

## Forging Linkages & Finding Solutions A BC Treaty Commission Conference for First Nations

### Chief Kim Baird, Tsawwassen First Nation Keynote Address – October 29, 2008

Good afternoon, everyone. I am very happy to be here today and very happy to share some of our experiences that we are going through at Tsawwassen. I would like to thank the Treaty Commission for hosting these forums. I think the more forums that promote dialogue amongst our communities are helpful.

One of the most memorable days of my life was witnessing the Senate passing federal settlement legislation and announcing royal assent of our treaty this past June. It was this point that most of the major hurdles regarding reaching our treaty were overcome. The order in council that will have to be passed to establish the effective date will be a fairly technical process without any major hurdles that we can foresee.

I am relieved that our bill got through before the federal election or we would have been set back considerably. I also know that our treaty has provided for some controversy. Having said that, I see today as an opportunity for us to talk about the treaty implementation challenges we are facing.

Treaty implementation is now a step into the unknown for our community and we look to our friends and role models, the Nisga'a and Yukon First Nations as examples, as well as Westbank First Nation and their self-governance. We would be very interested to learn about all their experiences in the past few years.

It seems like not only did we pass – were we the first to get a treaty through the treaty process – but we seem to be the first one to implement one as well in stage six. Our effective date will be April 3, 2009 so we have less than six months to replace the *Indian Act* in our community. This is a huge step on the road less travelled.

We now have to learn how to work within our post-*Indian Act* reality, how to work with their partners in a new range of relationships and how to take advantage of the opportunities the treaty offers.

I am very pleased to be able to share Tsawwassen's experience. We are always willing to share any information about what we are up to. As an aside, many First Nations are starting to take us up on that offer, especially in relation to the implementation of our treaty.

The purpose of this conference is to focus on economic development, capacity building and governance development. In my view these are all developmental and capacity building activities and are entirely what we are focused on in the pre-treaty implementation context.

As an aside, a few of us in the room saw Bill Clinton speak a couple of weeks ago and he spent some time talking about the capacity of governance, whether they are developed countries or developing countries. What struck me was his view that for society, whatever we do, we find that our aspirations are always greater than what government can provide, even with the most advanced governments and economies. I believe we can't have sustainability without self governance, economy and building capacity in our community from the top right on down. We are trying to do that right now legally, socially, economically and culturally.

What I propose to offer you is a very practical view of our implementation process and how we are trying to build that capacity. We have mapped out a course of work that involves a range of projects across a number of different topics. I will share this work plan and focus on the projects I am most excited about.

The goal of these projects, which began about 13 months ago and will continue over the next six months, is to allow us to be as prepared as possible for effective date. We have had disagreement with Indian Affairs over what we think we need to have in place by effective date and I will get into this a bit later. Sadly, our fights with Indian Affairs haven't miraculously ended.

We hope to ensure through the completion of our ambitious work plan that our members can begin to enjoy the benefits of the treaty as soon as possible and, following that, that we are in a position to maximize the opportunities the treaty provides over the long term.

Just to spend a moment on choosing our effective date, there are several competing interests at stake here. We have a significant debt owing as a result of the negotiation expenditures and we continue to spend money as we prepare for the treaty. So the sooner we can reach effective day the sooner we can access our settlement and our implementation funds and be able to pay for some of these costs.

As well, our community is expecting treaty benefits and they won't be patient forever. On the other hand, we have to do the work to be prepared for effective date and there is no sense accessing any funding if our books are not in order. So we made a decision to pursue a lot of pre-implementation work prior to effective day as a result of the intense development pressures on Tsawwassen lands and the restraints of the *Indian Act*.

The amount of legal work required is a bit horrifying and the range of governance and other types of projects is also massive. Given these competing interests the three parties agreed to when our effective day should be and yes, it was still in negotiation.

