

Nanaimo First Nation Framework Agreement

This Framework Agreement is dated [September 27], 1996

BETWEEN:

THE NANAIMO FIRST NATION
as represented by its Council
("Nanaimo First Nation")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the Minister of Indian Affairs and Northern Development
("Canada")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA
as represented by the Minister of Aboriginal Affairs
("British Columbia")

(collectively the "Parties")

WHEREAS:

- A. The Constitution Act, 1982 recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada, including rights that now exist by way of land claims agreements or that may be so acquired.
- B. The Parties are committed to conducting the negotiations in accordance with a government-to-government relationship within the framework of the Constitution of Canada and under the British Columbia Treaty Commission Process and the Parties are committed to negotiating, in accordance with their respective policies.
- C. For greater certainty, Canada is committed to negotiating self-government under "Aboriginal Self-Government - The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government," 1995. Canada's approach to negotiating self-government will not limit or restrict the positions that the other Parties may take.
- D. The Parties wish to begin treaty negotiations that will provide certainty in the future with respect

to ownership and rights to lands and resources within the Nanaimo First Nation Traditional Territory.

THEREFORE the Parties agree as follows:

1. DEFINITIONS

In this Agreement:

1.1

"Agreement-in-Principle" means the agreement ratified as evidenced by the signatures of the Parties at the end of Stage 4 of the BCTC process, and comprised of various Chapters and other provisions as agreed.

1.2

"BCTC" means the British Columbia Treaty Commission.

1.3

"BCTC Process" means the six stage negotiation process described in the Report of the British Columbia Claims Task Force dated June 28, 1991, and facilitated by the British Columbia Treaty Commission.

1.4

"Chapter" means a part or parts of an Agreement-in-Principle detailing the agreement on one or more of the substantive issues negotiated.

1.5

"Chief Negotiator(s)" means the negotiator(s) appointed by each of the Parties for the treaty negotiations contemplated by the BCTC Process.

1.6

"Final Agreement" means the agreement or agreements formally signed, ratified, and brought into effect by the Parties at the end of Stage 5 of the BCTC Process.

1.7

"Nanaimo First Nation Treaty" means the Final Agreement which will form a treaty or treaties within the meaning of section 35 of the Constitution Act, 1982.

1.8

"Overlap" means the geographic area within the Nanaimo First Nation Traditional Territory claimed by a First Nation other than the Nanaimo First Nation.

1.9

"Nanaimo First Nation Traditional Territory" means the geographic areas identified by the Nanaimo First Nation as its traditional territory on the map most recently accepted by the British Columbia Treaty Commission for purposes of treaty negotiations in the BCTC process.

2. PURPOSE OF THE FRAMEWORK AGREEMENT

2.1

The purpose of this Agreement is to guide the conduct of treaty negotiations among the Nanaimo First Nation, Canada and British Columbia towards completion of the Final Agreement, and to set out the timing, process and substantive issues for the negotiations.

3. PARTIES TO THE AGREEMENT-IN-PRINCIPLE

3.1

The only Parties to the negotiations and resulting agreements will be the Nanaimo First Nation, Canada and British Columbia.

4. SCHEDULING AND TIMING

4.1

The Parties will negotiate with the intention of concluding Agreement-in-Principle negotiations on the subjects listed in section 5 below within four to five (4-5) years from the date of execution of this Agreement.

5. SUBSTANTIVE ISSUES FOR NEGOTIATION

5.1

The following is a list of substantive issues that the Parties intend to address during the negotiation of an Agreement-in-Principle. It is not intended to be exhaustive and other subject matters may be addressed at the table by agreement of the Chief Negotiators:

5.1.1 Eligibility and enrolment;

5.1.2 Land;

5.1.3 Access;

5.1.4 Water rights and management;

5.1.5 Resources including, but not limited to:- fisheries and marine resources;- forestry, including flora;- wildlife;- non-renewable resources, including sub-surface ownership; and-

parks and protected areas;

5.1.6 Environmental management, protection and assessment;

5.1.7 Nature, structure, jurisdictions and authority of Nanaimo First Nation government;

5.1.8 Intergovernmental relationships;

5.1.9 Fiscal arrangements and taxation;

5.1.10 Programs standards and authorities to deliver services;

5.1.11 Economic development;

5.1.12 Financial component;

5.1.13 Culture, artifacts, and heritage;

5.1.14 Certainty, including achieving certainty as it relates to the Douglas Treaty and the negotiation of a treaty under the BCTC process;

5.1.15 Ratification;

5.1.16 Implementation;

5.1.17 Dispute resolution;

5.1.18 Amendment procedures.

5.2

The inclusion of a substantive issue in section 5.1 does not commit any of the Parties to conclude an agreement on that issue.

5.3

Substantive issues requiring regional or province-wide negotiations or discussion will be identified and negotiated accordingly.

5.4

The issue of constitutional protection as it applies to the various provisions negotiated on each substantive issue for negotiation, will be addressed prior to the conclusion of an Agreement-in-Principle.

