hereby release, resign, surrender, quit claim and yield up unto
 our Sovereign Lord the King, his Heirs and Successors forever, ~~the certain~~
~~SEVERAL~~ ~~the certain parcel or parcels of land and premises, situate, lying~~
~~and being in the~~
 in the County of _____ and Province
 of _____ containing by admeasurement
 the above named or lands being composed of

All those parcels of land and land covered by
 water in the West division of Kootenay Land District,
 in the Province of British Columbia, containing
 together nineteen hundred and twenty acres, more or
 less, being composed of
Firstly: All that portion of Lower Kootenay Indian
 Reserve No. 12, surveyed as Lot 9999, Group 1, which
 lies north and east of the right bank of the Kootenay
 River.
Secondly: All of Lower Kootenay Indian Reserve No. 2,
 surveyed as Lot 10000, Group 1.
Thirdly: All of Lower Kootenay Indian Reserve No. 3,
 surveyed as Lot 10001, Group 1.
Fourthly: All that portion of Lower Kootenay Indian
 Reserve No. 5, surveyed as Lot 10003, Group 1, which
 lies south of a line drawn east and west approximately
 12 chains south of the north boundary of Section 32,
 Township 6.

TO HAVE AND TO HOLD the same unto His said Majesty Our King,
his Heirs and Successors forever, in trust to Lease _____

the same to such person or persons, and upon such terms as the Government of
the Dominion of Canada may deem most conducive to our Welfare and that of
our people

AND upon the further condition that all moneys received from the
_____ leasing _____ thereof, shall, ~~after deducting~~
~~the usual proportion for expenses of management~~ be paid to us, in
the usual manner.

AND WE, the said Chief and Principal men of the said

Lower Kootenay Band of Indians _____ do
on behalf of our people and for ourselves, hereby ratify and confirm, and
promise to ratify and confirm, whatever the said Government may do, or cause
to be lawfully done, in connection with the leasing of the said land
and the disposition of the moneys derived therefrom.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed our seals this 5th day of September in the year of our Lord one thousand nine hundred and thirty-four.

Signed, Sealed and Delivered,

IN THE PRESENCE OF

W. C. Gorman
S. J. Gorman
H. C. M. Gorman

J. S. Ryckman
Judicial Agent.

Bill his
X
mark

Luca his
X
mark

Thomas Swanson his
X
mark

his Alexander his
X
mark

John Alexander his
X
mark

Nicholas his
X
mark

Nicholas Francis his
X
mark

Luca Sam his
X
mark

Joseph Dominick

Frank Powell

Sam Bly Lopez

John George



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Dominion of Canada

PERSONALLY APPEARED BEFORE ME

Province of British Columbia | J. S. Ryckman
 County of Kootenay | of the City of Vancouver
 To Wit: | in the Province of British Columbia
 and Geo. Alexander, Thomas Swanson, Luke Sam and Sam Pille Luke
 Principal men
 Chiefs of the Kootenay Band of Indians

And the said J. S. Ryckman
 for himself saith—

That the annexed release or surrender was assented to by a majority of the male members of the said band of Indians of the full age of twenty-one years entitled to vote, all of whom were present at the meeting or council.

That such assent was given at the meeting or council of the said Band summoned for that purpose and according to its rules or the rules of the Department.

That the terms of the said surrender were interpreted to the Indians by an interpreter qualified to interpret from the English language to the language of the Indians.

That he was present at such meeting or council and heard such assent given.

That he was duly authorized to attend such council or meeting by the Deputy Superintendent General of Indian Affairs.

That no Indian was present or voted at such council or meeting who was not a member of the band or interested in the land mentioned in the said release or surrender.

And the said Geo. Alexander, Thomas Swanson,
Luke Sam and Sam Pille Luke
 Chiefs of the Kootenay Band of Indians

say: That the annexed release or surrender was assented to by them and a majority of the male members of the said band of Indians of the full age of twenty-one years.

That such assent was given at a meeting or council of the said band of Indians summoned for that purpose as hereinbefore stated, and held in the presence of the said

J. S. Ryckman
 Deputy Superintendent General

That no Indian was present or voted at such council or meeting who was not a habitual resident on the reserve of the said band of Indians and interested in the land mentioned in the said release or surrender.

That the terms of the said surrender were interpreted to the Indians by an interpreter qualified to interpret from the English language to the language of the Indians.

