

OPENNESS PROTOCOL

HEILTSUK NATION TREATY NEGOTIATIONS

1.0 PURPOSE

1.1 This Protocol applies to the treaty negotiation process among the Heiltsuk Nation, Canada and British Columbia (the "Parties") and is intended to provide public access throughout the treaty negotiation process subject to the need to conduct effective and efficient negotiations. In acknowledging the need to have an open and effective process, the Parties want to provide accurate information to their advisory committees and the general public. The Parties agree to provide for such public access as specifically provided for in this Protocol.

2.0 DEFINITION

2.1 In this Protocol, the term "document" refers to materials that are recorded or stored, including graphic, electronic, mechanical, or other means (but does not include a computer program or any other mechanism that produces a record) and that are provided by one or more of the Parties as part of the Heiltsuk Nation negotiation process.

2.2 In this protocol the term "tripartite documents or agreements" means written records collectively produced, in whole or in part, by the Parties to this agreement, and which represent the positions, information, interests or views of the Parties.

3.0 OBSERVATION OF MAIN TABLE SESSIONS

3.1 Public observation of treaty proceedings will occur at Main Table sessions that are devoted to a general exchange of information or clarification of interests, issues and policies, or the discussion of matters of a general nature.

3.2 Public observation may include opening treaty negotiations for attendance by the general public, advisory committees, and the media. Those attending will participate as observers only.

3.3 In deciding whether other Main Table sessions will be open or closed, the Chief Negotiators will consider whether attendance at the session by individuals other than the negotiating team members would:

3.3.1 contribute to the better understanding of the negotiation process by the public;

3.3.2 interfere with the effectiveness of the process;

3.3.3 reasonably be expected to prejudice the positions or strategies of the Parties; or

3.3.4 harm the conduct of negotiations.

3.4 Pursuant to subsections 3.1, 3.2 and 3.3 of this protocol, the Chief Negotiators will determine by mutual agreement whether a session will be open or closed, either in whole or in part. Where it is agreed that a Main Table session will be open, the Chief Negotiators will, where possible, provide notice at least two weeks before the scheduled date of the session.

3.5 The Chief Negotiators will, by agreement, be entitled to adjourn open Main Table sessions for safety and security reasons. A person may be disallowed from attending future negotiation sessions where the Chief Negotiators determine, by agreement that the person's attendance would present a serious impediment to the negotiation process.

4.0 ACCESS TO DOCUMENTS

4.1 The Parties agree that the following documents will be made available to the general public on a timely basis:

4.1.1 Main Table agendas;

4.1.2 Records of Decisions and Commitments produced consistent with the Procedures Agreement among the Parties;

4.1.3 periodic reports reviewing the progress of negotiations prepared by the parties;

4.1.4 joint reports tabled with the British Columbia Treaty Commission;

4.1.5 other documents as agreed by the Chief Negotiators.

4.2 Tripartite documents determined to be available to the public by agreement of the Chief Negotiators will be made public after initialling, including the following:

4.2.1 the Framework Agreement;

4.2.2 sub-agreements;

4.2.3 the Agreement in Principle;

4.2.4 the Final Agreement.

4.3 Each Party will determine whether a document it has produced will be deemed confidential or will be available to the public. If a Party decides that a confidential document that it has produced should subsequently be released to the Public, the Party will consult with the other two Parties regarding its release, and take into consideration the effect the release of the document may have on the negotiations.

4.4 When two Parties produce a document, the Parties producing the document will decide whether the document will be deemed confidential or will be available to the public. If the two Parties decide that a document which they have produced should subsequently be released to the public, the two Parties producing the document will consult with the other Party regarding its release and take into consideration the effect the release of the document may have on negotiations.

4.5 When it has been determined that a document will be deemed confidential, the parties producing the document will:

4.5.1 ensure that the document bears the name of the Party producing the document;

4.5.2 ensure that the document deemed to be confidential is properly identified as confidential;

4.5.3 ensure that the document identified as confidential is marked as to the reason for the confidential nature of the document.

4.6 Documents which are deemed to be confidential will not be released to the public or advisory committees without the approval of the Party which has produced it.

4.7 The inclusion of the words "In Confidence" or "Confidential" on or in a document will constitute advice to any of the parties receiving the document that it is to be kept confidential.

4.8 The release of records is acknowledged to be subject to the Freedom of Information and Protection of Privacy Act and the Heritage Conservation Act of the Province of British Columbia, and the Access to Information and Privacy Act of Canada.

4.9 Confidential documents may include those relating to sensitive site specific information such as Heiltsuk Nation history, spirituality and sites of interment, cultural heritage, traditional foods and medicine harvesting areas and sensitive information relating to traditional and ceremonial practice. Such information may be removed from documents at the request of the Heiltsuk Nation Chief Negotiator.

5.0 CONSULTATION

5.1 The Parties acknowledge that Canada and British Columbia will establish consultation processes to consult with the local government and third parties on issues and concerns to be dealt with in the treaty

negotiations.

5.2 Consultation will be conducted with advisory committees which consist primarily of individuals who are resident in Heiltsuk Nation traditional territory, or who represent interest which have employees, or members, who are resident in Heiltsuk Nation traditional territory.

5.3 The advisory committees:

5.3.1 provide advice to the Chief Negotiators on matters related to how the interests of advisory committee members and their constituencies may be affected by a treaty; and, for greater certainty,

5.3.2 only the Governments of Canada and British Columbia instruct the respective Chief Negotiators on the conduct of negotiations;

5.3.3 The Government of Canada will approve the Framework Agreement and the Agreement in Principle and will ratify the Final Agreement on behalf of Canada and the Government of British Columbia will approve and ratify said agreements on behalf of British Columbia.

