

## Next Steps

- Confirm agreement to establish Trust for the \$100M Barricades Treaty and from the \$5M Legacy Fund.

**"Alhgoh 'uts'ut'en." "We all work together."**



---

# Term of a Trust

---

## **Irrevocable Trusts**

Trusts are generally irrevocable. That is, once they are established they cannot be undone by the people who set it up.

## **Revocable Trust**

The creators of the trust decide how long the trust will be in place and what, if any, events or passage of time would trigger the end of the trust agreement.

Individual community and collective goals will direct whether it makes sense to have a term for the trust to make accommodation for changing circumstances and allow future generations to assess the needs of the future community.

---

---

# Advising Canada of Decision to Create a Trust

---

- If the Communities agree to establish a Trust to hold, manage and disperse the \$100M, each Community would advise Canada by BCR of their intent and agreement.
  - The Communities would meet and direct their respective legal counsel to draft the Trust Agreement.
  - The Communities would negotiate and execute the Trust Agreement.
  - The Trust Agreement would then be provided to Canada for the transfer of the \$100M pursuant to the Settlement Agreement.
-

# Duty to Invest

At common law, trustee required to invest the trust monies prudently:

---

- Section 15.2 of the *Trustee Act*:

In investing trust property, a trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments.

- Not a standard of perfection, acknowledges inherent risk in investing

- Section 15.3 of the *Trustee Act*:

A trustee is not liable for a loss to the trust arising from the investment of trust property if the conduct of the trustee that led to the loss conformed to a plan or strategy for the investment of the trust property, comprising reasonable assessments of risk and return, that a prudent investor would adopt under comparable circumstances.

---

---

# Duty to Treat Beneficiaries Equally

---

- Unless the trust agreement states otherwise, a trustee must treat all beneficiaries equally and not prefer the interests of one over another – the “even hand” rule.
-

---

# Powers of a Trustee

---

**Appointment** – The Communities will appoint the Trustees.

- The number of trustees could be between 6 to 9.

**Role and Authority** – Trustees manage the funds that are transferred to the trust fund in accordance with the instructions and purposes outlined in the trust agreement.

**Decision Making** – Trustees decide how funds are invested and dispersed. They can retain financial and tax advisors and lawyers and must report to the beneficiaries.

**Protections** - When acting in good faith, Trustees are indemnified and protected from liability for decisions they make as Trustees and cannot be sued.

---

---

# Duties of a Trustee

---

- Duties are set out in the trust agreement, case law and BC *Trustee Act*
  - Held to a very high standard of loyalty – the trustee has a fiduciary duty
  - Must act in the best interests of the beneficiaries – Communities & members
  - Act honestly and in good faith
  - Avoid conflicts of interest
-



---

# Potential Trust Purposes

---

## Individual Purposes

- Building houses and cabins
- Purchasing hunting and fishing gear
- Purchasing boats and ATV's
- Education and training expenses & scholarships
- Necessities: clothes and groceries

## • Community Purposes

- Culture and language
  - Building housing
  - Buying and operating businesses
  - Building schools, hospitals, daycare
  - Purchasing vehicles, e.g. buses and vans, & heavy equipment
-

---

# Trust Principles

Creating a trust enables the Communities to collectively address community interests with the funds able to pay for cultural, social and economic needs and dreams:

---

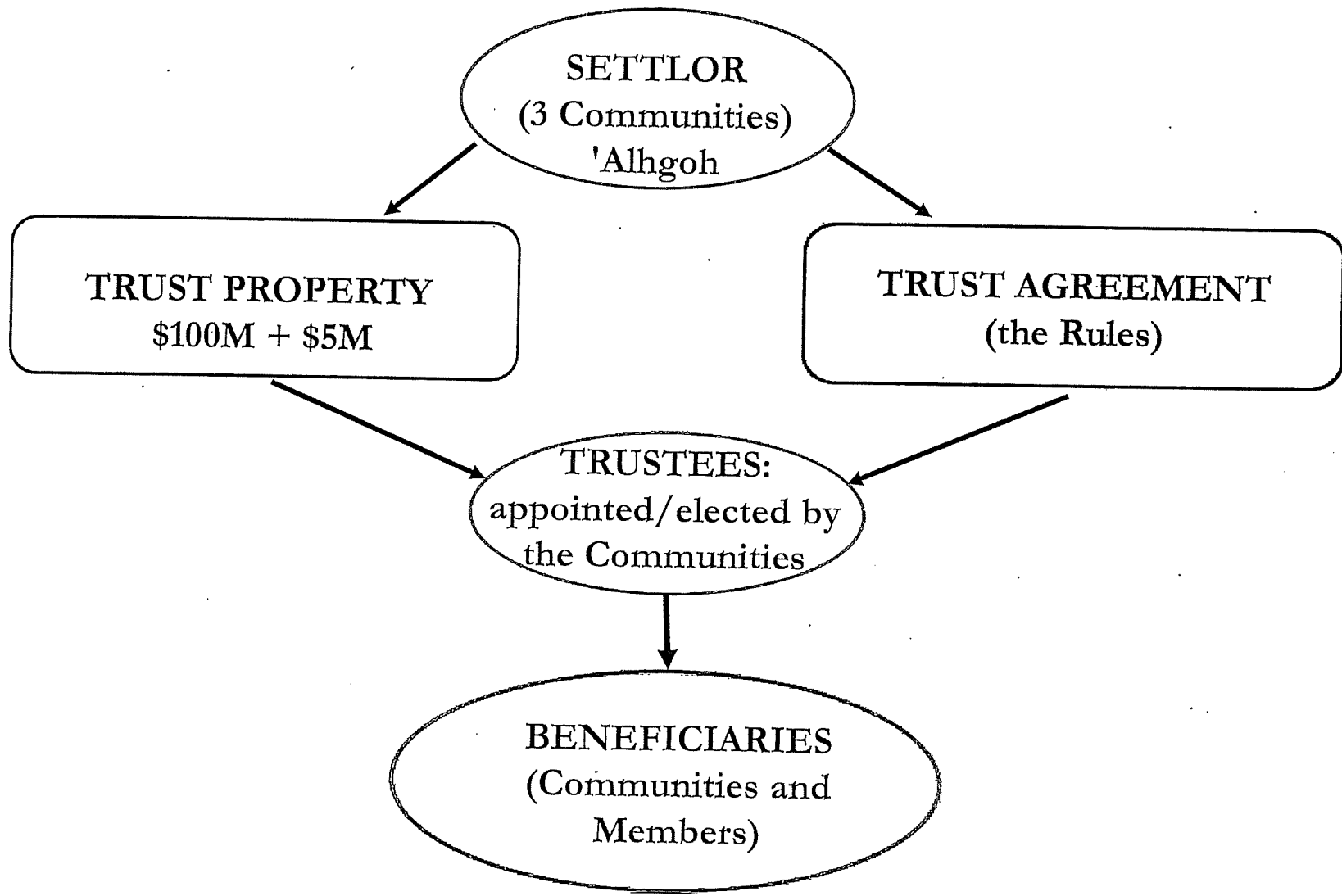
- **Purpose:** The Agreement will include the Purpose and Principles of the Trust.
  - **Trustees:** Identify the terms of appointment, roles, and decision-making authority.
  - **Investment:** Rules and Policies for investing Trust assets.
  - **Use:** Identify permitted uses of funds specific to Trust income.
  - **Disbursement:** How funds are distributed to the member Beneficiaries, including for education, training, housing, community development, culture, language, economic development, etc.
  - **Operation & Length:** Rules and guidelines for the operation of the Trust and how long the Trust will be in effect.
  - **Reporting:** Frequency and means of reporting to ensure transparency and accountability.
-

---

# Benefits of Creating a Trust

---

- Trust funds protected and separate from other Band Funds & protection from creditors;
  - Trust Agreement sets out specific rules for investment of trust funds - ensures benefits will continue for generations;
  - Trustees legally obligated to follow exact rules of trust - lessens risk from political change and keeps politics out of decisions;
  - Establishes clear and fair uses of trust monies;
  - Trust Agreements require trust expenditures and activities to be fully disclosed to beneficiaries;
-



---

# What is a Trust?

---

- Property held by one party for the benefit of another
  - Holder is called the “trustee”
  - The party that benefits from the trust property is the “beneficiary”
  - Benefits are paid to the beneficiaries based upon the purposes
  - Is a legally recognized relationship
  - Governed by case law and statute law
  - Commonly used by First Nations
-

