

An aerial photograph of a waterfall cascading into a pool of water. The water is a vibrant blue-green color, and the surrounding area is lush green. The waterfall is the central focus, with water splashing and creating white foam as it falls. The overall scene is serene and natural.

what's in these treaties?

a plain language guide TO THE TSAWWASSEN
FIRST NATION TREATY
AND THE MAA-NULTH
FIRST NATIONS TREATY
BC TREATY COMMISSION

Two British Columbia First Nations are *making history.*

On June 26, 2008, The Tsawwassen First Nation treaty was ratified by parliament and senate and given royal assent. The Maa-nulth First Nations treaty had been ratified in the British Columbia legislature on November 29, 2007. Ratification of the Maa-nulth First Nations treaty by parliament was delayed by the federal election October 14, 2008.

These First Nations will be stepping out from under the *Indian Act* to become self-governing and self-determining First Nations within Canada.

These two treaties will profoundly transform the relationship between these communities and non-aboriginal societies and governments. These treaties signal the end of a relationship under the *Indian Act* that had been so destructive to aboriginal people.

“I believe in my *heart of hearts* that this treaty is the foundation for success.

“And, ultimately, the most important thing this treaty provides is self-governance. We will be able, for once and for all, to extricate ourselves from the *Indian Act* — to get this oppressive legislation off our backs. But we will do so in a way that we can handle, that is based on our needs and, most importantly, our decisions over our own lives and the future of our community.

“This is an amazing prospect — something we couldn’t dream of achieving while still tethered to the *Indian Act*. And this economic independence will allow us to provide culturally appropriate services to our membership. It will allow us to tackle poor housing and more. It will allow us to rebuild our culture. It will contribute to our wellness. It will contribute to our educational aspirations for our youth.”

Tsawwassen Chief Kim Baird, addressing the federal Standing Committee on Aboriginal Affairs and Northern Development on Parliament Hill in Ottawa on June 4, 2008

Each treaty, of course, is unique and specific to place, history and circumstance. These treaties, by definition, are detailed and legal in nature. But key points have been identified and set out below so that people can better understand the documents that will change the landscape of this province.

Each First Nation also has its own Constitution, which spells out the rights and responsibilities of its citizens. Each Constitution also spells out law-making powers with regard to a broad range of issues including: lands and land management, social development protection and enhancement of culture, heritage and language, public administration, taxation and financial accountability.

Under each treaty, a system of self government is clearly spelled out. While self government is complicated and legalistic, its main points have been set out in an article written by the Treaty Commission with the participation of University of Northern British Columbia professor Greg Poelzer. As the article explains, First Nations were self-governing long before Europeans arrived in Canada, but the introduction of the *Indian Act* in 1876 undermined these traditional governance systems and took away the rights and freedoms of First Nations people.

For over 100 years, First Nations have persistently demanded to be freed from the *Indian Act* and fought for the right to govern themselves according to their own traditions. Under the BC treaty process, each First Nation has the opportunity to negotiate a self government arrangement to meet its unique social, cultural, political and economic needs. This arrangement will vary from treaty to treaty, but the primary goal is to negotiate law-making powers that grant the Maa-nulth First Nations and Tsawwassen First Nation the autonomy to make decisions about their own lives and future, while avoiding conflict with federal and provincial laws.

***“The Maa-nulth treaty is an expression of our **vision** of the future.*”**

It is a vision that permits us to see a future filled with opportunities. It is a vision that removes the crippling institutions of our colonial era. It is a vision that permits us to move forward and leave the pain of the past behind.”

Uchucklesaht Tribe Chief Councillor, Charlie Cootes

After these treaties are ratified and made into federal and provincial law, the *Indian Act* will no longer apply. Nor will tax exemptions. Under these treaties, personal sales tax exemptions will be phased out in eight years and income tax exemptions will be phased out in 12 years.

But, at the same time, these First Nations will have the right to tax and will be able to collect taxes from their members to support their government, once tax sharing agreements are reached with Canada.

Each treaty provides for the continuation of Indian status for the purposes of the delivery of services and programs. In both cases, there will no longer be such a thing as an Indian reserve.

Also, under each treaty, all current programs of social assistance will continue, as will all current medical and dental benefits now provided by the Canadian government.

Under these treaties, lands will be owned in fee simple and managed for the direct benefit of the people themselves.

Tax sharing agreements will provide a revenue source not available to municipalities because, under these two treaties, the First Nations will provide programs and services that other Canadians obtain through federally or provincially funded programs. Taxation can help to provide each First Nation with predictable revenues in an efficient and effective way thus contributing to self-reliance and the shared responsibility for funding self government. Taxation, as set out in these treaties, will contribute to a healthier and more sustainable fiscal relationship.

While each treaty is unique in its detail, they share many general principles.

