

WHAT WILL CHANGE WITH LAND CLAIMS?

In May 2005, Carcross/Tagish people will be voting on their historic land claim agreements.

Many C/TFN voters are wondering what will change if the C/TFN land claim agreements are approved. How will land ownership and rights change? How will things be different if C/TFN stops being an Indian Act band and becomes a self-governing First Nation? How will funding for the First Nation change? What changes will there be in the delivery of programs and services for Carcross/Tagish people?

This publication provides an overview of some of the changes C/TFN and its citizens will experience if the land claim agreements are approved. Additional details on many of these topics can be found in other materials produced by the Ratification Committee. Please drop by the office, call to talk to a field worker, or visit the ratification website.

This document highlights some of the changes that are expected to happen if the Carcross/Tagish land claim agreements are approved. It should not be relied on for legal interpretation of the land claim agreements or the Indian Act, or for other legal purposes.



DEFINITIONS OF TERMS USED IN THIS INFORMATION SHEET

The **INDIAN ACT** is a Canadian law. Among its many provisions, the *Indian Act* currently requires the Minister of Indian Affairs and Northern Development to manage Indian reserve lands and some moneys belonging to *Indian Act* bands, and to approve or disallow band bylaws. The Act also defines who is a status Indian.

SETTLEMENT LANDS are the lands that a First Nation with land claim agreements owns. C/TFN will own over 1554 square kilometres of Settlement Lands if their land claim agreements are approved.

A **TRADITIONAL TERRITORY** is an area of the Yukon that the people of a First Nation have traditionally used. A First Nation's Settlement Lands fall inside the boundaries of its Traditional Territory. A First Nation does not own its Traditional Territory but the First Nation and its beneficiaries have a number of rights within their Traditional Territory, both on and off of Settlement Land

C/TFN as an *Indian Act* Band
Without land claim agreements in effect

C/TFN as a self-governing First Nation
With approved land claim agreements in effect

LAND MATTERS

Land ownership

C/TFN, as an *Indian Act* band, does not have the legal capacity to own land in its own name. Reserve No. 4 (which is just over half a square kilometre in size) is a Reserve under the *Indian Act*. This means that Canada holds title to the land but has a trust-like duty to hold it for the use and benefit of Indians.

Canada also holds legal title to all Lands Set Aside. This includes most of the Choulta subdivision (which is 0.3 square kilometres in size) and many other pieces of land both inside and outside the Carcross town site. Lands Set Aside are lands Canada set aside for a First Nation to use, generally for residential purposes. They are not *Indian Act* Reserves and it is not clear what Canada's obligations to an *Indian Act* band are in terms of Lands Set Aside.

A corporation owned by the C/TFN is able to own private land. For example, the Yukon government transferred ownership of 10 lots in the Watson River subdivision to a C/TFN corporation after the land claim agreements were initialled by negotiators in 2003. Aboriginal title does not apply to any lands the corporation owns.

C/TFN, as a self-governing First Nation, will have the legal capacity to own land in its own name. C/TFN will own over 1554 square kilometres of Settlement Land. C/TFN will own both the surface and subsurface (minerals, oil and gas) of 66% of these lands and surface rights for the other 33%.

If C/TFN wants to, it can acquire additional land in the same way as other governments, companies and individuals. If C/TFN chooses to, it can negotiate with Government to have additional lands made into Fee Simple Settlement Lands. If this happens, other Fee Simple or Category B Settlement Land will need to become non-Settlement Land (C/TFN cannot increase the overall amount of its Settlement Land). There are limitations on how often C/TFN can negotiate the re-designation of Settlement Land and on the amount they may re-designate.

The Carcross Indian Reserve No. 4 will be owned by C/TFN as a 'retained Reserve' and the *Indian Act* will no longer apply to it. (A retained Reserve is just like Settlement Land except that it retains its status as 'land reserved for the Indians' under the Constitution of Canada). C/TFN may negotiate a specific claim for compensation for a portion of Carcross Indian Reserve No. 4 that was used for the South Klondike Highway.

C/TFN will make specific claims on the Choulta school lands and the Tagish/Six Mile River site.

Interim protection of land selections

Currently, land selected by C/TFN during land claim negotiations are protected from being sold or otherwise disposed of by the Yukon government until March 31, 2008.