---

# Rationale for a Trust

---

- The Barricades Treaty was meant for our families as part of the Keyoh system.
  - When the Treaty was signed we were not governed by *Indian Act* Bands.
  - All members are beneficiaries and need to benefit from the Trust.
  - A Trust will generate higher investment returns.
  - All Future Generations will also benefit from the Trust.
  - The 1911 Barricades Treaty promises will be fulfilled equally over time for each community, and can provide for farming assistance and schools, etc.
  - Members will benefit from payments, compensation and the Trust will alleviate poverty.
-

---

# Sharing Protocol Agreement - Principle

---

- The three Communities agreed to negotiate, in good faith, a formula for sharing the Global Settlement of \$100 million,
    - less their respective share of the costs of the claim.
-

---

# Trust Proposal – Allocation of Compensation

## 'Alhgoh

- An alternative to dividing the funds 3 ways between the Communities is to create a Trust for the benefit of all members of the three Communities.
- 
- A Trust Agreement would be established to place the \$100 million into a common pool trust fund that names the three Communities and members as beneficiaries of the trust.
  - Additionally, the **\$5M Legacy Funds** from the former Yun Ookw'u Ts'uhuna Society would be deposited into the trust as well.
    - Both the Nak'azdli Whut'en and Tl'azt'en Nation have retained the Legacy Funds for the former Pinchi lake Mine pending mediation with Binche Whut'en.
  - Proposed Trust Name – **“Barricades Treaty Trust”**
-



---

## Band Council Resolution – Acceptance of Offer - 'Alhgo

---

- Binche Whut'en provided Canada with a BCR, dated August 6, 2019, accepting the global Settlement Offer of \$100 million,
    - subject to reaching an agreement with the Nak'azdli Whut'en and Tl'azt'en Nation on equitably sharing in the Global Settlement Offer and
    - the parties have been drafting the settlement agreement since.
-

---

## Current Status of the *Draft* Settlement Agreement

- By letter, dated January 7, 2022, to the Communities from the Federal Negotiation Manager. Mr. Reitsma outlined two outstanding matters to be resolved to finalize the draft settlement agreement:
    - 1. The definition of “**Claim**” that determines the scope of the release and bring certainty and finality to the claim must be resolved;
    - Binche Whut'en wants to ensure that Canada continues to honour the Treaty commitment; and
    - 2. Canada requires direction on the how the Communities will share in the \$100 million, so that it can be written in the settlement agreement and paid out to the Communities.
-

# 1911 Barricades Treaty

- In the 1911 Barricades Treaty, Canada promised the Communities that, in exchange for the Communities agreeing to abandon use of the 'barricades' method of fishing, Canada promised the Communities the following:
  - a) to provide one 200 feet long by nine feet deep fish net to each family from the Communities, and twine to keep them in repair, nets to be renewed every two years;
  - b) to provide seeds for each family;
  - c) to provide farming equipment of all kinds;
  - d) to provide fishing stations for the Communities; and
  - e) to locate, erect, maintain and operate a school for the Communities.
- The Specific Claim is for damages in relation to Canada's failure to comply with its promises made to the Communities.

---

# Settlement Amount Offer

---

- On June 9, 2017, the Nak'azdli Whut'en and Tl'azt'en Nation made an offer to settle the Barricades Treaty Specific Claim to Canada for \$100 million.
    - Binche Whut'en was then part of the Tl'azt'en Nation.
  - By letter dated April 12, 2019, Canada presented the Communities a global settlement offer to settle the Specific Claim for the same amount, \$100 million.
-

---

# Claim Background

---

- The 1911 Barricades Treaty Claim is a joint claim by Binche Whut'en, Nak'azdli Whut'en and Tl'azt'en Nation against the federal Crown arising from Canada's failure to honour the 1911 Barricades Treaty.
  - The three Communities have provided Canada with Band Council Resolution's accepting a global Settlement Offer of \$100 million.
-

# Barricades Treaty: Signing - 'Alhgo

- The 1911 Barricades Treaty Claim is based on Canada having negotiated the Barricades Treaty at Fort St. James with the ancestors of the Nak'azdli Whut'en, Tl'azt'en Nation, and Binche Whut'en of the Dakelh Nation and concluding those negotiations on June 19, 1911 (the "Barricades Treaty").
- The members of the three Communities were represented by Chief Dominic, Chief Alexis and Chief Joseph.
- The Chiefs negotiated and agreed to the terms of the 1911 Barricades Treaty on behalf of the collective members with representatives of Canada at Fort St. James on June 19, 1911.