*On the following pages are summaries of key elements specific to the **Tsawwassen First Nation and Maa-nulth First Nations treaties.***

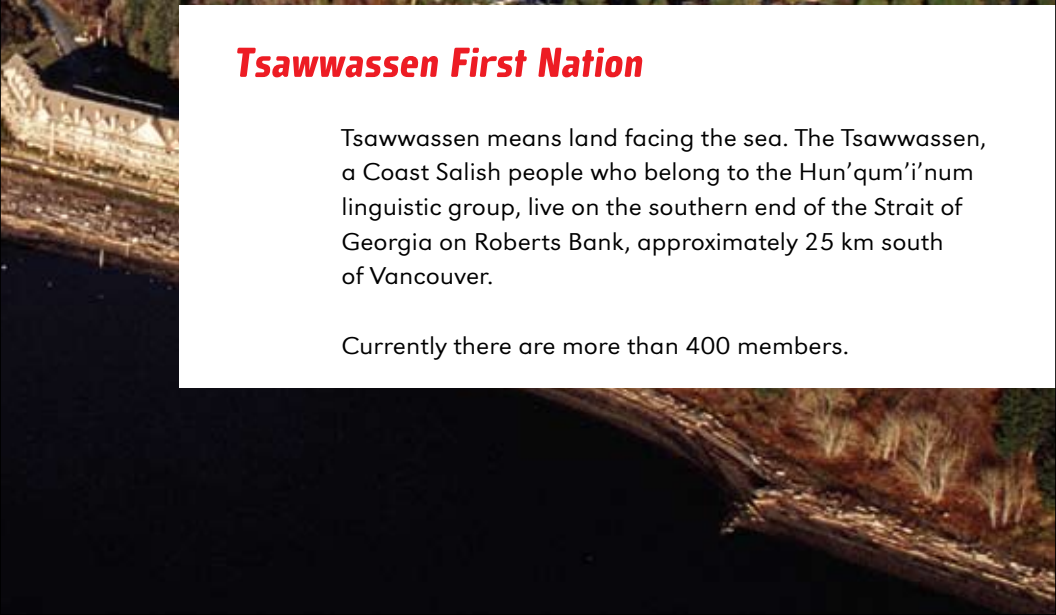


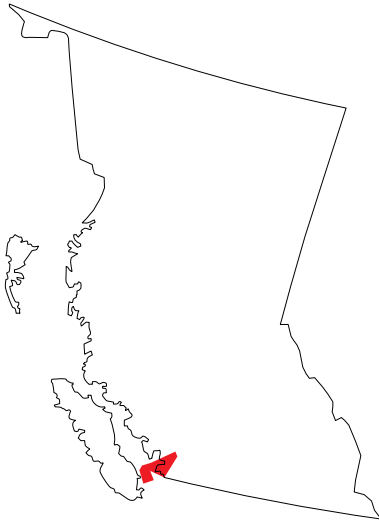


Tsawwassen First Nation

Tsawwassen means land facing the sea. The Tsawwassen, a Coast Salish people who belong to the Hun'qum'i'num linguistic group, live on the southern end of the Strait of Georgia on Roberts Bank, approximately 25 km south of Vancouver.

Currently there are more than 400 members.





70%

of the registered Tsawwassen First Nation members voted in favour of ratifying the Final Agreement on July 25, 2007. The treaty provides the First Nation with approximately 724 hectares of treaty settlement land and a one-time payment of \$13.9 million over 10 years. On November 7, 2007, Tsawwassen First Nation treaty settlement legislation passed third reading in the provincial legislature; it was ratified on November 22, 2007. The treaty, approved in Ottawa on June 26, 2008, is now being made into law. It is expected to take effect in spring, 2009.

Tsawwassen treaty highlights

The treaty also defines the rights and responsibilities of the Tsawwassen First Nation on their traditional territory, which covers approximately 279,600 hectares of land, including the waters of the southern Strait of Georgia.

In addition to the one-time capital transfer payment of \$13.9 million, there is \$2 million for relinquishing mineral rights under English Bluff, \$13.5 million for startup and transition costs, \$7.3 million for a number of funds for the purposes of resource management and economic development and \$2.6 million annually for ongoing programs and services.

The settlement comprises 724 hectares of land now, of which 662 hectares will be Tsawwassen Lands and 62 hectares will remain under the jurisdiction of city of Delta. There is an opportunity for Tsawwassen First Nation to add settlement land later. Regarding resources, there is provision for salmon, crabs and intertidal bivalves and funding to establish a Forest Resource Fund and Wildlife Fund.



CASH

Total value of the Tsawwassen First Nation treaty is estimated at more than \$120 million as follows:

- Land\$66.7 million
- Cash.....\$18.5 million
- Salmon Allocation.....\$2.7 million
- Other Funding Enhancements\$36.6 million.

LANDS

Tsawwassen First Nation will have direct control over 662 hectares of “Tsawwassen lands” as follows:

- 290 hectares of what is now reserve land
- 372 hectares of former BC Crown lands returned to Tsawwassen First Nation.*

*Of the 372 hectares of land returned to Tsawwassen First Nation by the BC Crown, approximately 209 of those hectares will be taken out of the Agricultural Land Reserve (ALR) for Tsawwassen First Nation use. The ALR is a collection of land in BC in which agriculture is recognized as the priority use. Since its inception in 1973, the ALR was intended to protect valuable agricultural land from development.

- 62 hectares of fee simple lands (Boundary Bay and Fraser River parcels) that will be owned by Tsawwassen First Nation but will stay under city of Delta jurisdiction.



Altogether 724 total hectares will be added; Tsawwassen First Nation will control 662 hectares of land under its new government; these lands will be called Tsawwassen Lands, to be registered at BC's Land Title office. Tsawwassen First Nation will own the subsurface resources beneath these lands.

