# Corporate Report

**NO: R254**

**COUNCIL DATE: December 8, 2003**

**REGULAR COUNCIL**

TO: **Mayor & Council** DATE: **December 5, 2003**

FROM: **Staff Representative to LMTAC on behalf of Councillor Priddy** FILE: **0450-20 (LMTAC) 0440-01 (First Nations)**

SUBJECT: **Treaty Negotiations Update**

**RECOMMENDATION**

That this report be received as information.

## INTENT

To provide Council with a brief update on ongoing treaty negotiations occurring within the lower mainland as well as a general overview of emerging issues that may bear impacts on lower mainland municipalities, including Surrey.

# DISCUSSION

Province-wide, there are currently fifty-three (53) First Nations participating in the treaty process via the BC Treaty Commission. The Treaty Commission and the six-stage treaty process were designed to advance negotiations and facilitate fair and durable treaties (see Appendix A).

Within the Lower Mainland, there are presently five (5) First Nations engaged in various stages of the treaty process, three of which contain statements of intent boundaries within Surrey, including Tsawwassen, Katzie, and Musqueam. Brief summaries on the status of their respective negotiations, including their statement of intent boundaries, are reflected in the attached appendices B through F.

**Context of Land Use Issues**

Under the Indian Act, First Nations are wards of the federal government, living on reserve land to which they have no ownership.

When a First Nation enters the BC treaty process they submit a statement of intent outlining their traditional territory. This establishes the parameters for land to be included in a final treaty.

The statement of intent boundaries for three of the above noted lower mainland First Nations, namely Tsawwassen, Katzie and Musqueam, encompass areas of Surrey (please refer to the attached maps). Overlapping boundaries must be resolved between First Nations in order for a final treaty to be achieved. The overlap issue is discussed more fully within this report.

For most First Nations, treaty settlement lands (area of land that will be owned and managed by First Nations pursuant to a treaty) will likely comprise only a percentage of their traditional territory. For example, land included within the Nisga'a Treaty comprises approximately eight per cent of their traditional territory.

The BC treaty process is guided by the principle that private property (fee simple land) is not on the negotiation table, except on a willing-buyer, willing-seller basis. Notwithstanding, in most cases, it will be Crown lands and resources transferred under treaties.

A point of contention in treaty negotiations is whether treaty settlement land, which would include land formerly held in reserves, will fall under federal, provincial or First Nation jurisdiction or some combination of all three jurisdictions. At many tables, the issue has been pared down to negotiating the scope of jurisdiction and determining which federal, provincial or First Nation laws will be paramount. Where treaties are reached, the *Indian Act* will no longer cover treaty settlement lands.

**Duty to Consult and Accommodate**

Lower mainland First Nations have raised concerns regarding land development projects within the region. Their concerns are related to development occurring within sensitive archaeological areas and areas with spiritual significance.

In its Speech from the Throne earlier in 2003, the BC provincial government acknowledged that the Crown has a duty to consult and accommodate First Nations where their rights may be affected. That announcement arrived on the heels of two landmark rulings in the BC Court of Appeal (*Haida and Taku River*), that confirm that the BC government must properly consult with and accommodate the interests of First Nations before proceeding with development on their traditional territories. The attached LMTAC report dated August 8th, 2003 discusses the policy impact of the *Haida* case and legal developments related to a third party duty to consult First Nations.

This duty to accommodate is mainly a federal and provincial requirement and does not extend to local governments except in situations where crown properties are considered for development.

In such cases, any stated aboriginal claim on a particular parcel of crown property is assessed through Lands & Water BC where a limited time frame is placed on determing the validity of the claim.

**Issues to Conclude Treaties**

Substantive treaty negotiations begin at the agreement-in-principle stage. Often described as the blueprint for a final treaty, the agreement in principle identifies and defines a range of rights and obligations including: existing and future interests in land sea and resources; structures and authorities of government; relationship of laws; and fiscal relations. Following the initialing of the draft agreement, First Nations take the agreement back to their communities for consultation after which, if ratified, the provincial and federal governments present the agreement to their respective cabinets for approval. An agreement-in-principle is not a legally binding document, but will form the basis for negotiating the Final Agreement and a governance agreement outside of the treaty.

The draft agreements in principle leave a number of essential issues to be negotiated (currently, the Tsawwassen First Nation is the only Lower Mainland First Nation to have a draft Agreement-in-Principle).

While these agreements in principle represent broad consensus among the Parties and provides a degree of clarity on lands, cash, resources, culture and related governance provisions, final agreement negotiations must address outstanding issues related to governance, certainty, compensation, cooperative management and revenue sharing. In addition, local governments have particular interest in issues related to governance (including intergovernmental relations), land and land use planning, certainty, overlap, and resource management.
The parties' success in addressing these issues, once an agreement in principle has been reached, will determine how much time it takes to conclude a treaty. Negotiators are suggesting it may take anywhere from 18 months to three years, after an agreement in principle is ratified, to conclude a treaty.

