



Corporate Report

NO: R188

COUNCIL DATE: July 19, 2004

REGULAR COUNCIL

TO: Mayor & Council DATE: July 12, 2004
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 an update on ongoing Lower Mainland Treaty Negotiations issues.

DISCUSSION

Surrey Meeting with Katzie First Nation

On July 7th, 2004, Councillor Penny Priddy, Surrey representative to the Lower Mainland Treaty Advisory Committee (LMTAC), and Surrey staff met with the Katzie First Nation representatives. Other parties in attendance included Katzie treaty negotiations main table representatives from both the Provincial and Federal government as well as Maple Ridge Councillor Candice Gordon. Councillor Gordon represents Maple Ridge at the LMTAC. She also represents LMTAC at the Katzie main table negotiations.

The Katzie First Nation is presently engaged in Stage Four (Agreement-in-Principle) of the treaty negotiations process. Their reserve lands are located primarily within Pitt Meadows, however, their traditional territory entirely encompasses the municipalities of Pitt Meadows, Maple Ridge, Port Coquitlam, Surrey, and the Langleys.

The main purpose of this meeting was to acquaint Surrey with the Katzie representatives with the intent of fostering positive associations with this group. In addition, the meeting provided an opportunity to engage in a high-level/open discussion on matters relating to Katzie's ongoing treaty negotiations and to gain some deeper insight on their issues and concerns.

The meeting also allowed the Surrey representatives to establish key contacts with the noted groups who we feel will effectively enhance the flow of communications back to the City on Katzie treaty related matters that may be of relevance to the City.

The relevant update to the Katzie negotiations is provided in greater detail on page two of this report.

Updates to Lower Mainland Treaty Negotiations

The last Council update on treaty related issues was provided in December 2003. The following provides a brief update on treaty issues since then.

There are presently five (5) First Nations engaged in various stages of the treaty negotiations process within the Lower Mainland. These First nations include Tsawwassen, Katzie, Musqueam, Squamish, and Tsleil Waututh.

Appendix A of this report provides a guide to the six-stage treaty process. Appendices B through F illustrate the traditional territories for each of the noted First Nations.

Katzie First Nation

Parties at the Katzie table are steadily working on Agreement in Principle (AIP) negotiations by continuing to meet approximately two days each month. The table has concentrated efforts on drafting joint principles, interest checklists and comparison charts on the following five Agreement-in-Principle topics: environmental management; culture & heritage; wildlife; migratory birds; and parks & protected areas.

The parties agreed to begin a process of translating interest papers into draft AIP chapters by the end of 2004. The table also received approval to proceed with two Treaty Related Measures. One relates to Culture and Heritage and will build upon intergovernmental relations, while the other relates to back-country recreational tenures. The table is also considering Federal and Provincial funding possibilities for forestry and tourism proposals.

In April, the Katzie table initiated preliminary discussions on governance and expressed an interest to participate in discussions for establishing intergovernmental relations between First Nations and the GVRD. Parties also initiated a review of the following AIP process-related chapters: amendment; approval of the AIP; *Indian Act* transition; implementation; dispute resolution; ratification of the Final Agreement; and eligibility and enrolment. Katzie is currently developing interest papers related to Forest Resources and Fisheries that are anticipated to be released by the end of November 2004. The next public Main Table Working Group meetings are scheduled for September 9 -10. All meetings are open to the public and are usually held at the Katzie Band Office in Pitt Meadows.

(The Katzie's Statement of Intent is depicted in Appendix B of this report.)

In addition to these three Parties, invited participants to this working group included representatives from LMTAC, GVRD, and the Corporation of Delta. Using funding provided by British Columbia, LMTAC contracted the services of Sussex Consultants Ltd. to research and compile local government material.

Since the inaugural meeting of the Tsawwassen IGRTWG in February 2004, three workshops were held. These workshops provided an opportunity to exchange information and address questions by all of the participants. Subsequently, the related reports and presentation material prepared by Sussex Consultants Ltd have been circulated to all LMTAC member jurisdictions and are now also posted on LMTAC's web site. These materials form not only an important compilation of documents for use by the Tsawwassen table, but for all treaty tables in the area.

Tsawwassen First Nation

All three Principals at the public signing ceremony on March 15, 2004 ratified the Tsawwassen Agreement in Principle (AIP). Since then, the Parties continue with Final Agreement negotiations and have expressed a tripartite goal of reaching a draft Final Agreement by the end of 2004.

The Tsawwassen First Nation, BC Treaty Negotiations Office and the Federal Treaty Negotiation Office committed to support development of intergovernmental relationships in part by establishing a Tsawwassen Intergovernmental Relations Technical Working Group (IGRTWG) to address First Nation/local government matters. In particular, the workshops were intended to exchange technical information on the following topic areas: Planning and Land Use Regulation, Local Governance and the GVRD, Services and Finances.

(Tsawwassen's Statement of Intent is depicted in Appendix C of this report.)

Musqueam First Nation

Since January 2003, the Parties have met monthly towards concluding a Framework Agreement and agreed to add the wording on compensation to the draft agreement. The Agreement was subsequently supported by the Musqueam community members and ratified on November 18, 2003.

Following, on December 17, 2003, the Parties initialed the Framework Agreement and presently wait official signing of the agreement prior to commencing Agreement in Principle (AIP) negotiations.

(Musqueam's Statement of Intent is depicted in Appendix D of this report.)

Squamish First Nation

In 2000, treaty negotiators at the Squamish table recommended a draft Framework Agreement for approval by their Principals. Since that time, no further negotiation activity has occurred.