For 50 years following the effective date of the treaty, Tsawwassen First Nation can add more lands to their Treaty Settlement Lands from a pre-selected area identified in the treaty. After that lands may be added if BC, Canada and Delta agree.

WATER AND NATURAL RESOURCES

As set out in the treaty, Metro Vancouver Water District will supply water on reasonable terms to Tsawwassen First Nation, which will be a member of Metro Vancouver.

Tsawwassen First Nation will have the right to harvest wildlife and migratory birds for food, social and ceremonial purposes within Tsawwassen traditional territory including in national and provincial parks. Tsawwassen First Nation will also have the right to gather plants for food, social and ceremonial purposes in specified areas.

The governments of Canada and BC will provide Tsawwassen First Nation with \$50,000 to establish a Wildlife Fund and \$100,000 to establish a Forest Resources Fund.



FISHERY

There are two parts to the Tsawwassen First Nation fishery. The allocation for food, ceremonial and social uses is protected in the treaty. The commercial component, set out in the Harvest Agreement, is outside the treaty.

On average, the annual allocation for salmon for food, ceremonial and social uses is as follows:

- 12,000 Fraser River sockeye
- 625 chinook
- 500 coho
- 2,576 chum
- 2,500 pink.

COMMERCIAL FISHERY

Under the Harvest Agreement, outside the treaty, the commercial salmon allocation for Tsawwassen First Nation is as follows:

- 31,200 Fraser River sockeye
- 7,550 chum
- 39,000 pink.

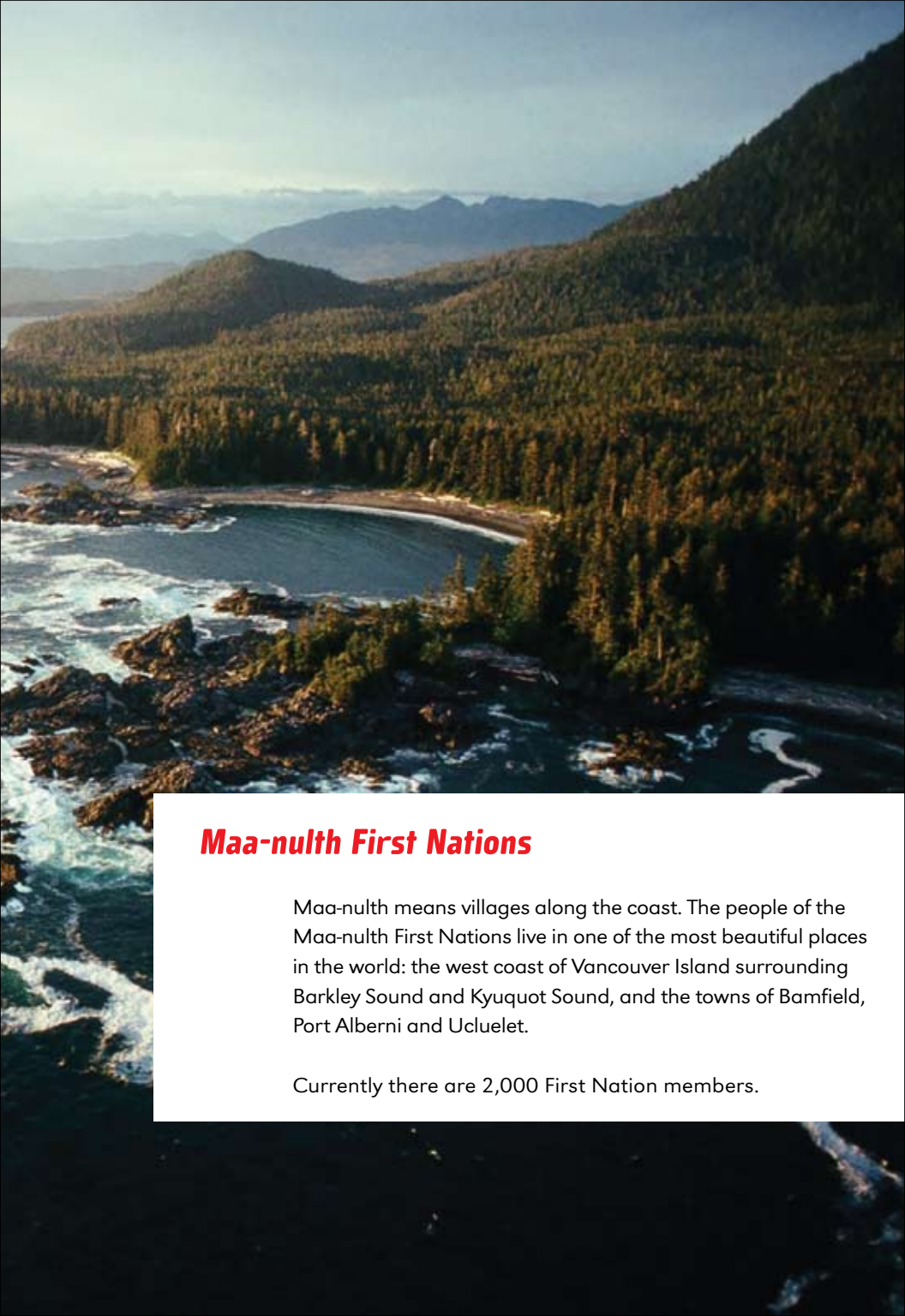
Funding of \$1.5 million is for the purchase of commercial crab licences and additional funds will be identified for a sustainable crab management and enforcement program.