1. Governance

The law-making powers of First Nations and how these will interface with federal and provincial powers are a major subject of negotiations. Currently, several tables are focusing their attention on finding agreement on the powers that will be included in a treaty and those that will be outside the treaty in a governance agreement.

One of the main principles of the treaty process is to balance the interests of non-aboriginals residents with the aboriginal

peoples' right to self government. Provisions for self government will vary from treaty to treaty, guided by these principles:

- Self government will be exercised within the existing Canadian Constitution. Aboriginal peoples will continue to be citizens of Canada and the province or territory where they live, but they may exercise varying degrees of jurisdiction and/or authority.
- The Canadian Charter of Rights and Freedoms and the Criminal Code of Canada will apply fully to aboriginal governments as it does to all other governments in Canada.
- First Nations will have the ability to make laws pertaining to treaty land and the provision of public service for their people, including health care, education and social services.
- Some local laws like zoning and transportation will apply to all residents on treaty lands, but the majority of treaty laws will apply only to treaty citizens. Federal, provincial, territorial and aboriginal laws must work in harmony.
- First Nations will be required to consult with local residents on decisions that directly affect them (for example, health, school and police boards).

The federal government supports negotiation of a wide range of First Nation law-making powers within a treaty. The provincial government also wishes to negotiate the full range of practical governance authorities that are necessary for First Nations to manage their affairs. However, the provincial government anticipates that these authorities will be delivered through a combination of authorities set out in a final agreement and in a governance agreement outside the treaty. Following the 2002 province-wide referendum, the provincial government has said it prefers to negotiate the following First Nation authorities within treaties: management of First Nation lands, resources and assets; preservation of First Nation cultural identity; and those authorities necessary for the internal operation of a First Nation government.

Governance authorities that the Province foresees placing within a governance agreement outside of a final treaty include those powers that are exercised by local governments. First Nations are concerned that their governance authorities will not enjoy constitutional protection if they are outside the treaty. As negotiations proceed, many First Nations will be carefully examining what authorities they see as fundamentally required in a final agreement.

Treaty rights are constitutionally protected and cannot be changed except by agreement, whereas governance agreements have proposed safeguards – orderly amendment and dispute resolution – for First Nation authorities that are delegated by the federal or BC provincial governments and could conceivably be changed without First Nation consent.

2. Non-Member Representation

The issue of non-member representation speaks to the rights of non- First Nation members (such as leaseholders) residing on either reserve land or future Treaty Settlement Lands.
Currently, 63% of the residents living on the Tsawwassen reserve are non-Tsawwassen members. Local government's key interest is to ensure that this segment of the population has an opportunity to vote on issues directly affecting them, and that the government to which they pay taxes is accountable. Currently, non-member residents have the opportunity to vote in municipal elections, but this situation will change post-treaty. The Tsawwassen agreement-in-principle is consistent with LMTAC's interest- in that the Final Agreement or governance agreement will provide non-members with opportunities or processes for participation on those matters that affect them, as well as access to appeal and review procedures. The precise mechanism to provide for this representation will be a topic for Final Agreement negotiations and one that LMTAC will continue to monitor.

3. Intergovernmental Relations

The topic of governance also encompasses discussions on intergovernmental relations.
The Tsawwassen agreement-in-principle does not provide a clear indication of what the post-treaty intergovernmental relationships between local government and Tsawwassen First Nation will look like. Building strong, positive working relationships between First Nation and local governments is crucial to successful treaties and as a result, some tables (like Katzie and Snuneymuxw) have established Intergovernmental Relations Working Groups. A similar side table has been proposed by the Parties at Tsawwassen. This working group will invite additional participation by Delta and GVRD to address issues specific to their jurisdiction and LMTAC to provide a regional perspective. Technical issues for the Intergovernmental Relations Working Group include: regional land use, servicing, boundary adjustments, the ownership and maintenance of infrastructure (including roads and ditches), and options for participation in the GVRD.

LMTAC members have begun exploring the topic of Regional Governance through development of a policy paper entitled "*Regional Governance and Governance in the Region*".
In particular, when it comes to issues of regional district membership, LMTAC has stressed that membership responsibilities, regional land use planning processes and fair funding relationships are of critical importance and need to be addressed.

4. Lands
Local governments have raised concerns around the prospect of additions to treaty settlement lands. This means that specific parcels of land acquired by a First Nation in fee-simple may become Treaty Settlement Lands post-treaty.