Lands selected by C/TFN during land claim negotiations will be owned by C/TFN as Settlement Land. Interim protection by Government will no longer be needed.



	C/TFN as an <i>Indian Act</i> Band <i>Without land claim agreements in effect</i>	C/TFN as a self-governing First Nation <i>With approved land claim agreements in effect</i>
Land-based decision-making powers	<p>C/TFN has a limited power under the <i>Indian Act</i> to make bylaws affecting the Carcross Indian Reserve No. 4. These bylaws are subject to approval by the Minister of Indian Affairs and Northern Development. C/TFN does not have any bylaw-making power over Lands Set Aside, including Choulta subdivision.</p> <p>Laws and decisions affecting the land and resources within C/TFN's Traditional Territory are made by other governments. For example, all hunting, fishing and logging laws are made by the governments of Yukon and Canada.</p> <p>C/TFN may be asked for their input when another government develops or changes laws affecting C/TFN's Traditional Territory. However, any legal requirement for other governments to consult C/TFN on these matters is uncertain.</p>	<p>C/TFN will have extensive law and decision-making powers for activities on its Settlement Lands. These laws and decisions deal mainly with the management of Settlement Land and its natural resources, and with public health and safety.</p> <p>For example, C/TFN will be able to make laws related to hunting, fishing, logging and other uses of its Settlement Land. It will also be able to make laws for its Settlement Land to license businesses, control or prevent pollution, control the proper care of animals, control the transportation of dangerous substances, and control the construction or demolition of buildings. C/TFN will also be able to make decisions about planning, zoning and development of its Settlement Lands.</p> <p>Laws and decisions affecting non-Settlement Land within C/TFN's Traditional Territory will continue to be made by other governments. However, C/TFN will have a guaranteed role in the processes for making many of these laws and decisions. For example, C/TFN will have guaranteed involvement in land use planning processes, planning of Special Management Areas, fish and wildlife management, as well as other matters (other sections in this publication contain more information on these topics).</p> <p>In addition, Government will have an obligation to consult with C/TFN regarding use of non-Settlement Land when such use may have a significant impact on neighbouring Settlement Land. C/TFN will have a matching obligation to Government.</p> <p>In total, C/TFN will have direct control of, or input into, the management of over 50% of the lands in its Traditional Territory.</p>
Land use planning	<p>C/TFN may be consulted on land use planning initiatives in its Traditional Territory but it has no guaranteed right of involvement in these processes.</p>	<p>C/TFN will have guaranteed involvement in land use planning processes that affect its Traditional Territory. If a Regional Land Use Planning Council is set up to deal with land use planning in C/TFN's Traditional Territory, C/TFN will be able to nominate up to one-third of the members of the Council.</p> <p>Any part of a Regional Land Use Plan that applies to Settlement Land must be approved by C/TFN.</p>

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LAND MATTERS

Authority to approve development projects

C/TFN has the opportunity to have input into the assessment of development projects. However, C/TFN does not have any decision-making authority on whether or not a proposed development project can proceed in its Traditional Territory (except on the No. 4 Reserve where C/TFN has limited authority).

When a proposed development project is to be located wholly or partially on C/TFN Settlement Land or on the No. 4 Reserve, a self-governing C/TFN will have the authority to make a decision on whether or not a project can proceed (or proceed with changes based on the assessment of the project).

Special Management Areas (SMAs)

At this time, C/TFN does not have a role in managing protected areas in the Yukon. Additionally, there are currently no parks or other types of protected areas that protect special natural or cultural features in C/TFN's Traditional Territory.

Four Special Management Areas (SMAs) are provided for under the C/TFN Final Agreement: Kusawa Park, Agay Mene Natural Environment Park, Tagish River Habitat Protection Area and the Lewes Marsh Habitat Protection Area.

Each of these areas will have a steering committee that will develop and recommend a management plan. C/TFN will have at least one representative on each of these committees. C/TFN's agreements also specify that the First Nation will have economic opportunities in the SMAs.

C/TFN people will be able to hunt and fish in these SMAs in the same way as they can in the rest of their Traditional Territory.



