

May 21, 199 - WITHOUT PREJUDICE - OPENNESS PROTOCOL

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

WHEREAS the Parties recognize the need to consult with third parties and to provide information to the public to ensure that treaties are lasting and beneficial agreements for the Pacheedaht First Nation, British Columbians, and all Canadians;

WHEREAS the Parties recognize the need to strike a balance between developing trust at the treaty tables and the need to ensure public confidence in the treaty process;

WHEREAS the Parties recognize that public confidence in the process will facilitate implementation;

WHEREAS the Parties recognize that building trust at the treaty tables and ensuring public confidence in the treaty process may be achieved through effective information and consultation mechanisms, public access to the process and regular flow of information amongst the parties and to the public;

WHEREAS the Parties recognize the need to have an open treaty process where strict confidentiality is the exception and where the parameters for the application of restrictions on openness are expressly made known;

WHEREAS the Parties recognize the need to balance the need for an open process with the need for a practical and effective negotiating environment;

AND WHEREAS the Parties recognize that information that will be shared with the public must accurately reflect the parties respective and/or joint interests;

THE PACHEEDAHT FIRST NATION, THE GOVERNMENT OF CANADA, AND THE PROVINCE OF BRITISH COLUMBIA HAVE AGREED ON THE FOLLOWING OPENNESS PRINCIPLES:

1. Attendance at Public Information/Education Community Meetings and Forums

- a. The Chief Negotiators for the Parties will be responsible for ensuring that an effective and regular public information/education process is established.
- b. A tri-partite public information/education workplan for all stages of the negotiation process will be developed and will include dates, times and location of community meetings and forums.

- c. Notices of these meetings and forums will be issued to the local media at least two weeks prior to a meeting or forum whenever practical.
- d. All community meetings and forums will be open to members of the general public.
- e. The Parties will update the general public at these meetings and forums on the progress of negotiations and any other information that the Parties consider to be relevant.
- f. Members of the general public in attendance at the community meetings and forums will be encouraged to express their views and ask questions.
- g. Nothing in this section shall be construed to prevent the Parties from pursuing bilateral or independent public information/education activities.

2. Attendance at Main Table Sessions

- a. The Chief Negotiators of the three parties each retain the exclusive prerogative of determining the composition of their respective negotiation teams at the Main Table sessions.
- b. All members of the three negotiating teams will be subject to all rules of confidentiality agreed to by Canada, British Columbia, and the Pacheedaht First Nation for the full duration of negotiations.
- c. All Main Table sessions will be assumed to be open to members of the general public, subject to available space, unless openness would harm the process or progress of the negotiations as specified in clauses (d) to (i).
- d. In setting the agenda for each Main Table session, the Chief Negotiators will negotiate whether the type of session, or particular agenda items contemplated, does not lend itself to an open attendance by members of the general public.
- e. In making a determination about whether or not a Main Table session is to be open to the general public, the Chief Negotiators will assess whether attendance by individuals other than members of the negotiating teams would:
 - (i) interfere with the effectiveness of the process;
 - (ii) increase the effectiveness of the session; and/or
 - (iii) prejudice the positions or strategies of the negotiating Parties.
- f. If the Chief Negotiators determine that a particular Main Table session, or parts of a Main Table

session, does not lend itself to open attendance by the general public, reasons will be communicated to the public.

- g. Notices of all Main Table sessions will be issued to the local media at least two weeks prior to a Main Table session whenever practical.
- h. The Chief Negotiators of the Parties will be responsible for the overall conduct of the negotiations, and members of the public in attendance at Main Table sessions will participate as observers only. Chief Negotiators are responsible for ensuring that observers are not disruptive to the negotiations.
- i. The Chief Negotiators will be entitled to adjourn open Main Table sessions for safety and security reasons.
- j. Attendance by individuals other than members of the negotiating teams to tables other than the Main Table will be determined by agreement of the Chief Negotiators.