We started our implementation work in September, giving us about 18 months of preparation in total from planning stage to execution. During this time we have run our implementation projects on parallel tracks; in many cases, we can't afford to sequence projects in what might be a more logical order. This requires a tremendous coordination effort and all this work has to be done by effective day.

We are in an odd kind of funding limbo because we are no longer eligible for loan funds from the treaty commission, yet there is so much developmental work to do and costly work. But the implementation money does not arrive until effective day so we are in a very vulnerable situation financially.

On top of this, most of our implementation dollars in a treaty will need to be used for our increased operational costs in any event. One lesson learned from other treaty First Nations is that the federal government does not provide enough funds for implementation and pre-implementation activities, which is crazy because in my view it is like falling down at the finish line.

I will get into our work plan in more detail to illustrate the needs we have. In terms of preparing for treaty there are four different kinds of work involved. The first is basic work involved in fulfilling specific obligations noted in the treaty that legally have to be done by April of next year. Canada and BC are helping us complete these tasks with the closing plan and various working groups, and the bulk of this work is transferring all of the interests of our lands over to the BC land title office – no small feat with the amount of complicated arrangements we have in Tsawwassen.

The second is running the organization and transition into treaty. This is different than fulfilling specific obligations because a lot of the work is internal. It involves things like ensuring better governance structure has been worked out in detail, as outlined in our new constitution, and that we have processes in place to make and amend laws and to pass budgets, etc. It involves ensuring that everyone in Tsawwassen government knows their job description and it involves looking at our policies and procedures for all our programs and ensuring that they work well. It involves writing a basic set of laws to pass on effective day,

things like the *Financial Management Act, Membership Act, Elections Act*.

The third type of project is capacity building. While many believe these projects are nice-to-haves as opposed to need-to-haves we are looking to accomplish as many of them as possible. We need to build our organization and the internal capacity of the organization because how we work post-treaty will be substantially different than pre-treaty.

One important project here is strategic and operational planning, linking to budget making. Under the treaty we will suddenly be able to make our own decisions on funding, but we need to set priorities, budget them, and make decisions about what programs get funding to accomplish which priorities. This requires a new process we don't have currently.

Another important project is setting up an economic development structure so we can minimize the risks to Tsawwassen Government itself as we undertake development projects that could have significant financial risk attached to them.

The third important project is a dispute resolution process of some sort to ensure we can operate consistently as a government, treat everyone fairly and move past our differences.

The fourth project is really key, and the reason we went into treaty. These projects involve initiatives to allow us to take advantage of our treaty benefits. The most obvious example is the land use planning process that sets out what areas of our new lands will be protected for environment or farming, what will be used for the Tsawwassen community and what could be used for different types of development. This plan allows us to move forward with the goal of generating sustainable revenue for Tsawwassen.

The second important project in this category is relationship building with our new partners, including Metro Vancouver and Translink. The treaty includes membership in these bodies, and we are exploring what opportunities there are for increased service levels as a member of these and other organizations.

In a nutshell, those are the four types of projects I will be talking about. We have deemed all of them to be mandatory by effective date. If we are willing to benefit as a community, we have to not only fulfill the minimum requirements, but we need to have our house in order as an organization. We need to have a plan to generate revenue and we need to be able to operate on a sound, consistent and administratively-fair basis.

Here's the way we have divided our work. I will touch on only the ones I think need a bit of explanation.

The first set of projects is related to institutional developments. We have a legislative and political organization project, which is implementing and fleshing out our Constitution. One of the important aspects of this project is ensuring we develop processes that the community can participate in. That involves our traditions and our culture.

If the decision-making structure doesn't resonate with our community members then the decisions will have less legitimacy from the start. Our financial projects are pretty self-explanatory by title. Project and expenditure framework is one I touched on already and the assets. The investment management project involves developing a strategy to manage our one-time cash settlement.

Our relationship projects are really critical to realize benefits from treaty. We need to build a very strong relationship with our neighbouring municipality, Delta. We need to integrate into Metro Vancouver in a number of ways with respect to being active on the regional council, to receiving and paying for core regional services, and with respect to accessing the water and sewer utilities infrastructure. Without these

partnerships we cannot generate any significant own source revenue.