MEMBER BENEFITS

Once the treaty is ratified, each Tsawwassen First Nation elder, 60 years or older, will receive \$15,000. This benefit will extend to all members who turn 60 in the future. On the treaty's effective date, each member will also receive \$1,000 – regardless of age.





Maa-nulth First Nations

Maa-nulth means villages along the coast. The people of the Maa-nulth First Nations live in one of the most beautiful places in the world: the west coast of Vancouver Island surrounding Barkley Sound and Kyuquot Sound, and the towns of Bamfield, Port Alberni and Ucluelet.

Currently there are 2,000 First Nation members.



5 First Nations

The five Maa-nulth First Nations voted in favour of accepting the Final Agreement in October 2007. Provincial legislation to ratify the agreement was introduced in the legislature on November 21, 2007; it was ratified on November 29, 2007. The treaty will require royal assent from federal parliament before taking effect.

There are approximately 2,000 Maa-nulth First Nation members from five distinct First Nations: Huu-ay-aht First Nation (pronounced Ooh-ay-at), Ka:'yu:'k't'h'/Che:k'tles7et'h First Nation (pronounced Ky-yuk-et/check-le-set), Toquaht Nation (pronounced toe-kwat), Uchucklesaht Tribe (pronounced U-chuck-le-sat) and Ucluelet First Nation (pronounced U-clue-let).

Maa-nulth treaty highlights

The treaty provides the Maa-nulth First Nations with a one-time payment of \$73.1 million over 10 years, as well as \$1.2 million annually in resource royalty payments for 25 years and \$9.5 million annually for program funding.

The treaty also provides 22,375 hectares of land including subsurface resources, in addition to the existing reserves of 2,084 hectares and allows the First Nations to add to their settlement lands in the future through purchases.

There is one-time funding of \$47.3 million to fund transition and implementation in such areas as fisheries, parks, public works, governance and land and resource management to be paid over eight years.

A further \$11.1 million has been provided outside the treaty for capital projects such as the purchase of commercial fishing licences and to prepare for treaty implementation.

The Maa-nulth First Nations Final Agreement is the first modern-day treaty on Vancouver Island.



CASH

Maa-nulth First Nations will receive the following financial benefits, for a total of \$62.6 million, as follows:

- \$19.4 million to Huu-ay-aht First Nation
- \$16.1 million to Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nation
- \$3.6 million to Toquaht Nation
- \$4.9 million to Uchucklesaht Tribe
- \$18.6 million to Ucluelet First Nation.

RESOURCE REVENUE SHARING PAYMENTS

For the next 25 years Maa-nulth First Nations will receive a portion of the revenues that the provincial government collects annually for resources removed from its traditional territories. Annual resource revenue will be as follows:

- \$350,000 to Huu-ay-aht First Nation
- \$300,000 to Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nation
- \$70,000 to Toquaht Nation
- \$100,000 to Uchucklesaht Tribe
- \$380,000 to Ucluelet First Nation.

Maa-nulth First Nations will have guaranteed rights to natural resources on treaty settlement lands. Similar rights extend to federal and provincial parks as well as Domestic Fishing Areas offshore.



FISHERIES

There are two parts to the Maa-nulth First Nations fishery. First, there is the allocation of fish for food, ceremonial and social purposes (FSC). In 1990, the Supreme Court of Canada released its Sparrow decision. In this landmark case, the court held that, after conservation and other valid legislative objectives, aboriginal rights to fish for food, social and ceremonial purposes have priority over all other uses of the fishery. These fishing rights are protected under the treaty.

Commercial Maa-nulth First Nations fisheries, however, are not included inside the treaty. The provisions are set out instead in a Harvest Agreement, a negotiated arrangement so that a particular First Nation can fish commercially. Negotiated at the same time as the treaty, the Harvest Agreement does not receive constitutional protection.

Maa-nulth First Nations FSC salmon allocations are as follows:

- Ocean chinook: an abundance-based formula of 1,875 fish plus 1.78 per cent of the ocean chinook Canadian Total Allowable Catch
- Ocean coho: 7,000 fish
- Pink: 7,250 fish
- Somass sockeye: up to 22,886 fish
- Henderson sockeye: up to 17,055 fish
- Fraser River sockeye: 0.13366 per cent of Fraser River sockeye.



Maa-nulth First Nations also have the following allocations:

- Herring: 90 short tons each year
- Halibut: 26,000 pounds plus 0.39 per cent of the Canadian Total Allowable Catch
- Rockfish: 11,250 pounds, plus 2.46 per cent of the West Coast of Vancouver Island ZN Commercial Total Allowable Catch
- Groundfish: 13,000 pounds
- Sablefish: 0.082 per cent of the Sablefish Canadian Total Allowable Catch or about 7,000 pounds per year).

COMMERCIAL FISHERY

As set out in the Harvest Agreement, Maa-nulth First Nations will have the following licences:

- Salmon: eight Area D Gillnet and Area G Troll licences in the at-sea salmon fishery
- Terminal Salmon: one Area D Gillnet licence in the terminal Henderson Lake sockeye fishery comparable to 20 per cent of the terminal commercial Total Allowable Catch of Henderson Lake sockeye and 25 per cent of the terminal commercial Total Allowable Catch of Jensen Lake sockeye
- Halibut: one licence comparable to .35 per cent of the Canadian Commercial Total Allowable Catch
- Rockfish: one licence
- Crab: one Area E licence
- Roe Herring: four gillnet licences



- Sablefish: 0.34 per cent of the sablefish Commercial Total Allowable Catch.

