

January 17, 1996 - WITHOUT PREJUDICE - OPENNESS PROTOCOL

Openness Protocol For Treaty Negotiations Among Nanaimo First Nation, Canada, and British Columbia

1.0 PURPOSE

1.1 The purpose of this Protocol is to guide the Parties in providing public access to the treaty negotiation process, while recognizing the need for an effective negotiation environment.

1.2 It is intended that this Protocol will:

- (a) lead to a better public understanding and awareness of the subject matters considered in the negotiations;
- (b) provide a variety of opportunities for local communities, both aboriginal and non-aboriginal, and the general public to be informed as the negotiations proceed; and
- (c) increase public confidence in the negotiation process and promote support for the approval and implementation of agreements.

1.3 Each Party is responsible for informing and consulting with their communities in the treaty making process.

1.4 This Protocol is not intended to diminish the ability of any Party to consult with its advisory committees as necessary to advance the treaty negotiation process.

2.0 PARTIES TO THE NEGOTIATIONS

2.1 The Nanaimo First Nation, Canada and British Columbia will be the only Parties negotiating the Nanaimo First Nation Treaty.

2.2 The Parties acknowledge that British Columbia will include as a member of its negotiating team a representative of local government from the Treaty Advisory Committee (TAC). This TAC Representative will follow the direction and instruction of the Chief Negotiator for British Columbia.

2.3 The members of the negotiating teams for the Parties will be subject to all rules of confidentiality, including the provisions of this Protocol, and such rules as may be agreed to by the Parties, for the full

duration of negotiations.

2.4 The provincial Chief Negotiator and the TAC will establish Terms of Reference for the TAC consistent with this Protocol. Copies of the signed TAC Terms of Reference, including the cover letter, will be provided to the other Parties.

3.0 DEFINITION

3.1 In this Protocol, the term "Record" means any thing on which documentary material or information is recorded or stored including by graphic, electronic, mechanical or other means (but does not include a computer program or any other mechanism that produces records), and that is provided by one or more Parties to the other Parties as part of this negotiation process.

4.0 NEGOTIATION SESSIONS

4.1 Public access to treaty proceedings will generally occur in Main Table negotiations devoted to a general exchange of information or clarification of interests and policies, or the discussion of matters of a procedural nature.

4.2 The Chief Negotiators will determine by mutual agreement whether a treaty negotiation session will be open to observation. In making the determination whether a negotiation session is open, the Chief Negotiators will consider whether observation could reasonably be expected to:

- (a) encourage public support for, or enhance progress in, the negotiations;
- (b) allow a comprehensive exploration of interests and issues of a sensitive nature;
- (c) prejudice positions, interests or negotiation strategies of any Party or the successful and timely conclusion of the current or future stages of negotiations of fair and lasting agreements;
- (d) result in disclosure of Records or information that was produced or provided in confidence; or
- (e) result in disclosure of Records or information that could reasonably be expected to be harmful to or interfere with the conduct of the negotiations.

4.3 Observation of a treaty negotiation session will be achieved by opening sessions to the general public, representation from advisory committees, broadcast by local television or radio, or any combination of the foregoing, or including representation from the print media.

4.4 The Chief Negotiators will agree, three weeks prior to regularly scheduled treaty negotiating sessions, where possible, whether that session will be open, either in whole or in part, in accordance with paragraphs 4.1 and 4.2.

5.0 ACCESS TO RECORDS

5.1 The Parties agree that the following documents will be made available to the public in their final form on a timely basis:

- (a) Main Table meeting agendas;
- (b) Records of Decisions and commitments given by each Party at a Main Table meeting; and;
- (c) all reports tabled with the British Columbia Treaty Commission.

5.2 The following documents, once they have been initialled by the Chief Negotiators, will be made available to the public:

- (a) the Framework Agreement;
- (b) the Agreement-in-Principle; and
- (c) the Final Agreement.

5.3 Where one Party produces a Record and provides it to another party, the Chief Negotiator for the Party producing the Record will decide whether the Record may be made public and advise the other parties accordingly.

5.4 Where two or more parties produce a Record, the Chief Negotiators for those Parties will determine by mutual agreement whether it may be made public. In making this determination, the Chief Negotiators will consider whether granting access to the Records could reasonably be expected to:

- (a) encourage public support for, or enhance progress in, the negotiations;
- (b) not accurately reflect the intentions of any Party;
- (c) prejudice positions, interests or negotiation strategies of any Party or the successful and timely conclusion of the current or future stages of negotiations of fair and lasting agreements;

(d) result in disclosure of Records or information that was produced or provided in confidence; or

(e) result in disclosure of Records or information that could reasonably be expected to be harmful to or interfere with the conduct of the negotiations.

5.5 The TAC Representative may share with the TAC Records that have not been determined to be available for public distribution by the Chief Negotiators pursuant to paragraphs 4.0 and 5.0 only where:

(a) the Record directly affects the local governments represented by the TAC;

(b) the TAC members agree to confine discussion of the Record to "in camera" sessions of their local government and they will not otherwise disclose the Record; and

(c) the Party producing the Record consents to the release of the Record.

5.6 Inclusion of the words "In Confidence", "Confidential" or similar words on or in respect of a Record will constitute advice to any Party receiving the Records that it is to be kept confidential.

5.7 The release of Records is acknowledged to be subject to the Freedom of Information and Protection of Privacy Act and Heritage Conservation Act of the Province of British Columbia, and the Access to Information Act and Privacy Act of Canada. If a Chief Negotiator is aware of a written request for information relating to the negotiations, notice of the request will be given to the other Parties.

6.0 PUBLIC INFORMATION

6.1 The Parties agree that public information activities will be undertaken in communities within Nanaimo First Nation traditional territories and may include public information forums, workshops, media interviews and briefings, meetings with third Parties and community groups, open houses and the production and distribution of materials.

6.2 A Party may engage in multilateral or independent public information initiatives during the treaty negotiation process.

6.3 The Chief Negotiators have established a Committee to develop a draft information plan for consideration by the Chief Negotiators at the Main Table.

7.0 AMENDMENT

7.1 This Protocol will be reviewed and may be amended prior to the end of each stage of the negotiations, by agreement in writing of the Chief Negotiators.

8.0 EFFECTIVE DATE

8.1 This Protocol becomes effective on the date it is signed.

On behalf of the Nanaimo First Nation:

Chief Jerry Brown

Chief Negotiator

On behalf of Canada:

John Langford

Chief Federal Negotiator

On behalf of British Columbia:

Cristina Scattolin

Treaty Negotiator

DATE: January 17, 1996