

# **KLAHOOSE FIRST NATION TREATY PROCESS**

## **OPENNESS PROTOCOL**

WHEREAS Canada, British Columbia and the Klahoose First Nation are committed to negotiating a treaty in the spirit of mutual respect and within the parameters of the B.C. Treaty Process which is facilitated by the B.C. Treaty Commission;

WHEREAS the Parties recognize the need to balance a number of factors in undertaking such complex negotiations, including the need to develop trust at the treaty table, to maintain the integrity of the treaty table, to have a practical and effective negotiating environment, and to provide adequate information to the public such that public confidence in the process will be maintained;

WHEREAS the issue of public confidence in the process requires consultation with third parties and the provision of information to the public to ensure that treaties are lasting and beneficial agreements for all parties;

WHEREAS the Parties recognize that information may be provided to the public in a variety of ways and through a variety of forums, and that there is a desire among the Parties to set out their mutual understanding on this issue through this Openness Protocol;

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

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

### **1.0 PURPOSE**

1.1 This Protocol shall apply to the Treaty Process between the Klahoose First Nation and British Columbia and Canada (the "Parties") and is intended to promote an open process throughout the treaty negotiations while recognizing the need to conduct effective negotiations. As set out in this document, the Parties agree to promote openness through:

- i) access to main table sessions;
- ii) access to documents;
- iii) public information; and

iv) consultation.

## **2.0 ATTENDANCE AT TREATY NEGOTIATION SESSIONS:**

2.1 Observation at a treaty negotiation session will generally occur in those sessions devoted to a general exchange of information on issues, interests and policies.

2.2 The Chief Negotiators will determine by mutual agreement whether or not a treaty session will be open to observation. In making the determination whether or not a negotiation session is open, the Chief Negotiators will consider whether observation could reasonably be expected to:

- i) contribute to the better understanding of the negotiation process;
- ii) interfere with the effectiveness of the process;
- iii) prejudice the positions or strategies of the Parties; or
- iv) harm the conduct of negotiations.

2.3 The Chief Negotiators will endeavour to agree, three weeks prior to regular scheduled treaty negotiation sessions, whether that session will be open or closed in accordance with paragraphs 2.1 and 2.2.

## **3.0 ACCESS TO DOCUMENTS**

3.1 In this Protocol, the term "Document" means anything 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 documents), and that is provided by one or more Parties to the other Parties as part of this treaty negotiation process.

3.2 The Parties agree that at a minimum, the following documents will be made available to the public in their final form:

- i) Agendas for open Main Table Meetings;
- ii) Records of Decisions and commitments given by each Party at an open Main Table meeting, and;
- iii) Periodic reports reviewing the progress of negotiations prepared by the Parties.

3.3 The following documents, once they have been initialled by the Chief Negotiators, will be made

available to the public:

- i) Framework Agreement;
- ii) Sub-agreements;
- iii) Agreement-in-Principle;
- iv) Final Agreement.

3.4 The test for determining whether other Documents will be made public as specified in section 3.5 will be applied by one or more Chief Negotiator(s) as follows:

- i) where one Party produces a Document specific to the Klahoose Table, the Chief Negotiator for the party producing the Document will decide whether the Document will be made public and will advise the other Parties at least one (1) week prior to the proposed release date;
- ii) where two or more Parties produce a Document specific to the Klahoose Table, the three Chief Negotiators will decide whether the Document will be made public.

3.5 In making a determination as to whether a document will be made available to the public in the situations specified in 3.4, the Chief Negotiators will consider whether granting access to the document could reasonably be expected to:

- i) result in disclosure of Documents or information that was produced or provided in confidence;
- ii) 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;
- iii) not accurately reflect the intentions or interests of any Party;
- iv) encourage public support for, or enhance progress in, the negotiations; or
- v) result in disclosure of Documents or information that could reasonably be expected to be harmful to or interfere with the conduct of negotiations.