When reviewing the other AIP's reached in BC, all except the Tsawwassen AIP include municipal consent as a requirement where the land to be added is within municipal boundaries. The Tsawwassen AIP states that the Parties agree to attempt to obtain the consent of the municipality as a consideration and state that the consent must not be "unreasonably withheld". This provision is inconsistent with LMTAC's First Principles. LMTAC's principles state that local government lands should not be included in treaty settlements and should this principle not be respected, local governments should be fully compensated. It's expected that this issue will be explored by the Provincial government during Tsawwassen's Final Agreement negotiations.

Additions to Treaty Settlement lands raises the further issue- that land parcels may not be contiguous to existing reserves nor integrated into one land base- which would help to realize economies of scale and minimize jurisdictional complexities.

5. Certainty
Certainty is defined as ownership and jurisdiction including that the rights, responsibilities and authorities of all parties are clear and predictable. The federal and the provincial governments are tasked with ensuring that the processes for reviewing and amending the treaty are fair and predictable. Within this context, the federal and provincial governments face the challenge of achieving certainty without extinguishing aboriginal rights.

In the past, the Crown has required First Nations to 'cede, release and surrender' their aboriginal rights in exchange for treaty rights. This is referred to as the 'extinguishment model'. First Nations in the BC treaty process reject this approach because they see it as giving up any rights that may not be included in a treaty. For example, many First Nations in the BC treaty process are reluctant to give up their tax exemption when most other First Nations in Canada will continue to have these exemptions - including those that have signed treaties in the past. The federal and BC provincial governments and the First Nations Summit are working together to find creative solutions to issues of this nature.

Both the federal and BC provincial government have stated that blanket extinguishment of aboriginal rights is not an option.

In order to find a mutually acceptable way to achieve certainty a great amount of time and expertise was spent in the Nisga'a negotiations to develop what has been referred to as the 'modification model'. The modification approach provides that the aboriginal rights of the First Nation, as modified, are those set out in a treaty.

However, in the Nisga'a case, the governments of Canada and BC took the view that a higher degree of certainty is needed over land-based rights and therefore required the First Nation to agree to a 'fallback release' of these rights. (The release is intended to provide legal protection in the event the purpose of the modification is not achieved for a specific right set out in a final agreement or if the modification proves unenforceable.)

As First Nations find the release requirement objectionable, Canada and BC have agreed to continue to work with the other parties to identify an acceptable certainty technique. This includes examination of an orderly process for the addition of rights not included in a final agreement.

As noted earlier, the BC Government has proposed that many governance-related rights be set out in a governance agreement outside the treaty. BC has further proposed a different certainty technique in respect of these rights: the First Nation agrees not to assert any governance-related right other than those exhaustively set out in the governance agreement. This is generally referred to as the 'non-assertion model'.

Although there has been progress, much work is still required by treaty tables to close the gap in vision on this issue.

From a local government perspective, certainty also entails accessibility of a dispute resolution mechanism for local governments, as well as the resolution of overlaps or shared territory.

6. Dispute Resolution

In relation to dispute resolution, local government involvement is absent from the dispute resolution provisions within current agreement in principles because they are not signatories to the Final Agreement. Currently, no common operating framework for local and First Nation Governments exists, such as provided to local governments by the *Local Government Act* and *Community Charter*. Without a common operating framework uncertainty will persist.

Treaties must allow for dispute resolution provisions to address certainty issues that may arise after the settlement legislation is enacted. Achieving certainty with respect to land use, servicing and resolution of disputes can be the most useful role of the treaty for local governments. In addition, treaty negotiations highlight the need to explore land use co-ordination and related issues because their conclusion will most likely bring increased activity of First Nation lands largely for the purposes of economic development. Therefore it is crucial to develop mechanisms for resolving land use disputes in an effective and amicable way.

7. Overlap

Overlap is included among the assessment criteria to show readiness during stage two of the BC Treaty Process. A First Nation must clearly identify all known overlaps and begin to address these issues by notifying all affected First Nation communities and preparing a map that depicts the areas of shared territory under dispute. First Nations are to make best efforts to establish an agreed upon process for resolving the overlaps with each of the affected neighbours and describe the way in which the First Nation will report to the BC Treaty Commission on the progress of overlap discussions. LMTAC's First Principles state that AIP's should not be signed until overlap issues are resolved, but this has not been the case with the Tsawwassen AIP. However, the Province will not agree to conclude a Treaty Settlement land package that includes land still subject to an overlap dispute.

8. Compensation

The BC Claims Task Force Report states that negotiations are expected to include discussion of a financial component to recognize past use by other parties of First Nation land and resources and the impact of this on First Nations' ongoing interests, and to provide capital for community and economic development. The financial component could take different forms, such as cash payments, resource revenue sharing or other means.

Compensation had been an obstacle to progress at some tables including the Musqueam negotiations.