Photo courtesy of Yukon government

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FISH AND WILDLIFE

Fish and wildlife management

Within C/TFN's Traditional Territory, wildlife and freshwater fish are managed by the Yukon government under Yukon laws. The Yukon government takes the lead on conducting wildlife and freshwater fish assessments and developing management plans. Government typically consults with C/TFN on these initiatives.

If C/TFN has other concerns about habitat or wildlife management, it may raise them with Government on a case-by-case basis.

For a number of years, C/TFN has been participating on the Southern Lakes Caribou Recovery Program, a cooperative program set up to raise public awareness and advise Government on management actions.

C/TFN has a Resource Officer who works on fish and wildlife issues. There is also a part-time staff person to look at the potential impacts of development projects on the environment (and the community).

C/TFN has successfully applied for funding for a number of fisheries stock assessment projects in the past.

C/TFN's participation in fish and wildlife management decisions in its Traditional Territory will be enhanced. The Carcross/Tagish Renewable Resource Council will be set up, with half the members being nominated by C/TFN. This council will advise Government on fish and wildlife management concerns within all of C/TFN's Traditional Territory.

In respect of its Settlement Land, C/TFN will be able to pass laws in relation to hunting and fishing, and the protection of fish and wildlife and habitat.

As well, a Southern Lakes Wildlife Management Coordinating Committee will be set up, as resources allow. This committee will bring C/TFN, other neighbouring First Nations and the Yukon government together to conduct a wildlife assessment and address significant wildlife and habitat issues in the relevant traditional territories.

C/TFN will continue to be able to apply for project funding to carry out specific wildlife or fisheries projects.

Right to harvest for food

Generally, a person eligible as a beneficiary of Carcross/Tagish First Nation may hunt without a hunting license at any time for food, without bag limits, on vacant crown land within their First Nation's Traditional Territory or within the Traditional Territories of other Yukon First Nations that do not have approved land claims agreements. Hunting may be limited for reasons of conservation, public health or safety.

If this same person wants to hunt inside the Traditional Territory of a Yukon First Nation that has approved land claim agreements in place, this person must either get written consent from the First Nation in whose Traditional Territory they want to hunt, or they must purchase a Yukon hunting license. If they gain consent, they may hunt at any time, subject to regulation by that First Nation. If they get a hunting license, they must comply with regulations under the Yukon's *Wildlife Act*.

Carcross/Tagish people will have the right to harvest fish and wildlife for food or ceremonial purposes at any time on C/TFN Settlement Lands and on vacant Crown land that is within C/TFN's Traditional Territory (C/TFN may create regulations to govern this hunting and fishing).

These harvesting rights can only be limited for conservation, public health or public safety reasons. If a limit is placed on the harvesting of some species, Carcross/Tagish people will be able to harvest a guaranteed share of that limit (the Final Agreement defines a process for setting limits).

If C/TFN people want to hunt in another First Nation's Traditional Territory, they will need to get either a Yukon hunting license or the written consent of the First Nation in whose Traditional Territory they want to hunt. If they have a Yukon hunting license, they will not be able to hunt on the other First Nation's Category A lands without permission from that First Nation.

Other First Nation people will not be able to hunt in C/TFN's Traditional Territory without either a Yukon hunting license or C/TFN consent.

Allocation of traplines

C/TFN as an *Indian Act* Band *Without land claim agreements in effect*

Within C/TFN's Traditional Territory, trapping activities and the allocation of traplines are managed by the Yukon government.

C/TFN as a self-governing First Nation *With approved land claim agreements in effect*

About 70% of the traplines in C/TFN's Traditional Territory will be allocated, over time, to Yukon First Nation beneficiaries or beneficiaries of Transboundary claims.

As well, C/TFN will have the final say about who can get up to 70% of the traplines in C/TFN's Traditional Territory that are designated as Category 1 traplines. Registered trapline holders can choose whether or not they want to have their trapline designated as Category 1 and they must provide written consent for this to happen. The Yukon government will be responsible for allocating the remaining traplines (these are called Category 2 traplines).

The Carcross/Tagish Renewable Resource Council (of which half the members will be nominated by C/TFN) may make bylaws about the management of furbearers and set out criteria for the assignment of all traplines within C/TFN's Traditional Territory.