Meanwhile, the Squamish Nation has been focused on initiatives outside the treaty process, including various commercial activities, an agreement with BC Rail and BC to co-manage the Squamish River Estuary, development and endorsement of the Squamish Nation Land Use Plan and co-hosting a Community-to-Community forum with the District of Squamish.

The Squamish Nation leadership is currently seeking the community's endorsement of a multi-year activity plan for all their business and community activities, including treaty negotiations.

(The Squamish Statement of Intent is depicted in Appendix E of this report.)

Tsleil Waututh First Nation

Beginning in January 2004, the Parties committed to meet two days each month. Discussions since then have focused on Tsleil Waututh Nation (TWN) urban and rural land interests, considered key issues to be addressed in order to reach a negotiated treaty settlement. Parties have also explored general interests in forest resources and particular interests pertaining to the Indian Arm Watershed. TWN also identified further interests related to aquaculture opportunities, small hydro-electric projects, and a back-country recreational tenure.

On June 21, National Aboriginal Day, Geoff Plant, Attorney General and Minister Responsible for Treaty Negotiations, and George Abbott, Minister of Sustainable Resource Management, joined Tsleil-Waututh Chief Maureen Thomas at Cates Park/Whey-ah-Wichen in North Vancouver to launch the "Honouring our Past" poster and encourage First Nations to work with government to reintroduce aboriginal place names to B.C. The Tsleil-Waututh First Nation and District of North Vancouver signed a protocol agreement in 2001 to co-manage the park, with a focus on recognizing its historical and recreational significance to the First Nation and the municipality. Through funding a Treaty Related Measure, BC and Canada committed to support continued co-management of the park and to develop further intergovernmental relations.

(The Tsleil Waututh Nation Statement of Intent is depicted in Appendix F of this report.)

Review of LMTAC First Principles

At the March Lower Mainland Advisory Board (LMTAC) regular board meeting, members endorsed an action plan to review and build upon the committee's established First Principles. The first part was to request staff to proceed with background briefing notes on four specific topic areas which, based on discussions at the Tsawwassen treaty table, required elaboration. By the July board meeting (July 28th) three of these briefing notes will be finalized.

The second part of the plan entails collecting comments from each member jurisdiction on the existing and potentially new principles to prepare for a special meeting. Accordingly, Surrey's comments will be forwarded to LMTAC by late July.

LMTAC staff will review and compile the comments from member municipalities over the month of August in preparation for a future meeting on this matter.

The existing First Principles that were endorsed by Surrey Council in 1999 are attached in Appendix G for reference.

CONCLUSION

This report provides an update on Lower Mainland Treaty Related issues and an overview of relevant ongoing negotiations.

Robert Costanzo,

Surrey Staff Representative to the Lower Mainland Treaty Advisory Committee

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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.

<p>STAGE ONE <i>Statement of Intent</i></p>	<p>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.</p>
<p>STAGE TWO <i>Readiness</i></p>	<p>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.</p>
<p>STAGE THREE <i>Framework Agreement</i></p>	<p>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.</p>
<p>STAGE FOUR <i>Agreement-in-Principle</i></p>	<p>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.</p> <p>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.</p>
<p>STAGE FIVE <i>Negotiation of Final Agreement</i></p>	<p>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 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.</p>
<p>STAGE SIX <i>Implementation</i></p>	<p>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.</p>

Katzie First Nation Statement Of Intent



Status: Stage 4

Chief: Peter James

Band Membership: 460

Population on Reserve: 282

No. of Existing Reserves: 5

Area of Reserves: 341 Hectares

Area under Negotiation: 103,278 Hectares

LMTAC rep. to the Negotiations: Councillor Candice Gordon, Maple Ridge

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.

Tsawwassen First Nation Statement Of Intent



Status: Stage 4

Chief: Kim Baird

Band Membership: 233

Population on Reserve: 158

No. of Existing Reserves: 1

Area of Reserves: 273 Hectares

Area under Negotiation: 207,900 Hectares

LMTAC rep. to the Negotiations: Councillor Harold Steves, Richmond

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 D

Musqueam First Nation Statement Of Intent



Status: Stage 3

Chief: Ernest Campbell

Band Membership: 1,089

Population on Reserve: 522

No. of Existing Reserves: 3

Area of Reserves: 254 Hectares

Area under Negotiation: 104,371 Hectares

LMTAC rep. to the Negotiations: Councillor Harold Steves, Richmond

The First Nation has approximately 1,080 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



Status: Stage 3

Chief: Bill Williams

Band Membership: 3,232

Population on Reserve: 2,082

No. of Existing Reserves: 23

Area of Reserves: 2,116 Hectares

Area under Negotiation: 648,700 Hectares

LMTAC rep. to the Negotiations: Councillor Corinne Lonsdale, Squamish

The First Nation has approximately 3,230 members, 2,000 of whom live on Squamish Nation reserves. Squamish's traditional territory ranges from the Lower Mainland to Howe Sound and the Squamish Valley watershed, measuring 6,732 square miles.

APPENDIX F

Tsleil-Waututh Nation Statement of Intent



Status: Stage 4
Chief: Maureen Thomas
Band Membership: 379
Population on Reserve: 227
No. of Existing Reserves: 3
Area of Reserves: 110 Hectares
Area under Negotiation: 178,900 Hectares

LMTAC rep. to the Negotiations: Councillor Jean Ferguson, N. Vancouver (District)

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:

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:

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:
Resource Sustainability**

Principle:

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.

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.

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 | 33. Treaties must identify regional programs and services |

Regional Programs/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.
35. All existing and future service agreements must be

Respect Service Agreements

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.

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