Although a directive in November 2002 gave negotiators the green light to explore the issue of compensation, it is only recently that any progress has been made with facilitation from the Treaty Commission.

In a letter to Musqueam in July 2003, the Indian and Northern Affairs Minister reaffirmed his support for “individual treaty negotiation tables to explore the issue of compensation” as earlier agreed by the Principals in Ottawa in November 2002. In the minister's opinion, the recommendation permits individual negotiation tables, where they so choose, to agree to explore the issue of compensation without it becoming a substantive topic for negotiation. However, it was made clear that “willingness to engage in discussions should not be construed as signaling that Canada is now prepared to negotiate compensation on a legal or financial liability or accountability basis.”

The minister further noted that while the BC government understands the importance of this issue for First Nations and that without efforts to reconcile the past in a substantive and meaningful way, the negotiating parties are unlikely to make progress at a number of treaty negotiations.

9. Cooperative Management and Revenue Sharing

Cooperative management and revenue sharing are ways First Nations can maintain an attachment to their traditional territories. Revenues from resources can provide an important tool for building First Nations' self-sufficiency and can enable them to benefit from development activities within their traditional territories. Resource revenue is also one possible way to resolve the issue of financial compensation.

How these co-operative management agreements will be given effect in treaties is still to be negotiated.

10. Resource Management (fisheries)

Negotiations have begun around harvest allocations of particular species of fish, wildlife and plants for domestic, and sometimes commercial, purposes. Negotiations have also touched upon management plans and the role that First Nations will have.

Lower Mainland local governments have expressed concern with fisheries provisions within the Tsawwassen agreement-in-

principle, Specifically, Tsawwassen will be provided with the right to harvest fish and aquatic plants for domestic purposes in the Tsawwassen fishing area. LMTAC has expressed concern that allocation formulas provided within the AIP are not sustainable, if replicated along the Fraser River. BC has acknowledged the need to identify the incremental amount of fish that will be required to satisfy the demands of the full watershed and how TFN will fit into the equation.

The Tsawwassen AIP is unique in that its Fisheries chapter contains two acknowledgement clauses that balance the Tsawwassen interest for secure access to economic opportunities with BC's interests in broad watershed allocation decisions, integrated management arrangements; and creating a Tsawwassen commercial fishery on the same priority basis as commercial fisheries.

Both the federal and BC provincial governments have committed to consult and work with representatives from the commercial and recreational sectors leading up to the Final Agreement.
Lower Mainland local governments have raised specific concerns on Fraser River fisheries management

# CONCLUSION

There are presently five (5) First Nations engaged in various stages of the treaty process within the Lower Mainland, three of which contain statements of intent boundaries within Surrey, including Tsawwassen, Katzie, and Musqueam.

Currently, the Tsawwassen First Nation is the only Lower Mainland First Nation to have a draft agreement-in-principle in place. General issues to resolve with draft agreements-in-principle are related to governance, lands and land use planning, certainty, compensation, cooperative management and revenue sharing, and resource management

While the City is fundamentally supportive of the BC Treaty process, Surrey is opposed to any potential loss of municipal tax revenues or alterations to existing land use resulting from future treaty settlements. All existing and future BC Treaty negotiations potentially effecting Surrey must reflect consideration and compliance to the Surrey Council endorsed “First Principles” of the Lower Mainland Treaty Advisory Committee (Appendix G). The City's position is that the BC provincial and federal governments include the noted First Principles as a part of their negotiations process for all treaties affecting lower mainland municipalities.

Status reports on treaty progressions will be provided to Council on a quarterly basis and on an as- required basis should any significant developments arise.

Robert Costanzo,

Surrey Staff Representative to the Lower Mainland Treaty Advisory Committee

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Attachment

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## APPENDIX A

### THE BRITISH COLUMBIA TREATY COMMISSION'S SIX STAGE TREATY PROCESS

The Treaty Commission is the independent and neutral body responsible for facilitating treaty negotiations among the governments of Canada, BC and First Nations in BC. The Treaty Commission does not negotiate treaties—that is done by the three parties at each negotiation table.

The Treaty Commission and the treaty process were established in 1992 by agreement among Canada, BC and the First Nations Summit. The Treaty Commission and the six-stage treaty process were designed to advance negotiations and facilitate fair and durable treaties.

The Treaty Commission's primary role is to oversee the negotiation process to make sure that the parties are being effective and making progress in negotiations. In carrying out the recommendations of the BC Claims Task Force, the Treaty Commission has three roles—facilitation, funding and public information and education.