The Harvest Agreement also makes \$4.15 million available to Maa-nulth First Nations for the purchase of additional commercial fishing licences to increase participation in the local commercial fishery.

FOREST RESOURCES

Maa-nulth First Nations will own all forest and range resources on treaty settlement lands. This ensures that Maa-nulth First Nations will control the management and harvesting of trees and non-timber forest resources both for commercial and traditional purposes.

Where national parks and national marine conservation areas are wholly or partly within its traditional territories, Maa-nulth First Nations retain rights within park boundaries to conduct activities such as: harvesting plants for food, social and ceremonial purposes; gathering plants or timber resources for medicinal, ceremonial or artistic purposes; trapping of fur-bearing animals; and the hunting of birds and mammals for food, social and ceremonial purposes.

Maa-nulth First Nations will own subsurface resources beneath treaty settlement lands. They will have the authority to set fees, royalties and other charges for exploration, development or extraction and production of those resources.



WATER

Water resources are recognized under the treaty. The provincial government will establish water reservations for each Maa-nulth First Nation as follows:

- 75,000 cubic decameters per year to HUU-ay-aht First Nation
- 50,000 cubic decameters per year to the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nation
- 15,000 cubic decameters per year to Toquaht Nation
- 50,000 cubic decameters per year to Uchucklesaht Tribe
- 57,000 cubic decameters per year to Ucluelet First Nation.

Maa-nulth First Nations water allocations may be put to a host of uses including for domestic and industrial purposes, including hydroelectric power generation.

*The following pages set out elements
common to both the **Tsawwassen First Nation**
and **Maa-nulth First Nations treaties.***

GOVERNANCE

In Canadian law, First Nations governance is largely defined by the *Indian Act*. The extent of the right of First Nations to self government under s. 35 of the *Constitution Act*, 1982, is still uncertain.

The Tsawwassen and Maa-nulth treaties provide that the First Nations have the right to self government and the authority to enact laws to govern themselves as set out in the treaties. This right to self government and law making authority is subject to the Constitution adopted by each First Nation and the provisions of the treaties. The sweeping authority of the minister of Indian and Northern Affairs Canada over the First Nations and their governments under the *Indian Act* ceases on the date the treaties become effective.

The powers of self government under the Tsawwassen and Maa-nulth treaties are limited because of the division of legislative authority within the Canadian federal system. However, they are much greater than those exercisable by a band under the *Indian Act* and include many areas in which First Nations' law-making authority prevails over federal or provincial law. First Nations' law will have the highest priority when it comes to matters internal to them, including the use and management of First Nations' assets located on First Nations' lands, land use planning for and development of First Nations' lands, citizenship in the First Nation, adoption of children of the First Nation in BC, child protection within First Nations' lands, teaching of language and culture as well as kindergarten to Grade 12 education.

ROLE WITHIN TRADITIONAL TERRITORY

Under the treaties, the Tsawwassen and Maa-nulth First Nations own and control only a small part of the land within their traditional territories. However, the treaties provide that they will have a role off of treaty settlement lands within their traditional territories. This role includes (among other things) the opportunity to be consulted and have input before decisions concerning development or management of resources are made, commercial tenures, resource revenue sharing, the opportunity to participate in management or planning processes for protected or conservation areas, the right to participate in environmental assessments, and the ability to harvest renewable resources throughout their traditional territories.

COMMERCIAL RECREATION TENURES

The Maa-nulth treaty contains provisions for the establishment of commercial recreation tenures for each Maa-nulth First Nation. These tenures will be for a minimum term of 15 years and can be renewed in accordance with provincial law. They cannot be cancelled or amended unless the land is required for regional infrastructure purposes and no other suitable land is available. These tenures will enable the Maa-nulth First Nations to develop and operate businesses to meet the growing demand for outdoor recreational opportunities in BC.

HEAD LEASES FOR WATERFRONT LAND

In the Tsawwassen and Maa-nulth treaties, British Columbia has ownership of the foreshore. However, to ensure that the First Nations can exercise reasonable uses of the foreshore, head leases have been arranged between BC and First Nations on selected waterfront lands. The Tsawwassen and Maa-nulth First Nations governments may enact laws consistent with the leases to regulate activities or undertakings on the land other than those activities or undertakings that are permitted by provincial law.

ENVIRONMENT

The Tsawwassen and Maa-nulth treaties contains chapters on parks and the environment. The treaties expressly state that federal law and provincial law regarding environmental assessments apply to the lands of these First Nations. This ensures that uniform environmental standards are maintained. However, no project can proceed on Tsawwassen or Maa-nulth lands even if approval is obtained under federal law or provincial law unless the First Nation consents.

The treaties provide that the Tsawwassen and Maa-nulth First Nations are entitled to timely notice of and participation in environmental assessments concerning any projects that may adversely affect their lands or treaty rights.

TAXATION

Under the *Indian Act*, the personal property of Indians situated on a reserve is exempt from taxation. This exemption generally includes income earned by Indians on a reserve and federal or provincial taxes on the sale of goods or the provision of services to Indians on a reserve.