C/TFN will have powers to make laws in relation to trapping activities on its Settlement Land.

Nothing in the land claim agreements can force people to give up a trapline.



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HERITAGE AND CULTURE

Heritage

C/TFN is involved in heritage projects, usually upon invitation from a government, or based on project funding the First Nation has applied for.

C/TFN's role in the protection and management of heritage sites and resources within its Traditional Territory will be strengthened.

C/TFN will own and manage most of the heritage resources found on its Settlement Land (unless held by Government or by a private person). It will also own and manage most of the Heritage Resources found within C/TFN's Traditional Territory if the resource is directly related to the culture and history of Yukon Indian People.

Two new sites will be designated as Historic Sites which will also help to protect the heritage resources in the area. One is the Tagish Post/Six Mile River site and the other is the Conrad Heritage Site. C/TFN will be joint owners with the Yukon of these two sites and will be involved in preparing management plans for each of these areas. C/TFN will have economic opportunities related to the management of these sites.

Impacts on important C/TFN heritage routes and sites identified in the Final Agreement must be taken into consideration in land use planning and development assessment processes.

C/TFN will be able to continue to apply for funding for various heritage projects.

ECONOMIC DEVELOPMENT

Broad economic initiatives

C/TFN and Government have not developed any economic development strategies or plans for the region.

The Government of Canada will give C/TFN over \$5.6 million to create a C/TFN Strategic Economic Development Fund. This C/TFN-managed fund will be used to support economic development, training and education of Carcross/Tagish people.

At C/TFN's request, the Yukon and federal governments will work with C/TFN to create an economic development plan to enable C/TFN to benefit from economic development opportunities within C/TFN's Traditional Territory.

Additionally, steps will be taken to help C/TFN take advantage of Government contracting opportunities. The Yukon will also assist C/TFN in making investments in public corporations such as Yukon Development Corporation and Yukon Energy Corporation.

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Specific economic and employment opportunities	<p>Economic development opportunities between Government and C/TFN are negotiated on a case-by-case basis. Currently, there are no significant economic projects identified specifically for C/TFN at this time.</p> <p>For a number of years, C/TFN has successfully applied for annual funding to put towards community economic development. Project funding was over \$76,000 last year.</p>	<p>C/TFN will continue to be able to apply for government program funding for economic development and to negotiate for specific projects.</p> <p>If the Yukon government wants to build something in C/TFN's Traditional Territory that will cost more than \$2 million, the government and C/TFN must complete a Yukon Asset Construction Agreement. This agreement may include employment and economic opportunities for C/TFN citizens and firms (this provision will apply for 20 years after the agreements become legal).</p> <p>C/TFN will have the right to acquire a 25% interest in hydro, alternative energy and non-renewable resource projects owned by the Yukon government (or its corporations) in C/TFN's Traditional Territory. C/TFN can also acquire a quota of up to 25% of the commercial freshwater fishery through licenses and permits issued in its Traditional Territory.</p> <p>Additionally, as C/TFN takes on new areas of responsibility under the land claim agreements, it will need to create new jobs and hire more people.</p>

MONEY AND TAXATION

Money to run C/TFN government

C/TFN receives approximately \$214,000 per year for band management. This amount usually increases a bit every year, but this is not guaranteed.

C/TFN will receive over \$402,750 every year to implement the Final Agreement and over \$143,840 every year to implement the Self-Government Agreement. C/TFN will also receive an additional ten annual payments of \$119,674 to further help implement the Self-Government Agreement. All of these amounts will increase every year if there is inflation. The Self-Government amount also increases if C/TFN's population increases.

C/TFN will also receive a one-time payment of over \$1 million to implement the Final Agreement and a one-time payment of about \$236,000 to implement the Self-Government Agreement.