Our TransLink discussions seek to integrate the current reserve lands with the broader regional transit infrastructure, and this means a lot to our people. On December 29 – for the first time – we hope to deliver TransLink bus service through our community.

Our final project with respect to relationships involves working with our long-term lease holders. We need to ensure our residents that live in our Stahakin, Tsatsu Shores and Tsawwassen Beach subdivisions are comfortable with taxation, title transfer and land use plans post-treaty.

I will talk a little bit about shared territory issues a little later on because that is an important side of relationships as well.

I want to spend a moment focusing on the legislative plan. In my view, it is one of our flagship projects. We are not self-governing; in fact, we will have no authority to operate if we don't have a set of laws in place on effective day that provide us with the legislative backbone we need to be able to act as a self-governing First Nation.

We intend to build a series of laws, including a *Government Organization Act* and *Financial Management Act*, human resources management, local government and taxation, resources, and others that we will operate on as of effective date. These laws will be built in plain language, if that is at all possible, and will incorporate cultural practices whenever possible. They will be relevant and consistent with current law or a new policy. They will work within the concurrent law model negotiated in our treaty.

So far we have identified 18 laws we will have on effective date. We felt strongly we needed to go beyond the bare minimum for it to be a true expression of self government while staying within our limited capacity as a small First Nation.

I am proud of the work we are doing in partnership with Simon Fraser University, the First Nations Governance Centre, and various other experts, including a retired legislative drafter from the provincial government.

In a short period of time we have drafted policy, legislative instructions and legislation that involved a review committee made up of staff and advisors, and a community advisory committee that is open to our whole community and it is working really well.

I have to admit that I did not really start to get excited until I saw the first draft bill. On some laws we still have much to do. Our lands law in relation to lands management and the disposition of lands is very important because we have no other laws to fall back on in the concurrent model.

In other areas because of the concurrent model the relevant federal provincial law will be in place if we don't have ours in place, which means there wouldn't necessarily be a gap. But as I stated, there are no provincial/federal laws related to the land management to the degree that we need, especially when we consider the economic development that will be happening on our lands. It is an extremely important area to focus on.

Land issues provide the most critical work for our implementation plan. All of the legal-related land requirements, including survey of our lands – both old and new – and the replacement of all existing legal interests and placing them within the land title office absolutely must be complete by effective date.

Land-use planning has been challenging for very specific reason. This process, in my view, is as important as treaty if not more, but we had to do it within a seven-month period. This process unlocks the potential of Tsawwassen lands awarded under the treaty. It provides zoning designations in the community-approved plan. Tsawwassen can't generate any revenue without it, but we refuse to move forward unless the community decides together how they want the lands to look.

So many parts of implementing the treaty, including intergovernmental relations with Metro Vancouver hinged on us getting this work done, and we were committed to getting a plan based on the community's vision.

We have seen some tensions through this process and it has taken more time than required, and it has been challenging. One important dimension in this project that will require a lot of work moving forward is the relationship between our CP (Certificate of Possession) holders and our community. CP holders have every right to earn rents from their land holdings, however, for the land use plan to pull together and have any hope of ensuring we remain viable as a liveable community into the future, municipal processes or type of processes such as zoning and a lot restrictions must be applied to CP holder' lands as well.

Finding the right balance between the needs of CP holders and the needs of the community has proven to be an interesting and dynamic dialogue. It is particularly challenging, given the relative weakness of our pre-effective day land regulations. Our CP holders were very concerned that having land use zoning on their lands could impact their economic opportunities in a negative way.

Also some of the lands are in the middle of our current reserve, which means they will be the last places water pipes will likely get to. Council agreed to enter a facilitated process with our CP holders to see if there is any willingness to work together in partnership on some of these economic development issues to ensure no one gets left behind.