In the Tsawwassen and Maa-nulth treaties, these *Indian Act* tax exemptions for Tsawwassen and Maa-nulth members are eventually eliminated. For sales or transaction taxes, the exemption no longer applies after eight years. For income and other taxes, the exemption ceases to apply after 12 years.

Even though individual Tsawwassen and Maa-nulth members have given up *Indian Act* tax exemptions, each of these First Nations has gained increased taxing powers collectively under their treaties. Tax sharing agreements still need to be negotiated.* With these increased taxing powers, both First Nations will have greater ability to raise revenues for public purposes including development of infrastructure on their lands and delivery of programs and services to their members. The treaties provide that with the agreement of Canada or BC, these taxing powers may be extended to non-members within Tsawwassen or Maa-nulth lands.

*Property tax immediate through agreement with BC. Future agreements for sales and income tax.

TRADE AND BARTER

In Canadian law, members of a First Nation have the right under s. 35 of the *Constitution Act, 1982*, to trade and barter in fish or wildlife harvested by them if their ancestors traded or bartered in these items at the time of contact with Europeans and trade and barter was an important part of the culture of the First Nation. The Tsawwassen and Maa-nulth treaties simplify and strengthen this right to trade and barter.

Both the Tsawwassen and Maa-nulth treaties contain provisions recognizing the right of members of these First Nations to trade and barter in fish and aquatic plants, wildlife and migratory birds among themselves and with other aboriginal people of Canada resident in BC. This right is subject to any laws made by the First Nations. Trade and barter does not include sale. However, the sale of fish or wildlife by members is permitted if it is authorized by federal law (for fish and migratory birds) and provincial law for other wildlife.

ACCESS

The Maa-nulth treaty provides that the general public has a right of access to Maa-nulth public lands for temporary recreational uses and temporary non-commercial purposes including for the public to hunt and fish. However, the First Nations may adopt laws to regulate public access and prevent unauthorized uses. Both First Nations are required to use “reasonable measures” to inform the public of any restrictions or conditions that apply to access.

Some Maa-nulth lands are designated in the treaties as “private lands” and provision is made for designating other land as private land if certain conditions are fulfilled. Public access does not apply to private land. However, the First Nations are required to inform Canada, BC and the public and consider their opinions before designating other land as private land or changing the locations or boundaries of private lands. In the Maa-nulth treaty, some Maa-nulth lands of special importance because of their recreational or other public value can only be designated as private lands with the prior consent of BC.

EXPROPRIATION

Under the Tsawwassen and Maa-nulth treaties, Canada and BC retain the power to expropriate Tsawwassen and Maa-nulth lands for a public purpose. Federal law (for an expropriation by Canada) or provincial law (for an expropriation by BC) applies to an expropriation of Tsawwassen and Maa-nulth land. However, unlike other expropriations under federal or provincial law the treaties specify that special conditions apply if First Nation land will be expropriated. They include:

- 1) the approval of the federal or provincial cabinet is required before Tsawwassen and Maa-nulth land can be expropriated by Canada or BC
- 2) the expropriating authority is required in some cases and with some restrictions to offer replacement land to the First Nation
- 3) for expropriations by BC, a limit on the amount of land that can be expropriated is imposed
- 4) if land that has been expropriated is no longer required for the purpose for which it was expropriated, it will be returned to the First Nation on terms to be negotiated by the expropriating authority and the First Nation.

PROTECTIONS FOR NON-MEMBERS

In both treaties, the rights and interests of non-members affected by the Tsawwassen and Maa-nulth treaties are recognized and protected. This protection encompasses two main areas: existing rights in on treaty lands including tenures granted by the Crown, and the right to be consulted about matters that may directly and significantly affect the interests of non-members.

As a general principle, existing property rights of non-members (aboriginal and non-aboriginal) within Tsawwassen and Maa-nulth lands are not terminated or modified by the treaties. Both treaties contain an exhaustive list of the specific property rights or interests that continue after the treaty becomes effective. Even for people with interests in or exercisable on land that is situated near Tsawwassen and Maa-nulth land, the treaties require the First Nations to provide reasonable access through their land if no other means of access exist.

The Tsawwassen and Maa-nulth treaties expressly state that the First Nations will consult with non-members concerning decisions that directly and significantly affect those non-members. They also provide that in addition to consultation, the First Nations will ensure that non-members can participate in decisions that directly and significantly affect them. Participation by non-members includes the right to participate in discussions and vote (directly or through representatives) on matters that affect them. However, the First Nations can require that a majority of the members of any public institution by which decisions are made will be its own citizens.

THE BC TREATY PROCESS

The BC treaty process began in 1990 when Canada, British Columbia and First Nations established the BC Claims Task Force to make recommendations on the scope of treaty negotiations, the organization and processes to be used, interim measures and public education. In its report, the task force made 19 recommendations.

Subsequently, First Nations, Canada and British Columbia signed an agreement in September 1992 to establish the BC Treaty Commission. The *BC Treaty Commission Agreement* is supported by federal and provincial legislation and a resolution of the First Nations Summit.

The BC treaty process is a voluntary process of political negotiations among First Nations, Canada and British Columbia. Through political negotiations, the parties are attempting to “establish a new relationship based on mutual respect, trust and understanding.” This is a key recommendation of the *BC Claims Task Force Report*.