3.6 Documents which are marked as "In Confidence" or "Confidential" will be treated as such, and will not be made public without agreement of all Chief Negotiators.

3.7 Access to Documents and information is 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 the information relating to the negotiations, notice of the request will be given to the other Parties.

## **4.0 PUBLIC INFORMATION**

4.1 The Parties agree that public information activities will be undertaken in communities within the Klahoose First Nation traditional territory 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.

4.2 The Chief Negotiators may establish a Side Table to periodically develop a draft information plan for consideration by the Chief Negotiators or the Main Table.

4.3 Nothing in this section is intended to prevent the parties from participating in bilateral or independent public information activities.

## **5.0 CONSULTATION**

5.1 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.

5.2 For its part, the Klahoose First Nation will be focusing its consultation efforts on the Cortes Local Advisory Committee.

5.3 To assist the advisory committees in providing advice on items under negotiation. The Parties agree that:

- i) each of the Parties may provide to its advisory committees documents available to the public;
- ii) each of the Parties may provide periodic briefings to advisory committees established by the other Parties;
- iii) each of the Parties may provide to its advisory committees any documents described in subsection 3.3, after agreement is reached on the substantive provisions and form of any such document, and with the agreement of and in a manner agreeable to the Chief Negotiators.

## **6.0 TREATY ADVISORY COMMITTEE**

6.1 The Parties acknowledge that British Columbia may include as a member of the provincial negotiating team a representative of local government from the Desolation Sound / Comox Valley Treaty Advisory Committee (TAC).

6.2 All members of the three negotiating teams, including the local government representative from the Desolation Sound / Comox Valley TAC, will be subject to all rules of confidentiality agreed to by Canada, British Columbia and Klahoose for the full duration of the negotiations.

6.3 The TAC representative will follow the directions and instructions of the Chief Negotiator for British Columbia and comply with the provisions of this protocol.

6.4 The Parties acknowledge that the role of the TAC representative in the treaty process is to inform the provincial negotiating team of local government interests and concerns, and to report back to the TAC in a manner consistent with this Openness Protocol.

6.5 The TAC representative may share with TAC all information and documents that have been determined to be public by the Chief Negotiators pursuant to paragraphs 3.0 and 4.0.

6.6 The TAC representative may share with TAC information or documents that have been determined to be "In Confidence" or "Confidential" by the Chief Negotiators pursuant to paragraphs 3.0 only where:

i) It is agreed, in accordance with the process established in paragraph 3.4, that the document may be shared;

ii) Subject to section 6.7, the Chief Negotiator for British Columbia instructs the TAC Representative that information that directly affects local government interests may be shared; and

iii) The members of TAC and the councils of the local governments represented on TAC have agreed in advance that they will not share the information or document with any person and that discussions of the information or document will be "in camera".

6.7 In making a determination under 6.6 (ii) as to whether or not to instruct the TAC Representative that information may be shared with the TAC, the Chief Negotiator for British Columbia shall:

i) consider the relevance of the information to local government interests as outlined in Section (b) of the Memorandum of Understanding between the Province of British Columbia and the Union of British Columbia Municipalities;

ii) discuss with and consider the views and recommendations of the Chief Negotiators for the other Parties and endeavor to reach a consensus decision among the Chief Negotiators.

6.8 The British Columbia Chief Negotiator will complete Terms of Reference for the Treaty Advisory Committee, consistent with this Protocol, and will supply copies to the Klahoose First Nation and Canada.

## **7.0 AMENDMENTS**

7.1 This Protocol may be amended by agreement in writing of all Chief Negotiators.

7.2 The Chief Negotiators will review this Openness Protocol at the start of each stage of treaty negotiations and may amend the Openness Protocol by agreement of all Chief Negotiators.

Agreed to by the Parties this 26 day of June, 1996

Kathy Francis, Chief Negotiator, Klahoose First Nation

Ross McKinnon, Senior Negotiator, Government of Canada

Linda Jolson, Treaty Negotiator, Province of British Columbia