

# Property tax cancellation request

## Presentation to the Regional Municipality of Wood Buffalo



**FORT MCKAY**  
FIRST NATION





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# Reserve lands are tax exempt

- The *Municipal Government Act* **exempts** reserve lands from municipal property taxation by **excluding** reserve lands.

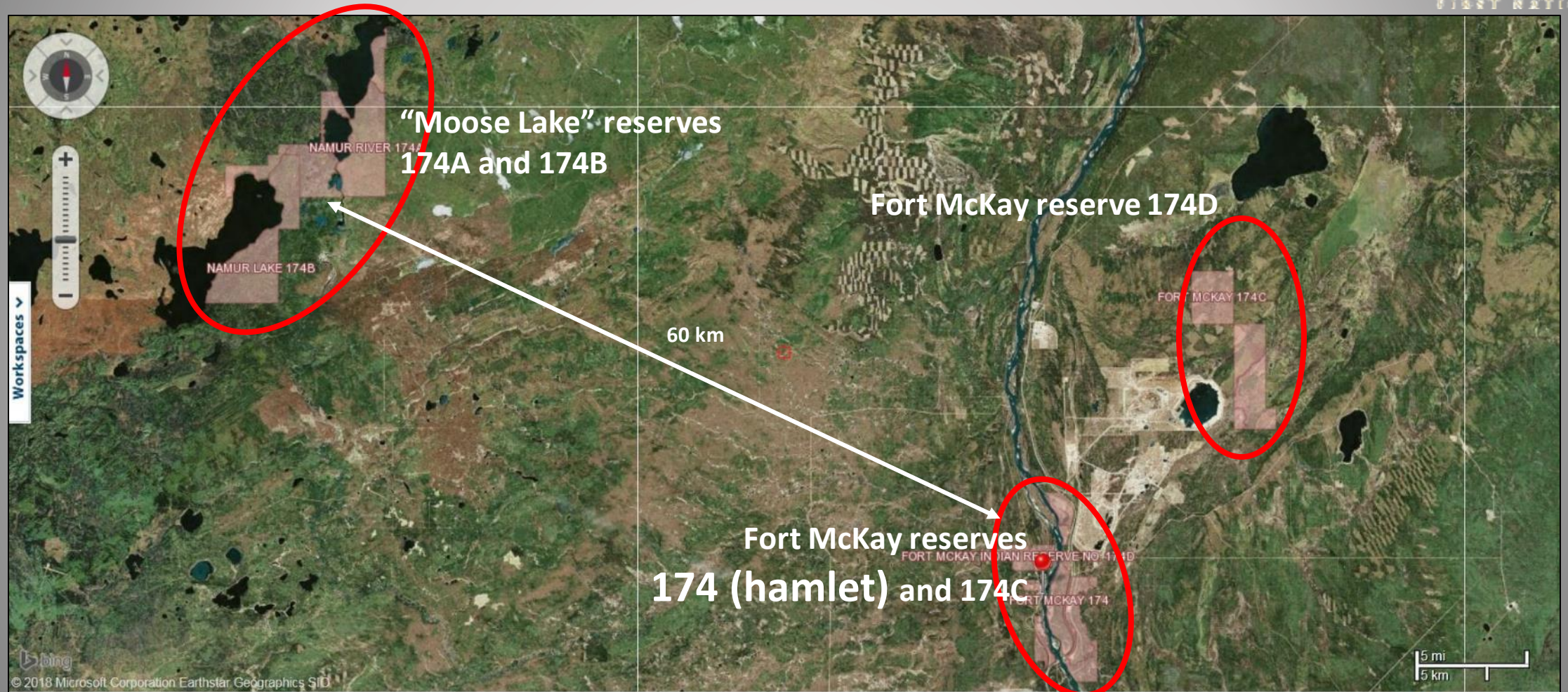
## Indian reserves

**2.1** No municipality, improvement district or special area constituted under the *Special Areas Act* includes land set apart as an Indian reserve.