That they are Principal men
 of the said band of Indians and entitled to vote at the said meeting or council.

Sworn before me by the deponents |
 at the City of Vancouver |
 in the County of Kootenay |
 this 5 day of Sept |
 A.D. 1917 |
 W. H. Crawford

J. S. Ryckman his
Geo. Alexander X
Thomas Swanson X
Luke Sam X
Sam Luke X

Form No. 55

A Notary Public is named from the Province of B.C.

N. 36195-6-1A

THE LOWER KODJERAS
PART OF INDIANS

-to-

THE KING.

S U R R E N D E R

-of-

DOWNY KALIBING INDIAN POWERS

NOV. 10, 2, 3 AND 5,

KALIBING TOWN DISTRICT, B. C.

COMPLETE LIST OF VOTERS

6

Lower Kootenay Band, Province of British Columbia

Surrender submitted September 5, 1924.

Departmental File No. 26,155-B-1A.

NAME	PRESENT	ABSENT	FOR	AGAINST
Abell,	yes		yes	
Thomas Swanson,	yes		yes	
Ernest Basil,		yes		
Joseph Dominic,	yes		yes	
John Alexander,	yes		yes	
Leo Alexander,	yes		yes	
Frank Basil,	yes		yes	
Nicholas,	yes		yes	
Luke,	yes		yes	
Pascal,		yes		
Luke Sam,	yes		yes	
Louis Paul White,		yes		
Nicholas Francis,	yes		yes	
Johnny Pierre,		yes		
Lazarus Louis,		yes		
Sam Pierre Lake,	yes		yes	
Edward Pascal,		yes		
John George,	yes		yes	
Louis Ernest,		yes		
Summary				

Certified Correct *J. S. Ryck* Indian Agent

September 5, 1924

IMPORTANT NOTICE

This document is carefully filled in and certified by Agent and approved by superintendent. Returns to (in all) surrender agents and 1918. Procedure to be followed in taking surrenders is explained fully in circular of instructions attached. The instructions must be every detail be followed carefully.

DEPARTMENT OF INDIAN AFFAIRS

Ottawa, 19.....

DUNCAN C. SCOTT

Deputy Superintendent General of Indian Affairs

COMPLETE LIST OF VOTERS

Lower Kootenay

British Columbia

Band, Province of

Surrender submitted

September 5, 1924

19

Departmental File No.

76,755-2/23

NAME	PRESENT	AGENT	FOR	AGAINST
Abell,	yes		yes	
Thomas Swanson,	yes		yes	
Ernest Basil,		yes		
Joseph Demitio,	yes		yes	
John Alexander,	yes		yes	
Leo Alexander,	yes		yes	
Frank Basil,	yes		yes	
Nicholas,	yes		yes	
Erke,	yes		yes	
Basnal,		yes		
Erke Sen,	yes		yes	
Louis Paul White,		yes		
Nicholas Francis,	yes		yes	
Johnny Pierre,		yes		
Lazarus Louis,		yes		
Sam Pierre Erke,	yes		yes	
Edward Pansel,		yes		
John George,	yes		yes	
Louis Ernest,		yes		
(The original list of names)	Summary			

Certified Correct *J.S. Richardson* Indian Agent

September 5, 1924

IMPORTANT NOTICE

This form must be carefully filled out and verified by Agent and returned as a signed document. Failure to do so will render the return null and void. Procedures to be followed in taking surrenders is explained fully in circulars of Indian Affairs. These instructions MUST in every detail be followed carefully.

DEPARTMENT OF INDIAN AFFAIRS

DUNCAN C. SCOTT

Ottawa, September 19, 1924

Deputy Superintendent General of Indian Affairs

Department of Indian Affairs & Northern Development

INSTRUMENT NO:

16812

[Signature]

I CERTIFY THAT THE WITHIN INSTRUMENT IS FULLY ENTERED AND REGISTERED IN THE LAND REGISTRY, INDIAN AFFAIRS BRANCH, DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, AT OTTAWA.

AT 9:43 O'CLOCK A.M. OF THE

13 DAY OF 21

AND 22 MONTHS 1982

FOR SIGNATURE AND SEAL IN NO. 16-8-3-5

IN THE PROVINCE OF

[Signature]
AUTHORIZED OFFICER

Land Registry

REGISTRATION AND CHIEF REGISTRARS