6. NEGOTIATION PROCESS

6.1

Negotiations will take place at a main negotiation table (the "Main Table"). The Chief Negotiators will be responsible for conduct and coordination of the negotiations, including:

6.1.1 managing the negotiation process including the development of workplans and the setting of priorities;

6.1.2 negotiating and recommending for approval an Agreement-in-Principle and a Final Agreement;

6.1.3 implementing and managing the Openness Protocol referred to in section 10.1 of this Agreement;

6.1.4 implementing detailed procedures, consistent with this Agreement, to guide the Parties during Agreement-in-Principle negotiations as outlined in the Procedures Agreement negotiated by the Parties;

6.1.5 establishing working groups, side tables and other processes, as agreed; and

6.1.6 implementing dispute resolution mechanisms, as agreed.

6.2

The Parties will record an agreement negotiated on a substantive issue in a Chapter. The Chief Negotiators will signify their agreement on a substantive issue by initialling a Chapter.

6.3

Once they have initialled the Chapters, the Chief Negotiators may negotiate an Agreement-in-Principle by consolidating the Chapters and adding necessary provisions as agreed.

6.4

The Chief Negotiators will signify their agreement on an Agreement-in-Principle by initialling it, and will recommend the completed Agreement-in-Principle to their respective Party for approval.

6.5

Prior to the Agreement-in-Principle being signed by the Parties, any Chief Negotiator may request that any initialled Chapter be reconsidered and amended.

6.6

The Parties will approve the Agreement-in-Principle by signing it.

6.7

After the signing of the Agreement-in-Principle, the Parties intend to negotiate, on a timely basis, a Final Agreement, based on the Agreement-in-Principle.

7. OVERLAPS

7.1

The Nanaimo First Nation will resolve any overlaps it may have with other First Nations and report back to the Main Table regularly on the status of its overlap discussions.

7.2

If the lack of resolution related to overlaps is found to be interfering with the successful conclusion of negotiations, the Nanaimo First Nation may consider other options to resolve the overlaps, including seeking assistance from the BCTC.

8. INTERPRETATION

8.1

This Agreement is not legally binding and does not create, recognize, affirm, deny or amend any rights.

8.2

This Agreement is not intended to be a treaty nor to constitute a land claims agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982.

8.3

The Nanaimo First Nation Treaty will constitute a treaty within the meaning of sections 25 and 35 of the Constitution Act, 1982.

8.4

The treaty negotiations and all related documents, except for a Final Agreement that is in effect, are without prejudice to the legal positions taken by any of the Parties in court proceedings or any other forum.

8.5

No statement made or document prepared by one or more of the Parties for the purpose of treaty negotiations shall be construed as an admission of fact or liability in court proceedings or any other forum.

9. SUSPENSION OF NEGOTIATIONS

9.1

Any Party may suspend the negotiations contemplated by this Agreement by providing written notice, which sets out the reasons for suspension and the date of the commencement of the suspension, to the other Parties and to the BCTC.

9.2

Prior to suspending negotiations, the Parties, wherever possible, will make reasonable efforts to enter into appropriate methods of alternative dispute resolution, including referral to the BCTC or an independent dispute resolution body.

10. PUBLIC INFORMATION, OPENNESS AND CONSULTATION

10.1

The Parties recognize the need to provide information to the public on the negotiation process and to consult with those whose interests may be affected by the negotiations. For this purpose, the Parties have negotiated an Openness Protocol to guide the Chief Negotiators during these negotiations.

11. APPROVAL OF THE AGREEMENT

11.1

The Chief Negotiators, by initialling this Agreement, will signify their intention to recommend it to the Parties for their approval.

11.2

Each Party will signify approval of this Agreement by the signature of its authorized representative.

11.3

The Chief Negotiator for the Nanaimo First Nation is authorized to sign this Agreement on behalf of the Nanaimo First Nation.

11.4

The Minister of Indian Affairs and Northern Development is authorized to sign this Agreement on behalf of Canada.

11.5

The Minister of Aboriginal Affairs is authorized to sign this Agreement on behalf of British Columbia.

12. AMENDMENTS

12.1

Except as provided in subsection 12.2, this Agreement may only be amended by agreement of the Parties in writing.

12.2

The Chief Negotiators may, by agreement in writing, amend the list of substantive issues for negotiation as set out in section 5.1.

13. INTERIM MEASURES

13.1

The Parties may negotiate and enter into interim measures agreements during treaty negotiations when an interest is being affected which could undermine the process and in order to protect provisions already agreed upon at the negotiation table.

14. GOVERNMENT PROGRAMS

14.1

During the negotiation process, the Nanaimo First Nation will continue to enjoy the same rights and benefits as any citizen of Canada and resident of British Columbia and will have access to the various programs and services of Canada and British Columbia in effect from time to time, including those directed to Aboriginal people and organizations in accordance with the criteria established from time to time for the application of those programs and services.

15. INFORMATION SHARING

15.1

The Parties recognize the need to share information during the negotiations and have negotiated an Information Sharing Protocol.

Signed on behalf of the Nanaimo First Nations represented by its Council
Chief Jerry Brown
Chief Negotiator

Signed on behalf of Her Majesty The Queen in Right of Canada
The Honourable Ronald A. Irwin
Minister of Indian Affairs and Northern Development

Signed on Behalf of Her Majesty The Queen in Right of British Columbia
The Honourable John Cashore
Minister of Aboriginal Affairs