3. Public Record of Main Table Sessions

- a. A record of decisions will be kept of the proceedings of Main Table sessions.
- b. The record of decisions will include the time and location of a Main Table session, the agenda for the session, a description of actions taken or to be taken on matters discussed, an attendance list, and the names and phone numbers of contact persons for each of the Parties.
- c. If prior to the end of a closed Main Table session all three Parties jointly determine that the release of particular types of information arising from the negotiating session, and contained in the record of decisions, would be harmful to the negotiations, the Parties will agree on whether and/or when the information is to be released.
- d. Recording, videotaping and photographing of open Main Table sessions will be allowed upon approval of the Parties. Any recordings or video taping of sessions however, will be used for historical purposes only and will have no status as admissions or records of agreement.
- e. Records of decisions of Main Table sessions, as described in 3b. and 3c., will be widely disseminated. For example, records of decisions may be made available through local libraries, computer bulletin boards, resource centres and through any other innovative means, so as to ensure as wide a distribution as possible, and to provide the opportunity for the general public to view them and make copies.

4. Documents Used in the Negotiations

- a. "Documents" for the purposes of this section means: discussion papers, reports, any document exchanged among the parties at Main Table sessions, or any other document directly related to the treaty

table negotiations.

b. The Chief Negotiator for a Party introducing a document to the table will decide whether the document is to be made public, or is to be held confidential.

c. Where two or more of the Parties jointly produce a document, the document will be assumed to be available to the public unless the Parties expressly determine and agree that the release of a particular document would harm the negotiations. Where a document is not to be released, the Parties will agree on a time frame during which the document will be kept confidential.

d. Correspondence among the Parties to the treaty table relating to negotiations would be available to the Parties only, unless the Parties agree to make any specific piece of correspondence more widely available.

e. The provincial Freedom of Information and Protection of Privacy Act, and the federal Access to Information Act and Privacy Act will apply.

f. Notice of written requests for documents submitted to any Party in the course of the negotiations must be shared with the other Parties to the negotiations.

g. Agreements concluded at each stage of the negotiations will be made public.

h. Agreements initialled by the Chief Negotiators for the three parties will be made available:

(i) by the provincial and federal Chief Negotiators, to:

- the local consultation body for the area (the "West Island Regional Advisory Committee");
- the local government consultation body for the area (the "Treaty Advisory Committee"); and
- the province-wide consultation body (the "Treaty Negotiations Advisory Committee") ; and,

(ii) by the Pacheedaht First Nation Chief Negotiator, to:

- Pacheedaht Treaty Committee;
- all Pacheedaht First Nation members; and
- Nuuchahnulth Tribal Council.

5. Media Relations

- a. Media coverage of open Main Table sessions will be allowed.
- b. Chief Negotiators of all three Parties, or their named delegates, will actively seek invitations to make presentations or participate in discussion panels through the broadcasting and/or print media.
- c. Tri-partite reports to the local media will follow each Main Table session. Reports may include records of decision, the date, time and location of the next Main Table session and any other information deemed relevant by the Parties.

6. Consultation with "Third Parties"

- a. The Parties will share information with each other and with the general public, concerning their respective consultation processes, and will make allowances to enable consultation to occur.
- b. The Parties will undertake joint consultation whenever possible.
- c. In accordance with their respective accountability mechanisms, provincial and federal negotiators will ensure that they report back regularly to affected third parties. As part of this reporting, provincial and federal negotiators will explain how third party views were taken into account during the negotiations and integrated into statements of interest or positions taken in the negotiations.

7. Consultation with Local Government Treaty Advisory Committees

Members of the Local Government Treaty Advisory Committee will be subject to all rules of confidentiality agreed to by Canada, British Columbia and the Pacheedaht First Nation for the full duration of the negotiations.

8. Review of the Openness Protocol

This Protocol may be reviewed and amended by consensus of the Parties.

ON BEHALF OF THE PACHEEDAHT FIRST NATION:

Chief Marvin McClurg

ON BEHALF OF THE GOVERNMENT OF CANADA:

Eric Denhoff, Chief Federal Negotiator

ON BEHALF OF THE PROVINCE OF BRITISH COLUMBIA:

T. Murray Rankin, Treaty Negotiator

DATE: May 21, 1997