5.4 Members of the advisory committees will be knowledgeable of the sector or interests they represent.

5.5 The Chief Negotiators for British Columbia and for Canada will formalize terms of reference for the local Regional Advisory Committee and provide a copy to the Chief negotiator for Heiltsuk Nation.

5.6 The Chief Negotiators will determine if tripartite documents or agreements are substantially complete and where it is so determined, these documents or agreements may be released to the advisory committees prior to initialling. A record of decision and commitment bearing the initials of the Chief Negotiators will signify that tripartite documents or agreements may be provided for review to the advisory committees.

5.7 The Parties agree that, subject to sections 4.3 and 4.4, each Party may consult with its advisory committees on drafts of documents or agreements the Party or the Parties have produced.

5.8 Parties who have concerns with the advisory committee consultation process shall bring them to the attention of other Parties at the earliest opportunity. They will be addressed by Chief Negotiators as soon as possible.

5.9 Heiltsuk Nation will, upon request, provide Canada and British Columbia information on its traditional territory for use in discussions with their advisory committees.

5.10 Canada and British Columbia will provide information to the members of their advisory committees

to ensure that they are knowledgeable about the treaty process in general, and the Heiltsuk Nation treaty process and the Heiltsuk Nation traditional territory in particular.

5.11 The Parties will undertake joint consultation whenever it is mutually deemed advisable.

6.0 TREATY ADVISORY COMMITTEE (TAC)

6.1 The Parties acknowledge that British Columbia will include one representative of the Central Coast Treaty Advisory Committee (the TAC Representative) as a member of the Provincial negotiating team.

6.2 The TAC Representative's role in negotiations is to advise the Provincial Chief Negotiator on matters under negotiation that may affect the interests of the Central Coast Regional District in accordance with the terms of reference set out in the Memorandum of Understanding between the Province of British Columbia and the Union of British Columbia Municipalities.

6.3 The Chief Negotiator for British Columbia will formalize terms of reference for the Treaty Advisory Committee and provide a copy to the Chief negotiator for Heiltsuk Nation and Canada.

6.4 The Parties have agreed to Rules of Information Sharing for the Treaty Advisory Committee Representatives to the Heiltsuk Nation Treaty Negotiations.

6.5 The TAC Representative will follow the direction and instruction of the Chief Negotiator for British Columbia and will comply with the provisions of this Protocol.

6.6 The TAC Representative and the TAC will be subject to the rules of confidentiality as set out in this Protocol. In addition, the TAC and its members shall only:

6.6.1 receive information which is not available for public distribution when this information directly affects a local government's interest;

6.6.2 receive information which is not available for public distribution if each member agrees on behalf of their local government that they:

6.6.2.1 will confine discussion of this information to "in camera" sessions of their local governments; and

6.6.2.2 will not disclose this information to anyone else.

6.6.3 The Parties agree that information referred to in Part 6 shall not include documents determined to be confidential under this agreement.

7.0 PUBLIC CONSULTATION

7.1 The Chief Negotiators for the Parties will be responsible for ensuring that an effective and on-going public consultation process is implemented for all interested parties in the Heiltsuk Nation traditional territory.

7.2 The Chief Negotiators of all three Parties, or their delegates, will seek invitations to make presentations or participate in discussion panels through the broadcasting and/or print media.

7.3 The Parties agree that public information activities will be planned and implemented by a public information committee, known as the "Heiltsuk Nation Public Information Committee", comprised of representatives of the respective Parties, including such other persons as the Parties may agree upon.

7.4 The Committee will develop an information strategy and plan which will include the objectives and the public information activities, for the next six months. This plan will be subject to approval by the Chief Negotiators.

7.5 Heiltsuk Nation reserves the right to determine the extent of its involvement in the public information strategy and plan.

7.6 The Parties agree that public information activities will be undertaken in communities within the traditional territory of the Heiltsuk Nation, using several approaches which could include:

7.6.1 Public Information Forum

The events to be held may include events sponsored by parties other than the Parties to this Protocol. Generally, they will involve the Chief Negotiators for the Parties or their designates. Other resource people may be invited;

7.6.2 Open Workshops

The events will focus on key issues. They will involve the Parties and will be open to the public and provide an opportunity for discussion;

7.6.3 Radio, Television, Newspaper Interviews and Briefings.

These interviews and briefings will focus on the substance and the progress of negotiations and will involve the Parties;

7.6.4 Meetings with Third Parties and other Community Groups

These meetings will involve the three Chief Negotiators for the Parties or designates. They may include groups such as Aboriginal organizations or groups, the Chamber of Commerce, municipal governments, unions, business groups and other similar organizations and agencies;

7.6.5 Open Houses

These events will provide the Parties with an opportunity to inform and to meet with members of the public and to discuss issues under negotiation;

7.6.6 Dissemination of Public Information Materials

These materials will be produced and distributed by the parties by any means, and may include libraries, resource centres and electronic bulletin boards.

7.7 Nothing in this Section is intended to prevent the Parties from participating in bilateral or independent public information activities. In the event that such activities are planned, the Parties involved will ensure that the Heiltsuk Nation Public Information Committee is given advance notice.

8.0 REVIEW OF THE OPENNESS PROTOCOL

8.1 The Parties may alter this Protocol at any time by written agreement of the Chief Negotiators.

8.2 The Chief Negotiators will review this Openness Protocol at the start of each subsequent stage of treaty negotiations and may, by written agreement of the Chief Negotiators, amend the Openness Protocol.

THIS AGREEMENT, dated this 19th day of June, 1996 is:

Signed on behalf of:
Heiltsuk Nation,
Heiltsuk Nation Chief Negotiator

Signed on behalf of:
Canada,
Chief Negotiator

Signed on behalf of:
British Columbia,
Chief Negotiator