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Compensation and loan money	C/TFN owes the Government of Canada for the money it borrowed to negotiate the land claim agreements and to make payments to elders during these negotiations. This amount is presently about \$21,659,916 (this includes estimated interest costs over 15 years).	<p>\$38,832,045 Amount Government of Canada will pay (tax free) in financial compensation to C/TFN over 15 years</p> <p>+\$5,283,512 PLUS an additional amount Canada will pay C/TFN as a one-time interest payment</p> <p>-\$21,659,916 LESS loans for elders benefit program and to negotiate land claim agreements (this includes estimated interest costs over 15 years)</p> <p>\$22,455,641 TOTAL AMOUNT of compensation money that C/TFN will receive after it has paid back the loans</p>
Personal taxation	Under section 87 of the <i>Indian Act</i> , status Indians do not have to pay taxes on income situated on any Reserve, including the Carcross Indian Reserve No. 4 (unless the person is a beneficiary of a Yukon First Nation with settled land claim agreements).	<p>The section 87 tax exemption under the <i>Indian Act</i> will no longer apply to Carcross/Tagish people who live in the Yukon, starting in the year after the Final Agreement is made legal. This means that, starting in 2006, Carcross/Tagish people who live in the Yukon will be subject to income tax on all income earned.</p> <p>C/TFN will receive a one-time payment of over \$2.9 million to help with the adjustment to the changes in taxation.</p>
Taxation revenues to First Nation	C/TFN does not receive any share of the income tax that is paid by people living in its Traditional Territory.	C/TFN may enter into negotiations with the governments of Canada and the Yukon on tax sharing arrangements to allow C/TFN to receive a share of income tax and GST revenues. C/TFN would receive the largest share of income taxes paid by people on C/TFN's Settlement Lands. Most self-governing Yukon First Nations have entered into these arrangements.
Resource royalties (money paid to develop oil and gas or minerals)	<p>The Yukon government collects money, called "resource royalties" from oil, gas and mineral developments in the territory. C/TFN does not receive any portion of these resource royalties.</p> <p>C/TFN is not able to charge or collect any resource royalties as it does not own any rights to subsurface materials like minerals, oil or gas.</p>	<p>C/TFN will receive a portion of the resource royalties that companies pay to the Yukon government for mining and oil and gas development in the Yukon. C/TFN will receive about 7.29% of the royalties that are available to Yukon First Nations. Based on recent levels of development, the payment to C/TFN will equal about \$80,000 per year. If development increases, so will the amount of this payment.</p> <p>C/TFN will be able to determine whether or not any new resource developments will be allowed on its Category A Settlement Lands. If it allows new resource developments, C/TFN will set the rate of royalty payments and collect the money directly.</p>
Kotaneelee Fund	The Kotaneelee fund represents oil and gas revenues collected in the Yukon from 1993 to 1998. The Yukon government is not obliged to make any payments out of this fund to First Nations without land claim agreements.	Yukon will pay C/TFN a one-time payment of about \$380,000 from the Kotaneelee fund, once C/TFN's land claim agreements become legal. This payment is not part of the Final Agreement.

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PROGRAMS AND SERVICES

Programs and services delivery

C/TFN delivers programs related to areas like health, social assistance, daycare and housing.

C/TFN’s decision-making authority for these programs is limited. Funding levels and the terms and conditions for these programs are generally set by Government in funding agreements.

Agreements for C/TFN to deliver new programs are negotiated on a case-by-case basis. Some funding agreements may be for one year in length, others may be for up to five years.

C/TFN’s first Programs and Services Transfer Agreements (PSTAs) will come into effect once the land claim agreements are made legal. When this happens, C/TFN will become responsible for program areas such as social assistance, capital infrastructure, band governance, economic development and addiction services. It will also become responsible for minerals, forests and land management on its Settlement Land.

These are just the first areas that C/TFN has chosen to take over. C/TFN can initiate negotiations to take on more responsibility as it wants to in the future. It can also decide not to take more responsibility if it feels it is not ready or if it doesn’t make financial sense to do so.

Programs and services funding

Funding for current programs and services is set out in funding agreements. Generally speaking, funding levels for the programs and services C/TFN delivers remain the same over multiple years.

C/TFN will receive funding each year for all of the programs it is taking over responsibility for in its first PSTA agreement. In the first year, C/TFN will receive over \$3.3 million. This amount will increase over time in proportion to increases in population and prices.

If C/TFN wants to take over additional programs and services in the future, negotiations will deal with new funding arrangements.

Control over program design and delivery

C/TFN must spend program funding it receives as specified in the funding agreement. Governments generally make funding available for programs and services that they consider a priority.