In December 1993 the Treaty Commission began receiving statements of intent from First Nations wanting to negotiate a treaty with Canada and British Columbia.

ROLE OF THE TREATY COMMISSION

The Treaty Commission has three complementary roles: facilitation, funding and public information.

Commissioners and staff spend much of their time and resources on facilitation to move negotiations forward at treaty tables. Facilitation can take many forms — it can involve the parties at individual tables; or the Principals, that is Canada, BC and the First Nations Summit; or First Nations and other players, such as local governments; or differing First Nations, and so on. And it embraces everything from structured facilitation, proactive chairing, back channel diplomacy, to engagement with political leaders.

The Treaty Commission allocates negotiation support funding so that First Nations can negotiate on a more secure footing with the governments of Canada and BC.

As the independent voice of treaty making the Treaty Commission provides information across BC using a variety of communications tools.

The First Nation Summit members elect two commissioners and the federal and provincial governments each appoint one commissioner. The chief commissioner is appointed by agreement of the three Principals.

“The arrival of the first treaty in the BC treaty process is a significant achievement for all those people who worked so diligently and determinedly to build the agreement and see it through to ratification by all three parties to the agreement. It’s a positive development for all British Columbians and an encouragement for other First Nations to seek their own unique treaties.”

FIRST NATIONS IN THE BC TREATY PROCESS AS OF SEPTEMBER 2008

There are 59 First Nations participating in the BC treaty process. Because some First Nations negotiate at a common table, there are 49 sets of negotiations. There are 8 First Nations in Stage 5 and 43 First Nations in Stage 4.

8 First Nations in Stage 5

In-SHUCK-ch Nation
Lheidli T'enneh Band
Maa-nulth First Nations*
Sechelt Indian Band
Sliammon Indian Band
Tsawwassen First Nation*
Yekooche Nation
Yale First Nation

Musqueam Nation
'Nqmgis Nation
Nazko Indian Band
Northern Shuswap Treaty Society
Nuu-chah-nulth Tribal Council
Oweekeno Nation
Pacheedaht Band
Quatsino First Nation
Snuneymuxw First Nation
Sto:Lo Nation
Taku River Tlingit First Nation
Te'Mexw Treaty Association
Teslin Tlingit Council
Tla-o-qui-aht First Nation
Tlatlasikwala Nation
Tlowitsis Nation
Tsay Keh Dene Band
Tsimshian First Nations
Tseil-Waututh Nation
Westbank First Nation
Wet'suwet'en Nation

43 First Nations in Stage 4

Carcross/Tagish First Nation
Carrier Sekani Tribal Council
Champagne and Aishihik
First Nations
Da'naxda'xw Awaetlatla Nation
Ditidaht First Nation
Esketemc First Nation
Gitanyow Hereditary Chiefs
Gitxsan Hereditary Chiefs
Gwa'Sala'Nakwaxda'xw Nation
Haisla Nation
Heiltsuk Nation
Homalco Indian Band
Hul'qumi'num Treaty Group
Hupacasath First Nation
Kaska Dena Council
Katzie Indian Band
Klahoose Indian Band
K'omoks First Nation
Ktunaxa/Kinbasket
Treaty Council
Kwakiutl Nation
Laich-Kwil-Tach Council of Chiefs
Lake Babine Nation

3 First Nations in Stage 3

Cheslatta Carrier Nation
Council of the Haida Nation
Squamish Nation

5 First Nations in Stage 2

Acho Dene Koe First Nation
Allied Tribes of Lax kw'alaams
Liard First Nation
McLeod Lake Indian Band
Ross River Dena Council

*Ratified Final Agreements

TIMELINE

- 1870** BC unilaterally denies existence of aboriginal title.
- 1876** Ottawa establishes reserves for Indians.
- 1878** Tsawwassen Reserve confirmed by Commissioner Sproat.
- 1914** Tsawwassen Chief Harry Joe submits a petition to the McKenna McBride Commission. His eloquent plea for more land goes unheeded.
- 1958** Construction begins on the BC Ferries terminal, causeway and Highway 17, effectively cutting the Tsawwassen reserve in half.
- 1968** Construction on the Roberts Bank Superport begins. By 1983 it had become a 113-hectare island with a BC Rail line.
- 1992** BC, Canada and the First Nations Summit establish the BC Treaty Commission to oversee treaty negotiations.
- 1993** Tsawwassen First Nation enters a formal treaty-making process.
- 1994** In January, the Maa-nulth First Nations enter the treaty process as part of the Nuu-chah-nulth Tribal Council treaty table.
- 2001** Nuu-chah-nulth Tribal Council, BC and Canada initial a draft agreement in principle. Six of the 12 First Nations negotiating as part of the Nuu-chah-nulth Tribal Council approve the agreement in principle. Five of these First Nations join together to form the Maa-nulth First Nations Treaty Society.

2003 July 9, Tsawwassen, BC and Canada initial the Agreement in Principle (AIP).

December 10, members of the Tsawwassen First Nation vote overwhelmingly to approve the AIP.

2006 In December, the Maa-nulth First Nations initial the AIP.

2007 July 25, Tsawwassen members ratify Final Agreement.

July 28, Huu-ay-aht First Nation votes to accept the Final Agreement. Of 303 votes cast, 90 per cent, or 272 votes were in favour of the treaty. The remaining four First Nations – Ka:'yu:'k't'h'/Che:k'tles7et'h First Nations, Toquaht Nation, Uchucklesaht Tribe and Ucluelet First Nation – vote in favour of the Final Agreement in October.