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# Fort McKay First Nation reserve lands





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Fort McKay No. 174D

SW 35-94-11 W4M

NW 28-94-11 W4M

LOT 12

LOT 11

LOT 10A

LOT 10

LOT 9

LOT 8

LOT 7

LOT 6

LOT 5

LOT 4

LOT 3

LOT 2

LOT 1

LOT 13

LOT 12

LOT 11

LOT 10

LOT 9

LOT 8

LOT 7

LOT 6

LOT 5

LOT 4

LOT 3

LOT 2

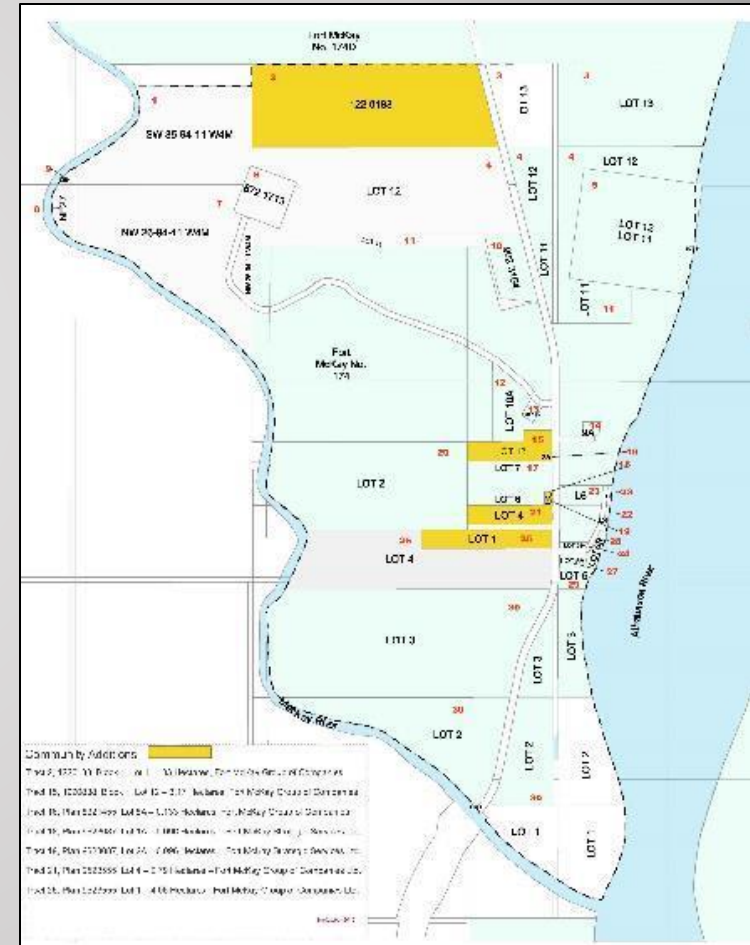
LOT 1

McKay River

Athabasca River

TLE Lands

Parcel 74, 1/4 Sec 5 T22N4R, Lot 8A - 0.997 Hectares, Fort McKay Strategic Services Ltd.  
 Parcel 22, 1/4 Sec 22 N10, Block 1, Lot 1 - 1.3 Hectares, Fort McKay Strategic Services Ltd.  
 Parcel 24, 1/4 Sec 24 N10, Lot 10 - 0.292 Hectares, Fort McKay Strategic Services Ltd.  
 Parcel 27, 1/4 Sec 27 N10, Lot 8A - 0.667 Hectares, Fort McKay Strategic Services Ltd.





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# TLE invokes the *Constitution Act*, 1982

- “Treaty Land Entitlement” is a specific reference to the unfulfilled treaty land obligations of Canada under Treaty 8 signed in 1899.
- Indigenous jurisprudence has repeatedly affirmed the primacy of Treaty rights.
- As part of a Treaty Land Entitlement (TLE) process, Fort McKay contends that the ATR process engages s. 35 constitutional obligations and Treaty No. 8.