These discussions are important to build trust but also to build the best opportunities for our whole community. These discussions are still in the early stages. As for the broader community, we needed to discuss as a community what was important to us, such as balancing the liveability of our community with economic activities. We had well over two dozen community consultations ranging from community meetings to individual family meetings to garner feedback into the plan. But the effort was worth it and I am happy to report that our community approved our land use plan in July of this year.

As I said, I viewed this as critical as the treaty vote. It wasn't easy, especially when you consider some of the challenges we had to overcome.

Our other category is not meant to signal that these projects are less important in any way. Economic development means setting up a separate corporate entity that can advance our economic development goals while protecting Tsawwassen from risk. That sounds easy, but it took several consultations with our council and community to determine which corporate model we should come up with. Now we need to hire staff and put a board in place in the next little while.

Another project we are considering is our community survey which will provide an important baseline to be repeated over time with the same measurement tool that will allow us to measure the success of the treaty across generations.

We are not just going to measure socio-economic consensus data, but also wellness indicators that take into account how people feel about themselves, how they feel about their community, their lifestyle and how healthy they feel.

I would be silly if I didn't mention our celebrations and ceremonies. How will we mark this important day in our history? What other events, including our entrance into the GVRD, or the passage of federal legislation are deserving of celebration? How can we do this in a culturally meaningful way? These are some questions that we are struggling with as we advance towards effective day.

This is not an easy work plan but it is important that we think through all these various areas, and a couple more I have not mentioned prior to the effective day. But when you think about the logistics of what we are doing, it is clear that it is a huge task.

A couple of years ago, getting an election code done for our community was a big, big deal. Now we have 18 laws to deal with and this is just one of 39 projects we have to advance.

Our economic development corporate work is another big task; again, just one of 39. We have never been so busy in our lives. What we are doing by effective day is still very much enabling, in my view. By this I mean we have much more to do to back-fill the work we get done by then. Most of what we are doing is skeletal and we have much more policy work especially to deal with post-effective date.

So I think you could categorize all of these 39 projects under self governance, economic development or capacity building. Thankfully we have some very strong resources and a good team in place to work through these projects. We also have some very good processes, the most important of which involves our community. We would not have a treaty in place if we had not communicated well with our membership, and we must continue to do so.

We have community meetings open to everyone. We have family meetings where a small team goes to each family to talk openly about important issues. We visit our off reserve member population, most of whom live in Bellingham or in the Okanagan to talk to them about decisions, and we have a working committee of members that engage in more technical issues and provide very, very valuable feedback.

Our staff team involved with treaty includes our chief administrative officer who provides very important direction and oversight. Our treaty team, a group of Tsawwassen members, who provide policy, administrative and logistical support and a projects coordinator who, generally speaking, keeps projects moving and fills in where required.

Our staff team works with a legal team and a number of senior advisers and consultants. Thankfully these resources bring a lot of networks to the table so we can usually source an expert to work on a particular problem, such as taxation for an example, or setting up an economic development corporation. Our team will grow and shrink as required. Our core will remain mostly Tsawwassen members and mostly women, I might add, and several committed non-members.

In addition, all Tsawwassen staff in all program areas are supporting the process by participating in the operational overhaul and service planning projects.

We've made a lot of progress in 13 months of that long list of projects I showed you; almost all of them are up and running. Some of them are complete. It will be a lot to bring together in six months, and it is not without its specific challenges.

I will mention a few challenges right now. Funding, I already talked about this challenge. But it is important to note that we flagged this issue to senior levels of government, and while they've been fairly accommodating thus far – we have a lot of our funding requirements covered – but remained short in several areas. So we are

doing all sorts of fundraising work. We will likely have to borrow money to make it happen, as well. We are also trying to be creative to reduce costs while continuing to make the case for critical pre-implementation funding.

