

Cabinet Decision Document

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MINISTER:

Geoff Plant, Attorney General and Minister Responsible for Treaty Negotiations

TITLE:

Tsawwassen First Nation Agreement in Principle (AIP)

DECISION REQUESTED:

1. Approval of the Agreement in Principle; and
2. Approval to proceed with Final Agreement negotiations.

BACKGROUND:

On July 9, 2003 an AIP was initialled by Chief Negotiators from British Columbia, Tsawwassen First Nation and Canada. The Agreement has been negotiated within the mandate provided to the Treaty Negotiations Office (TNO) by Cabinet. Conclusion of the AIP supports the New Era commitment to: “fast-track treaty talks and to conclude fair treaty settlements”, the Ministry’s Service Plan, and the government’s treaty principles. A summary of the Agreement is set out in Appendix A, a map of proposed treaty lands is attached as Appendix B and a review of the treaty referendum principles and the Tsawwassen First Nation AIP is included in Appendix C.

A Communications Plan provides for continuing information sessions with stakeholders and the public. The AIP and a summary of it have been posted since late July 2003 on the British Columbia Treaty Commission website, the Indian and Northern Affairs Canada (INAC) website, the TNO website and the Tsawwassen First Nation website. Other written material, such as fact sheets and brochures, have been distributed and made available to the public. Tsawwassen First Nation ratified the AIP through a community vote of 100-36 on December 10, 2003.

The AIP with Tsawwassen is the fourth agreement ratified by a First Nation following the referendum and the first in the Lower Mainland. This Agreement, together with the preceding AIPs, provides further evidence that the treaty process is working, and will deliver certainty on the land base and secure key provincial interests in the Tsawwassen and Ladner region of Delta in the Lower Mainland.

A Final Agreement will most likely be completed in one to two years. Prior to the Final Agreement, the Parties must negotiate a governance agreement, the phase-in period for removal of the tax exemptions, a mechanism for delivering an economic fishery component outside the Final Agreement, the right of refusal mechanism for Brunswick Point lands, fiscal financing, taxation and own source revenue agreements and an Implementation Plan.

TNO is seeking approval to sign the AIP and to proceed with Final Agreement negotiations.

RECOMMENDED DECISION:

1. Approval of the AIP; and
2. Approval to proceed with Final Agreement negotiations.

SIGNATURE:

Honourable Geoff Plant
Attorney General and Minister Responsible for Treaty Negotiations

DATE:

KEY CONTACT:
Bronwen Beedle, Chief Negotiator
Telephone: (250) 387-0024

Appendix A
Summary of the Tsawwassen Agreement in Principle

Introduction

If approved by the principals, the Tsawwassen First Nation AIP will be the foundation for undertaking Final Agreement negotiations and completes stage 4 of the 6-stage British Columbia treaty process. It deals with land, cash, resources, culture and related governance provisions. The AIP sets out certain law-making authorities related to Tsawwassen First Nation's management of their lands, resources and culture.

Between AIP and Final Agreement, the parties have also agreed to negotiate the nature and scope of other law-making authorities that may be included in the Final Agreement and a governance agreement.

The key commitments in the AIP are:

General Provisions

- The AIP is not a Final Agreement (i.e., a "treaty") and is not legally binding.
- To achieve certainty, the treaty will be the full and final settlement of Tsawwassen First Nation's aboriginal land rights and any other aboriginal rights related to the matters set out in the Final Agreement.
- The parties will achieve certainty by modifying any such aboriginal rights into the rights set out in the Final Agreement (treaty).
- With respect to a governance agreement, Tsawwassen First Nation will agree not to assert or exercise any rights other than those set out in the governance agreement for as long as that agreement is in effect.
- The Canadian Constitution will not be altered and the *Canadian Charter of Rights and Freedoms* will continue to apply.
- Tsawwassen First Nation will have agreed-to law-making authorities concurrent with federal and provincial laws, which will continue to apply.