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# Legal double-bind

- RMWB has taxed these properties on the basis they are not reserve lands and because the titles are, instead, held by two wholly owned corporate subsidiaries of Fort McKay.
- A reasonable comparison might be RMWB's relationship to the Regional Recreation Corporation and Wood Buffalo Housing.
- Alberta's *Land Titles Act* **does not recognize** First Nations as corporate entities entitled to own fee simple lands. Reserve lands are held in trust for their exclusive use and occupation by the federal Crown.
- To acquire the parcels identified for ATR, Fort McKay had to transfer title to the aforementioned corporations that are recognized by Alberta as legal landholders, **which hold the parcels in trust.**



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# *Indian Act, s. 90*

The ATR process implicates Fort McKay's constitutionally recognized and affirmed s. 35 Aboriginal and Treaty rights, as well as articles of Treaty No. 8 regarding taxation, and are also subject to the provisions of s. 90 of the *Indian Act*.

## **Property deemed situated on reserve**

90 (1) For the purposes of sections 87 and 89, personal property that was

- (a) purchased by Her Majesty with Indian moneys or moneys appropriated by Parliament for the use and benefit of Indians or bands, or
- (a) given to Indians or to a band under a treaty or agreement between a band and Her Majesty,

**shall be deemed always to be situated on a reserve.**

# Parcels purchased with FN monies



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2021-06-04 8:21:43 AM
Fort McKay First Nation
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**A/P Vendor Transactions (APVTRN01)**

**From Vendor Numbe** [GOV01] To [GOV01]  
**From Document Date** [ ] To [9999-12-31]  
**Session Date** [2021-06-04]  
**Report Format** [Vendor Transactions by Document Date]  
**Transaction Types** [Invoice, Debit Note, Credit Note, Interest, Prepayment, Payment]  
**Include Contact/Phone/Credit Limit** [No]  
**Include Space For Comments** [No]  
**Include Zero-Balance Vendors** [Yes]  
**Include Transaction Type Totals** [No]  
**Show Applied Details** [Yes]  
**Show Fully Paid Transactions** [Yes]  
**Sort Transactions by Transaction Type** [No]

Vendor Number/Name/ Type/Document	Order Number/ 1099/CPRS Code/Amount	PO Number/ Check Number	Doc. Date/ Appl. Date	Due Date or Check Number/ Applied Type/Applied No.	Batch - Entry	Days Over	Transaction Amount	Balance
GOV01 Government of Alberta								
IN GOA 01/23/14 Land purchase			2014-01-23	2014-02-22	3328-14	0	322,000.00	
PY PY058257 Government of Alberta			2016-07-26	000000068448	2376-1		-322,000.00	
Government of Alberta		000000068448	2016-07-26	PY GOA 01/23/14	2376-1		322,000.00	0.00
<b>Vendor Total:</b>							0.00	0.00
<b>Report Total:</b>							0.00	0.00

CR: Credit Note

AD: Adjustment

ED: Earned Discount Taken

R: Reversal

DB: Debit Note

CF: Applied Credit (from)

GL: Gain or Loss (multicurrency ledgers)

IN: Invoice

CT: Applied Credit (to)

PY: Payment

IT: Interest Charge

DF: Applied Debit (from)

PI: Prepayment

DT: Applied Debit (to)

MC: Miscellaneous Payment

RD: Rounding

**1 vendor printed**



# Purchased and held in trust



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## LAND TITLES ACT TRANSFER OF LAND

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, as represented by the President of Treasury Board, Minister of Finance, of Sixth Floor, 9811 - 109 Street NW, Edmonton, Alberta, T5K 2L9 (the "Transferor"), being the registered owner of an estate in fee simple in lands situated in the Province of Alberta and described as follows:

See attached Schedule "A"

hereby in consideration of the sum of One (\$1.00) Dollar paid to the Transferor by Jim Boucher as trustee for the members of the Fort McKay First Nation, the receipt of which sum is hereby acknowledged, and at his direction and with his consent, transfers to:

**FORT MCKAY STRATEGIC SERVICES LTD.** of P.O. Box 5360, Fort McMurray, Alberta, T9H 3G4 (the "Transferee")

all the Transferor's estate and interest in the lands.