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| **STAGE ONE** ***Statement of Intent*** | First Nations choosing to enter into the treaty process must submit a Statement of Intent (SOI) to the BCTC. The SOI identifies the traditional territory, overlapping First Nations and included background information on the First Nation. Upon submission, the BCTC either accepts or rejects the SOI. |
| **STAGE TWO** ***Readiness*** | This is the first opportunity for representatives from the First Nation, BC and Canada to formally meet and declare their interests in treaty making, identify issues of concerns and to exchange information. |
| **STAGE THREE** ***Framework Agreement*** | The First Nation, Provincial and Federal governments negotiate procedural matter through the Framework Agreement, which includes identification of substantive issues, establishment of a timeframe, initiation of the public information process and identification of meeting procedures. |
| **STAGE FOUR** ***Agreement-in-Principle*** | This is the stage at which the parties begin substantive negotiations. The goal is to reach the major agreements that will form the basis of the treaty. During this stage, the parties examine in detail the elements of the Framework Agreement. The Agreement in Principle will confirm the ratification process for each party and lay the groundwork for an implementation plan.<br><br>The ratification process allows the parties to review the emerging agreement and to approve, reject or seek amendments to it. British Columbia has announced that Agreements in Principle will be subject to public review before ratification. The process also gives the negotiators a mandate to conclude a treaty. |
| **STAGE FIVE** *Negotiation of* | The treaty will formalize the new relationship among the parties and embody the agreements reached in the Agreement in Principle. Technical and legal issues will be |

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| *Final Agreement* | resolved at this stage, but issues already settled will not be reopened. The treaty will be signed and formally ratified at the conclusion of this stage. |
| **STAGE SIX** ***Implementation*** | Once the treaty has been signed, a substantial amount of work is still required. Above all, the execution of long-term implementation plans and the commitment of good will and effort are the goal of the final stage of the process. |

**APPENDIX B**

# Tsawwassen First Nation Statement Of Intent

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| Status: Stage 4<br>Chief: Kim Baird<br>Band Membership: 233<br>Population on Reserve: 158<br>No. of Existing Reserves: 1<br>Area of Reserves: 273 Hectares<br>Area under Negotiation: 207,900 Hectares<br><br>LMTAC rep. to the Negotiations: Councillor Harold Steves, Richmond | On July 28, 2003, the parties at the Tsawwassen First Nation (TFN) table initialled the first agreement in principle in the Lower Mainland. The draft agreement includes 427 hectares of land **(all located within Delta)** plus existing reserve land (290 hectares) and $14.2 million – $10.1 million capital transfer, $2 million for fish licences, $1 million for economic development, $1 million for culture & heritage, and $100,000 to acquire forest resources.<br><br>The agreement also includes provisions for two treaty-related measures to facilitate the identification of potential Tsawwassen artifacts and to support the development of intergovernmental relationships. Further, the agreement lays out a process in which the parties will engage with the Agricultural Land Commission to assess the prospects for excluding settlement lands from the Agricultural Land Reserve after treaty. This is in response to TFN's stated need to provide its members with lands for community and economic development in order to become a self-sufficient and sustainable First Nation. The Parties have expressed an interest to complete a draft Final Agreement within one year; by the end of 2004.. Issues to be resolved include provisions for Tsawwassen governance, |

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| | intergovernmental relations, allocations for harvesting wildlife and migratory birds and a commercial fisheries component (which will not be part of the treaty). A Tsawwassen community ratification vote on the draft agreement in principle is scheduled on December 10th, 2003..<br><br>The First Nation of approximately 270 members traditionally occupied and used the land and water around Pitt Lake and the Fraser River Delta to Point Roberts and Saltspring Island. |

**APPENDIX C**

# Katzie First Nation Statement Of Intent

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| Status: Stage 4<br>Chief: Peter James<br>Band Membership: 460<br>Population on Reserve: 282<br>No. of Existing Reserves: 5<br>Area of Reserves: 341 Hectares<br>Area under Negotiation: 103,278 Hectares<br><br>LMTAC rep. to the Negotiations:<br>Councillor Candice Gordon, Maple Ridge | Agreement-in-principle negotiations at the Katzie table are progressing at a moderate, but steady pace. Interest papers have been exchanged on wildlife, parks and protected areas, culture and heritage, and environmental management, and the parties are now developing joint principles in these areas.<br><br>The First Nation has also used interim measures funding to develop their governance capacity, and determine forestry and tourism opportunities. Katzie has been active in developing relationships with its neighbouring municipalities through its intergovernmental working group and a community relations working group.<br><br>The Katzie have unofficially expressed general interests in Surrey specific developments, primarily within the Port Kells area. Surrey staff will closely monitor these negotiations and maintain direct communications with the LMTAC representative to the Negotiations accordingly. Council will be apprised of any significant developments in this regard.<br><br>A First Nation with approximately 460 members, Katzie traditionally occupied and used the land and water around Pitt Lake, Pitt River, Surrey, Langley, New Westminster and Vancouver. |