As a self-governing First Nation, C/TFN will be able to decide how to spend the \$3.3 million it will receive annually for programs and services. For example, if C/TFN wants to increase social assistance payments to its citizens, it can decide to do that without getting the approval of the Minister of Indian Affairs.

C/TFN can also make changes to the design and delivery of any of its programs (subject to certain terms and conditions in its PSTAs).

Eligibility for national programs

Carcross/Tagish members are able to access a range of national programs designed for aboriginal people specifically, and Canadian citizens generally.

Carcross/Tagish citizens will continue to be able to access any national programs that are not taken over by C/TFN.

C/TFN citizens who live outside the Yukon will access all national programs through the federal government.



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LAW - MAKING AUTHORITY

First Nation constitution

C/TFN passed its own constitution in 1997. It is based on its traditional clan system and C/TFN is governing itself according to this constitution. However, as long as C/TFN is an *Indian Act* band, the Minister of Indian Affairs has final say in whether or not this constitution can be used instead of the process set out in the *Indian Act*.

The *Indian Act* also defines who can be a member of C/TFN.

Under self-government, C/TFN will have the final say on how it governs itself. Only C/TFN citizens will be able change or amend C/TFN's constitution. The Self-Government Agreement sets out some areas that a First Nation constitution must deal with (e.g. it must include a citizenship code, outline the structure of governing bodies and provide a financial reporting system).

Under self-government, C/TFN will have final say on who can become a citizen of the First Nation. C/TFN citizens will keep all of their rights as Canadian citizens.

Independent law-making authority

C/TFN may pass by-laws for the No. 4 Reserve. The scope of these laws is outlined in the *Indian Act*. C/TFN by-laws are subject to approval by the Minister of Indian Affairs and Northern Development.

C/TFN will be able to make laws dealing with a variety of subject areas. When C/TFN makes its own laws, the C/TFN law may replace a Yukon law that deals with the same subject matter. However, it cannot replace a federal law. How C/TFN laws and federal laws will work together is a matter that may be negotiated in the future.

C/TFN may make land-based laws and decisions for its Settlement Lands in relation to land management, natural resource management, and public health and safety.

C/TFN can also make citizen-based laws that will apply to C/TFN citizens living anywhere in the Yukon. These laws can cover the areas of health care, aboriginal languages, training programs, social welfare, education, cultural beliefs and practices, adoption of children, performing marriages, inheritance, and dispute resolution outside of the court system. For example, C/TFN is looking at passing a Family Law that is based on traditional laws.

Administration of justice

Currently, the First Nation has no formal role in the administration of justice. Through the Southern Lakes Justice Committee, C/TFN has sought input into the justice system through sentencing circles and other programming.

C/TFN will be able to negotiate and set up a system for the administration of justice for its citizens that reflects more traditional ways of resolving conflicts.

Photo courtesy of Yukon government



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ABORIGINAL RIGHTS AND TITLE

Constitutional protection of aboriginal rights and title

Aboriginal people in Canada who have not yet entered into a treaty or land claim agreements may have constitutionally protected aboriginal rights. The extent of these rights is still largely undefined.

Judicial decisions do give some content to these rights. However, such decisions are mostly based on facts of the specific case and they cannot always be directly applied to other situations. Taking legal action to define rights is a very expensive process and can take a long period of time. As well, there is no guarantee as to the outcome of the eventual decision.

On C/TFN Category A and Category B Settlement Lands, the First Nation and its people will retain any aboriginal rights, titles and interest they may currently enjoy in relation to the surface of the land (as long as they are consistent with the provisions of the C/TFN Final Agreement). Category A and B Settlement Lands together make up over 99% of C/TFN’s Settlement Lands.

Aboriginal rights, titles and interests are not retained on C/TFN’s Fee Simple Settlement Lands (which total about 1.11 square kilometres) or on non-Settlement lands.

The rights set out in the C/TFN Final Agreement, and any retained aboriginal rights, are protected under the Constitution of Canada which is the highest law in the country.



Unless otherwise indicated, all photos courtesy of Brian Shanahan

Contact the Ratification Committee for more information.
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This information sheet highlights elements of the Carcross/Tagish land claim agreements. It should not be relied on for legal interpretation of the Final and Self-Government agreements.