In Witness Whereof the Transferor has executed this Transfer this 17 day of July, 2018.

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA,  
as represented by the President of Treasury Board,  
Minister of Finance

Per:   
Lorna Rosen, Deputy Minister

The following lands:

FIRST:

MCKAY SETTLEMENT  
ALL THAT PORTION OF LOT SIX (6)  
WHICH LIES TO THE EAST OF THE EASTERLY LIMIT OF THE ROAD ALLOWANCE  
CROSSING THE SAID LOT, AS SHOWN ON A PLAN OF SURVEY OF THE SAID  
SETTLEMENT, SIGNED AT OTTAWA ON THE 22ND DAY OF FEBRUARY A.D. 1913  
CONTAINING 1.70 HECTARES MORE OR LESS  
EXCEPTING THEREOUT: HECTARES MORE OR LESS  
A) PLAN 8823017 - ROAD 0.201  
EXCEPTING THEREOUT ALL MINES AND MINERALS

SECOND:

PLAN 9623087  
LOT 1A  
EXCEPTING THEREOUT ALL MINES AND MINERALS

THIRD:

PLAN 9623087  
LOT 2A  
EXCEPTING THEREOUT ALL MINES AND MINERALS

FOURTH:

PLAN 9122994  
LOT 9A  
EXCEPTING THEREOUT ALL MINES AND MINERALS

FIFTH:

PLAN 762 1671  
LOT FIVE-B (5B)  
CONTAINING 0.275 HECTARES, MORE OR LESS.  
EXCEPTING THEREOUT: A) 0.002 HECTARES, MORE OR LESS, AS SHOWN  
ON ROAD PLAN 8823017  
EXCEPTING THEREOUT ALL MINES AND MINERALS

SIXTH:

PLAN 762 1671  
LOT FIVE-A (5A)  
CONTAINING 0.664 HECTARES, MORE OR LESS.  
EXCEPTING THEREOUT: A) 0.002 HECTARES, MORE OR LESS, AS SHOWN ON  
ROAD PLAN 8823017  
EXCEPTING THEREOUT ALL MINES AND MINERALS

Transfer of Land  
UPPVPA - Fort McKay Developments Ltd.

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# Current land use of ATR lands

LEGAL DESCRIPTION	LAND USE	INCLUDED IN CANADA/RMWB SERVICES AGREEMENT	2019 TAX AMOUNT	2020 TAX AMOUNT	% INCREASE IN TAXES PAYABLE
PLAN 9623087 LOT 2A	Residential/Family Support Center	YES	\$ 150.69	\$ 398.39	265
PLAN 7621671 LOT 5A	General Store and Fuel Station; Residential	N/A	81.59	1,777.02	265
PLAN 8321455 LOT 8A	Youth Center	YES	1,469.83	2,598.57	176
PLAN 16970501 LOT 6	River Lot/Boat Launch	N/A	32.80	709.97	2,148
PLAN 9623087 LOT 1A	Family Support Centre	YES	150.44	390.18	260
PLAN 9523555 LOT 4	Fort McKay Cemetery	N/A	217.18	193.73	0
PLAN 9523555 LOT 1	Fort McKay Arbor	N/A	279.30	73.52	0
PLAN 9122994 LOT 9A	Daycare/Elders Centre	YES	175.42	521.96	298
PLAN 7621671 LOT 5B	Vacant Land (ditch)	N/A	13.76	104.78	742
PLAN 1923447 BLOCK 1 LOT 1	Public Works Yard	YES	783.14	3,976.04	508
PLAN 1920838 BLOCK 1 LOT 12	Arena	YES	261.14	66,196.87	25,363
<b>TOTAL</b>			<b>\$ 3,615.29</b>	<b>\$ 76,942.03</b>	<b>2,128</b>