**APPENDIX D**

# Musqueam First Nation Statement Of Intent

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| Status: Stage 3<br>Chief: Ernest Campbell<br>Band Membership: 1,089<br>Population on Reserve: 522<br>No. of Existing Reserves: 3<br>Area of Reserves: 254 Hectares<br>Area under Negotiation: 104,371 Hectares<br><br>LMTAC rep. to the | Musqueam received a letter from Canada in January 2003 expressing concern about lack of progress and indicating that Canada might disengage from the table.<br><br>The Treaty Commission facilitated several meetings among the parties at the Musqueam table to explore options for resuming negotiations, which had been stalled |

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| Negotiations: Councillor Harold Steves, Richmond | over the issue of compensation. The table appears poised to finally resolve the issue following a Band Council Resolution to approve the Framework Agreement. This agreement is subject to final and collective ratification by Canada, BC and the Musqueam which will likely occur in early 2004.<br><br>The First Nation has approximately1,080 members, with traditional territory spanning the Greater Vancouver area. Their traditional territory includes the South Westminster area of Surrey. |

**APPENDIX E**

# Squamish Nation Statement Of Intent

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| Status: Stage 3<br>Chief: Bill Williams<br>Band Membership: 3,232<br>Population on Reserve: 2,082<br>No. of Existing Reserves: 23<br>Area of Reserves: 2,116 Hectares<br>Area under Negotiation: 648,700 Hectares<br><br>LMTAC rep. to the Negotiations: Councillor Corinne Lonsdale, Squamish | In 2000, treaty negotiators at the Squamish table recommended the draft Squamish NationFramework Agreement for approval by their Principals. Since the recommendation for approval, no treaty negotiations have occurred.<br>Squamish received a letter from Canada in January 2003 expressing concern about lack of progress and seeking confirmation of the First Nation's treaty priorities.<br><br>Squamish has been focused on |

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| | initiatives outside the treaty process, including formalizing its working relationship with the Lil'wat Nation, an agreement with BC Rail and British Columbia to co-manage the Squamish River Estuary, development and endorsement of the Squamish Nation Land Use Plan and initiatives relating to the 2010 Olympics. Squamish's traditional territory ranges from the Lower Mainland to Howe Sound and the Squamish Valley watershed, measuring 6,732 square miles.<br><br>The First Nation has approximately 3,230 members, 2,000 of whom live on Squamish Nation reserves. |

**APPENDIX F**

# Tsleil-Waututh Nation Statement of Intent

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| Status: Stage 4<br>Chief: Maureen Thomas<br>Band Membership: 379<br>Population on Reserve: 227<br>No. of Existing Reserves: 3<br>Area of Reserves: 110 Hectares<br>Area under Negotiation: 178,900 Hectares<br><br>LMTAC rep. to the Negotiations:<br>Mayor Don Bell,<br>N. Vancouver (District) | Following a period of slow progress marked by divergent visions of a treaty, the parties at the Tsleil-Waututh table have increased the pace of negotiations and are committed to achieving an agreement in principle. Land issues have dominated negotiations with Tsleil-Waututh Nation over the past year. Three interim measures were initiated in February 2002 including an assessment of eco-tourism and eco-forestry opportunities, an assessment of a joint venture opportunity for renovating and renting a commercial heritage building in downtown Vancouver and an assessment of a joint venture opportunity to develop a marine eco-tourism business at Canada Place in Vancouver.<br><br>Tsleil-Waututh signed a non-binding protocol agreement with the District of North Vancouver to protect archaeological resources in Cates Park, and has formal agreements with the Ministry of Forests, the Ministry of Water, Land and Air Protection and the District of North Vancouver on various resource uses in specific parks and other sites in its traditional territory.<br><br>Tsleil-Waututh traditionally occupied and used the land and waters around North Vancouver and the Lower Mainland. The First Nation has approximately 380 members. |

## APPENDIX G

LOWER MAINLAND TREATY ADVISORY COMMITTEE FIRST PRINCIPLES

There are several broad principles which help to inform Lower Mainland area Local Government interests in treaty negotiations. These principles were developed in 1999 through a 10 month policy development and consultation exercise that directly involved all 26 municipal and regional district governments represented on LMTAC. Further principles were added in June 2000. LMTAC's First Principles provide the framework for more detailed exploration of underlying interests.