I should warn that governments have been very reluctant to fund us on these critical projects, and I believe that will only get worse for those that follow us. We have dealt with a huge number of shared territory discussions, and have resolved most of them with few issues. However, there were several extensive discussions, and as difficult as they are, we are still willing to discuss and try to resolve these issues with other First Nations.

To be frank, it has been very difficult and sensitive in some of these discussions, but Tsawwassen believes that our treaty does not impact anyone but our own members. There is very strong disagreement with some First Nations about the shared territory issues, some of whom are here today as well. But Tsawwassen truly and sincerely hopes to overcome these issues. I know I cannot stress how sensitive this issue is and I don't want to try for a minute to diminish the importance of this.

I should also say that one of our hardest lessons learned was that for all our good intentions it was very difficult to reach agreements when every First Nation concerned about our treaty had its own priorities to contend with. These issues weren't often at the top of our work list. On top of this we were actually surprised to settle an agreement; we didn't really expect to succeed. Not only were we taken off guard about the success, but obviously the other people were as well, which again was not our intention.

It is clear that we have more work to do in this area even though effective day is close on hand. But we have maintained that we would like to reach agreements, if at all possible. Somehow we want to find a way to continue to move forward on this issue.

Finally, change management will be important. There is only so much change a group of people can take, and applying a treaty, completely new governance and a land model is challenging at best. Tsawwassen needs to separate change that must occur now with change that can be phased in or occur later, and is doing that wherever possible.

The process will be over before we know it and Tsawwassen will be in a post-treaty world. There are several things we know we will need post-treaty and I thought I would share some of those in closing.

To go from the *Indian Act* band with INAC-based policies and bylaws approved by ministers in a very limited way to a self-governing First Nation is difficult. We have never really had policy capacity in Tsawwassen let alone lawmaking capacity. Suddenly we will have ultimate responsibility. We will need people who can understand program policy, who can develop and present positions to our decision-makers, and who can understand the impacts of external changes.

We need new capacity to support our new reality within our administration. We are also figuring out how to disband our treaty department, but ensure that our members continue to be within our organization so we don't lose our best expertise and talent.

We also need very good lands management. We have a strong department now, but with the range of responsibilities we will have, we will grow significantly. We need to be able to operate effectively and efficiently to get transitions done in a minimum amount of time and to develop, implement, and stick to a land use plan.

We must actively participate in a regional government structure if we are to integrate and get the most from the treaty. We need continued strong leadership and this must come from inside Tsawwassen if self-government is to be more than just a name. This involves developing succession plans for a number of positions and steering our capable youth into education programs that allow them to come back to contribute. This is a long-term generational plan and it is one that will ensure the treaty succeeds.

Finally, we must have neutral enforcement. We must be able to stand behind the decisions we make and ensure that those decisions are respected by everyone – member and non-member. Without good enforcement that treats everyone on the same basis we will not be able to make decisions because we won't have the trust of people we act for.

I should admit that when this process started a little over a year ago I was scared, scared of all the work we had before us, unsure of how we would get it done and who would do it. One of the first things we did was have a senior adviser draft a potential work plan and we all got together around a table and talked about how to do it. It was daunting. But since then, I should say I have moved from being scared to being excited.

I am still intimidated by the amount of work we have in front of us, but the excitement is building in me. We have momentum now and we are moving forward. We are knocking off our tasks and we are making process. We are making some of the important decisions we need to make that help us move forward inch-by-inch and day-by-day. We are moving towards being a treaty-ready organization, and in the transition we are becoming self-governing.

I will close where I started. Thank you for allowing me to be here today. I hope I have provided you with some useful information. I am happy to follow up with information, if you have questions now or if you want to meet to discuss how our process is proceeding in the future. It is very important we continue to share what we are doing and how we are doing it. There is enough work here that we don't need to be doing it alone, and we certainly don't want to succeed alone; we want to see all of our communities succeed and reach their potential.

While I answer any questions, I'm going to leave a copy of our land use plan because it seems to have generated lots of interesting questions recently for us. Thank you.