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# RMWB already collects a fee-for-service

- Indigenous Services Canada pays an **annual fee** to RMWB under a Municipal Services Agreement **to deliver municipal services** to Fort McKay.
- Taxes are, in part, payment for municipal services, which services are already paid by ISC.
- RMWB already collects a service fee for these lands as if they were reserve lands as per s. 90 of the *Indian Act*.
- Municipal property tax includes education and seniors housing levies from which Fort McKay receives **no benefit**.



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# RMWB legal counsel

- RMWB's legal counsel has advised Fort McKay it does not believe RMWB is subject to the provisions of Treaty No. 8, the *Constitution Act*, or the *Indian Act* because **it is not an agent of the Crown**.
- We disagree. However, we seem to have reached an amicable arrangement in which it is not necessary to have a court determine if RMWB is, like other orders of government, required to **protect Treaty rights and uphold the honour of the Crown**.
- This resolution will remove the **final impediment** to completing the TLE settlement and ATR process.





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# *Municipal Government Act (MGA)*

- RMWB Administration has said it wishes to proceed with arguments applicable only under s. 347 of the MGA.
- **For the sake of expediency**, Fort McKay is prepared to proceed with the argument that Council should cancel the 2020 and 2021 taxes assessed to the 11 subject parcels and any associated arrears subject to those limitations.



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# Cancellation of taxes

Cancellation, reduction, refund or deferral of taxes

**347(1) If a council considers it equitable to do so**, it may, generally or with respect to a particular taxable property or business or a class of taxable property or business, do one or more of the following, with or without conditions:

- (a) **cancel or reduce tax arrears;**
- (b) **cancel or refund all or part of a tax;**
- (c) defer the collection of a tax.





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# Further MGA provisions

Tax becomes debt to municipality

## 348 Taxes due to a municipality

- (a) are an amount owing to the municipality,
  - (b) are recoverable as a debt due to the municipality,
  - (c) **take priority over the claims of every person except the Crown,**
  - and
  - (d) are a special lien[.]
- Again, Fort McKay suggests the Constitution, Treaty No. 8, the *Indian Act*, case law, and even MGA s. 348 above all support our position **these lands are not taxable.**
  - If this debt is outstanding, the ATR cannot proceed.



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# Tax exempt properties

- MGA s. 362 exempts properties held by a health authority, nursing homes or other seniors residences, cemeteries, properties held by non-profit organizations that are “used solely for community games, sports, athletics or recreation.”
- Taxed properties in Fort McKay include the Elders, Youth and Daycare centres, the boat launch, the arena, and a public works yard. Fort McKay’s cemetery is probably the only taxed cemetery in Alberta.
- These facilities also provide services to municipal citizens of the Métis hamlet next door.
- We suggest these non-profit properties, if they were located in Fort McMurray, **would not be taxed.**





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# Summary

- In 2008, Regional Council approved the transfer of these lands as part of the TLE and ATR processes.
- RMWB already receives payment for services to these lands from ISC as if it already considers them to be reserve lands.
- Council can cancel these taxes under MGA s. 347 consistent with s. 362, not to mention the ATR process, reconciliation, and other matters about which RMWB and Fort McKay disagree; s. 348 subordinates RMWB's interests to those of the Crown.
- When the tax levy is cancelled, Fort McKay can proceed with acquiring the federal Ministerial Order that will complete the ATR.

# Immediate choice before Council

- Administration has given Council essentially two options:
  1. uphold the property taxes as assessed; or
  2. **cancel the municipal property tax that was assessed.**



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# QUESTIONS