## GENERAL PRINCIPLES

| Brief Description: | Principle: |
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| **Uniqueness of Urban Treaties** | 1. Treaty agreements in other regions of the Province should not be used as a precedent or template for urban treaty settlements. Provisions in Lower Mainland area treaties should reflect the complex realities of the urban environment specific to each treaty. |
| **Local Governments are Not Third Party Interests** | 2. Local Government shall be recognized in the treaty process as an independent, responsible and accountable order of government, not as a secondary level or third party interest. |
| **Respect Canadian Constitution** | 3. Treaties should uphold the principles of the *Canadian Constitution* and the *Canadian Charter of Rights and Freedoms*. |
| **Respect Heritage** | 4. Treaty settlements must respect the values, heritage, culture and traditions of Aboriginal and non- Aboriginal peoples. |
| **Open and Transparent Negotiations Funded By Senior Governments** | 5. Tripartite* treaty negotiations must be open and provide for meaningful public input throughout the negotiations. The cost of the public process is to be funded as an essential part of treaty-making by the tripartite negotiating parties. |
| **Resolution of Overlaps** | 6. Agreements-in-Principle* (Stage 4) shall not be completed until all conflicting land, water and resource issues (of those Aboriginal peoples who qualify under the BC Treaty Process) have been resolved. Agreements-in-Principle* shall include the details of the overlap resolution agreement. |
| **Need for Certainty** | 7. Local Governments strongly support the need for certain and final definitions of Treaty rights. Treaties should provide a clear and exhaustive definition of powers that First Nations governments may exercise. |
| **Role of LMTAC** | 8. LMTAC is the voice of Lower Mainland area Local Governments on all issues relating to the treaty process. |
| **Consistent Application of Principles** | 9. LMTAC's First Principles will be applied to all Lower Mainland area treaty agreements. |

## LAND PRINCIPLES

| Brief Description: | Principle: |
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| **Cash Settlements in Urban Areas** | 10. Urban treaty settlements should be composed primarily of cash and other fiscal considerations rather than land, because of scarcity of unencumbered and uncommitted lands in the Lower |

Mainland area.

**Private & Local Government Lands and Assets Protected**

11. Privately-owned fee-simple* lands, Crown Corporation lands, and Local Government-owned lands and assets, including those acquired through a Local Government process, must not be available for land selection. Lands and assets include, but are not limited to: Local Government facilities, rights-of-way, lands leased from other governments, Crown lands subject to a Local Government license/tenure, municipal and regional parks, conservation and protected areas, greenbelts, school board lands, and Local Government commercial operations (i.e. forest lands, park concessions).

**Continuation of Local Government Authority over Lands Pre and Post Treaty**

12. The continuation of Local Government regulatory and taxation authority over lands within a municipality or regional district that may be transferred as part of a treaty settlement is paramount.

    Lands received by a First Nation as part of a treaty settlement should be held in fee-simple* and have no new or special status. Lands to be added *after* the treaty is signed must remain subject to Local Government jurisdiction and taxation unless otherwise agreed to by Local Governments through a community consultation process.

**Lands Held in Fee-Simple**

13. Clarity and consistency in regulatory jurisdiction is paramount in the post-treaty environment. Treaty settlement lands* within municipalities and regional districts are to be treated like all other fee-simple* lands (e.g. be subject to compatible zoning bylaws, be assessed for regional services, and not include ownership of sub-surface resources).

**Importance of Access**

14. There must be continued access (via land, water or air) to Local Government lands and assets on, between or adjacent to treaty settlement lands* as well as to privately-held and leased lands on, between or adjacent to treaty settlement lands* for the purposes of, but not limited to, infrastructure development and maintenance.

## RESOURCE and ENVIRONMENTAL PRINCIPLES

**Brief Description:** **Principle:**

**Resource Sustainability**

15. Sustainability* of local economies is a priority in the post-treaty environment. Lower Mainland area renewable, natural resources (including, but not limited to, forests, water and fish) must continue to be managed on a sustainable basis in order not to undermine the economic base of Local Governments and their communities.

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| **Consistent Regulatory Controls** | 16. | Clarity and consistency in regulatory jurisdiction with respect to natural and physical resources are paramount in the post-treaty environment. Development of resources can have a significant impact on Local Governments |
| **Conservation / Environmental Protections** | 17. | International agreements and Federal and Provincial legislation with respect to conservation (of wildlife, migratory birds, fish and other species) must be incorporated into all treaties.<br><br>Present, future and potential refuge and environmentally-sensitive areas, including but not limited to, the Fraser River Basin, Boundary Bay Wildlife Management Area, Maple Wood Flats and Indian Arm, must be identified and protected during the treaty process. |
| **Protect Wildlife Habitats** | 18. | Locally, nationally, and globally significant wildlife habitats in the Lower Mainland area must be recognized and protected. |
| **Preserve Agricultural Lands** | 19. | Lands in the Agricultural Land Reserve (ALR) must remain in the ALR and under the jurisdiction of the Agricultural Land Commission (ALC). |
| **Respect Local Government Leases and Licenses** | 20. | Local Government leases and licenses (including park tenures and agricultural, mining, forest and range leases/licenses on Crown lands), and the economic and environmental viability of these agreements, as well as any provisions for their renewal, must be respected and preserved. |
| **Access, Usage, Maintenance and Protection of Water Resources** | 21. | Local Government and private interests in water must be preserved. Interests include, but are not limited to: ground water, aquifers, natural drainage systems, watersheds, reservoirs, water licenses, water lots, shoreline and easement access for servicing, historic rights of water use, purity control standards and water use regulations. |
| **Protect Annual Allowable Cut** | 22. | Forest land which may come under Aboriginal control must remain and continue to be managed within the existing timber supply areas and Forest Districts to ensure no loss of Annual Allowable Cut (AAC) on the land base. |
| **Protect Fish Stocks** | 23. | The protection of fish stocks is a primary concern, and the rights and responsibilities of all fishers engaged in native, commercial or recreational fishing should be given due consideration. |