Oct. 21, Maa-nulth members ratify Final Agreement.

Nov. 7, Tsawwassen treaty is ratified by BC legislature.

Nov. 29, Maa-nulth treaty is ratified by BC legislature.

2008 June 26, Tsawwassen treaty is formally ratified in Ottawa.

GLOSSARY OF TREATY TERMS

aboriginal people: all indigenous people of Canada, including Indians (status and non-status), Metis and Inuit people (as defined in the *Constitution Act*, 1982).

aboriginal rights: refer to practices, traditions or customs which are integral to the distinctive culture of an aboriginal society and were practiced prior to European contact.

aboriginal title: a sub-category of aboriginal rights dealing with land.

agreement in principle (AIP): document produced in the fourth phase of the six-stage treaty negotiation process. The AIP outlines the major points of agreement between the parties regarding provisions which will form the basis of the treaty. An AIP is not binding on the parties, and changes may occur in negotiating the final agreement.

band: an organizational structure defined in the *Indian Act* which represents a particular body of Indians as defined under the *Indian Act*.

British Columbia Treaty Commission: an independent body, of five commissioners appointed by Canada, BC and the First Nations Summit, to oversee and facilitate the six-stage process for negotiating treaties.

capacity building: the development of human, technical and financial resources in First Nation communities.

Crown land: land or an interest in land, held by Canada or BC. Almost all Crown land in BC is held by the province.

Delgamuukw obligations: informal term used to refer to the legal obligations of the Crown to aboriginal people arising out of the Court of Appeal decision in Delgamuukw.

Douglas treaties: 14 treaties struck between 1850 and 1854 between the British Crown, represented by Sir James Douglas, and some Vancouver Island First Nations.

First Nation: a) an aboriginal governing body, organized and established by an aboriginal community, or b) the aboriginal community itself.

First Nations Summit: an umbrella organization of some BC First Nations and tribal councils. The First Nations Summit is one of the principals in the BC treaty process.

food fish: informal term used when referring to the legal obligation of the Crown to recognize an aboriginal right to fish, particularly for food, social and ceremonial purposes, arising from the Supreme Court of Canada's decision in Sparrow.

INAC: acronym for Indian and Northern Affairs Canada. INAC is responsible for negotiating treaties on behalf of Canada.

Indian Act: federal legislation designed to give effect to the legislative authority of Canada for "Indians, and Lands reserved for the Indians," pursuant to s.91(24) of the *Constitution Act*, 1867.

Indian reserve: defined in Section 2 of the *Indian Act* as a tract of land that has been set apart by the federal government for the use and benefit of an Indian band.

initialled agreement: an agreement which the negotiators for all parties have initialled as a means of expressing their intention to recommend the agreement to their respective authorities for approval.

interim measures: any activity undertaken in the interim before treaties are concluded, that is primarily related to the management or use of land or resources.

land claims agreement: term used by the federal government to refer to a treaty with a First Nation.

Non-status Indian: a person who claims aboriginal ancestry but does not meet the criteria for registration, or has chosen not to be registered, under the *Indian Act*.

overlaps: areas of land identified by more than one First Nation as part of their traditional territory.

ratification: official acceptance of an agreement by one of the parties.

registered Indian: person who is defined as an Indian under the *Indian Act*, and who is registered under the Act.

s. 35: section of the *Constitution Act*, 1982 that states that aboriginal rights and treaty rights are recognized and affirmed and makes it clear that treaty rights include rights that now exist by way of land claim agreements or that may be so acquired. As a result of this constitutional protection, government has an obligation not to infringe upon aboriginal and treaty rights without justification.

self government: government of a First Nation by its own people.

specific claim: a claim made by a First Nation which is based upon the alleged failure of Canada to meet either the terms of an existing agreement, or, in the case of Canada, their fiduciary obligation. Negotiated outside of the treaty process.

status Indian: person defined as an Indian under the *Indian Act*.

third parties: parties outside of governments and First Nations who have an interest in treaty negotiations.

traditional territory: the geographic area identified by a First Nation to be the area of land which they and/or their ancestors traditionally occupied or used.

treaty: an agreement between government and a First Nation that defines the rights of aboriginal peoples with respect to lands and resources over a specified area, and the self government authority of a First Nation. Treaties are final agreements which have been ratified by all parties.

Treaty 8: treaty entered into by Canada and five bands from the Peace River area in 1899. The treaty covers large portions of northeast BC and northern Alberta.

Treaty Advisory Committee (TAC): a committee of local government representatives, set up through an agreement between BC and Union of BC Municipalities. TACs, such as the Lower Mainland Treaty Advisory Committee, enable local government representatives to discuss issues and interests, advise provincial negotiators on local government issues and participate in negotiations as members of provincial negotiating teams.

treaty right: right protected under s. 35 of the *Constitution Act*, 1982, which is held by First Nations people pursuant to a treaty.

treaty settlement land: area of land that will be owned and managed by a First Nation pursuant to a treaty.

tribal council: a self-identified entity which represents aboriginal people or a group of bands.

for more information

WWW.BCTREATY.NET

www.tsawwassenfirstnation.com

www.maanulth.ca

www.inac.gc.ca

www.gov.bc.ca/arr



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