## GOVERNANCE PRINCIPLES

| **Brief Description:** | | **Principle:** |
|---|---|---|
| **Respect Government Authorities** | 24. | Treaties must recognize and respect the authority and jurisdiction of Federal, Provincial and Local Governments. |
| **Application of Criminal / Civil Laws** | 25. | Canadian Criminal Law should continue to apply as |

well as existing precedents set out in Civil Law in British Columbia.

**Democratic Values**

26. Aboriginal self-government should uphold the principles of democracy and accountability.

**Rights of Representation**

27. Treaties must uphold the principle of "no taxation without representation" for all persons residing on treaty settlement lands.* Mechanisms need to be developed to ensure that all persons who are living on treaty settlement lands* and who are paying taxes or levies to the First Nation have access and a voice in First Nation governance systems.

**Delivery of Local Programs/Services**

28. Aboriginal self-government provisions must provide for First Nation participation in, or partnerships with, Local Governments for more effective and efficient delivery of programs and services.

**"Meet or Beat" Standards**

29. Standards and regulations (including enforcement provisions) that apply to treaty settlement lands* should meet or exceed established standards set by Federal, Provincial and Local Governments for issues including, but not limited to: environmental protection, public health, labour, safety, fire protection, building codes, noise and licensing.

**Dispute Resolution Accessible to Local Governments**

30. Treaties should include an effective dispute resolution mechanism that is accessible to Local Governments, particularly relating to inter-jurisdictional issues such as, but not limited to: planning, land use, natural resources, growth management, stewardship and transportation.

**Parity Between Local Government and First Nations Powers**

31. Local Governments must be provided the opportunity to access Local Government-related powers, as defined by Provincial legislation, also available to First Nations in the post-treaty environment.

**Address Off-Reserve/TSL* Issues**

32. Lower Mainland area Local Governments have increasing Aboriginal populations that are not from the traditional territories* of Lower Mainland area First Nations as well as Aboriginal populations that will reside off future treaty settlement lands.* Treaties must include mechanisms to ensure that the costs of providing programs and services to these populations do not become the responsibility of Local Government.

**Participation in and Delivery of Regional Programs/Services**

33. Treaties must identify regional programs and services (such as, but not limited to, air quality, solid waste management and Regional Growth Strategies) in which First Nations must participate, either through direct involvement in the existing program/service or indirectly through a contract with Local Governments.

    This principle recognizes that some programs/ services affect all area residents and that regional delivery enhances economies of scale. This principle

also emphasizes the importance of the various interconnections between urban communities in the Lower Mainland area.

## FISCAL PRINCIPLES

| Brief Description: | Principle: |
|---|---|
| **Recognize Fiscal Capacities** | 34. Treaties must recognize the limited fiscal capacity of all levels of government and not impose any cost to Lower Mainland taxpayers, other than their contribution to treaty settlements through the cost-sharing Memorandum of Understanding between the Provincial and Federal Governments. |
| **Respect Service Agreements** | 35. All existing and future service agreements must be respected to ensure Local Governments receive financial contributions from all users of Local Government programs, services and infrastructure. |
| **Cost Neutral Agreements for Local Governments** | 36. No demand must be placed on Local Government tax revenues or revenue sources resulting from treaty settlements, particularly on the ability of Local Government to derive tax revenue from sources such as property taxes, service fees, utility charges and grants-in-lieu from Crown lands. Any revenue loss to Local Governments arising from treaty settlements must be fully compensated. |
| **Fair sharing of costs** | 37. No one Local Government should be disproportionately burdened as a result of treaty negotiations. |
| **Flexible Cost Recovery Post-Treaty** | 38. The Provincial *Municipal Act* and *Vancouver Charter* must enable Local Governments to develop flexible taxation and cost-recovery mechanisms when dealing with Aboriginal governments in the post-treaty environment. |
| **Respect Existing Financial Commitments** | 39. Treaties must respect and recognize existing Provincial fiscal commitments to Local Governments. |