Lands

- On the effective date of the Final Agreement, Tsawwassen First Nation will own approximately 427 hectares (ha.) of provincial Crown land and the current Indian reserve (approximately 290 ha.).
- Those lands to which Tsawwassen First Nation governance authorities apply are called "Tsawwassen Lands". Tsawwassen Lands will comprise the existing reserve and approximately 365 ha. of provincial Crown land. Those lands outside Tsawwassen First Nation jurisdiction are known as "Other Tsawwassen Lands". Other Tsawwassen Lands will comprise approximately 62 ha. of provincial Crown lands (see map attached). All existing legal interests on Tsawwassen lands will be identified and protected, including those of third parties and certificates of possession.
- Before Final Agreement the parties will negotiate conditions under which lands, purchased by Tsawwassen First Nation post-treaty, could become Tsawwassen Lands.
- The parties will engage in a process with the Agricultural Land Commission to assess the prospects for excluding Tsawwassen Lands from the agricultural land reserve post-treaty. Subject to the outcome of the process, Tsawwassen Lands and Other Tsawwassen Lands will be subject to any designation as agricultural land reserve in effect immediately before the effective date.

- The Final Agreement will contain provisions by which Tsawwassen First Nation will have rights of refusal to purchase the Category B Lands identified in the 1998 Roberts Bank Protocol Agreement.
- Before the Final Agreement, the parties intend to address Tsawwassen First Nation's objectives with respect to Highway #17 as set out in the AIP.

Subsurface and Mineral Resources

- Subsurface resources on Tsawwassen Lands will be owned by Tsawwassen First Nation, subject to agreement on resource management, extraction regimes and terms and conditions of ownership.

Land Management and Use

- Tsawwassen First Nation will have law-making authority concerning the management, administration and development of Tsawwassen Lands.
- When Tsawwassen First Nation makes a planning and land use management law it will be on the basis of principles in respect of consultation and transparency similar to those of municipalities undertaking similar laws.
- Before making a planning and land use management law, Tsawwassen First Nation will consult with residents of Tsawwassen Lands who are not Tsawwassen members.

Access and Roads

- Tsawwassen First Nation will have the rights of a fee simple land owner in respect of control of public access to Tsawwassen Lands and Roads, and federal and provincial trespass laws will apply.
- Access is guaranteed for legal interests on Tsawwassen Lands and Tsawwassen Roads, including residents, lessees and visitors and agents of the Crown undertaking work on public utilities or infrastructure.
- Tsawwassen First Nation may regulate public access to Tsawwassen Lands and Roads, including the breakwater fronting the existing Tsawwassen Reserve that is owned by Tsawwassen First Nation.
- The Crown will continue to own dykes that border Tsawwassen Lands.

Forest Resources

- Tsawwassen First Nation will own and manage the forest resources on Tsawwassen Lands.
- Tsawwassen First Nation laws with respect to forest management will be consistent with provincial standards for private lands.
- Tsawwassen First Nation will receive a one-time payment of \$100,000 to acquire forest resources for purposes determined by Tsawwassen First Nation.

Fisheries

- The federal and provincial Ministers will retain authority, within their respective jurisdictions, to manage and conserve fish and fish habitat.
- Tsawwassen First Nation will have the right to harvest fish for domestic purposes.
- The harvest level for Fraser River sockeye salmon that may be harvested for domestic purposes will be based on a formula that would, if applied using historic data, result in an average of 12,000 fish per year.

- The harvest level for Fraser River chum that may be harvested for domestic purposes will be based on a formula that would, if applied using historic data, result in an average of 2,000 fish per year.
- The harvest level of Fraser River chinook salmon that may be harvested for domestic purposes will be an average of 625 fish per year.
- The harvest level of Fraser River coho salmon that may be harvested for domestic purposes will be an average of 500 fish per year.
- The right to harvest fish will be limited by measures necessary for conservation, public health or public safety.
- Before the Final Agreement the parties will agree on the right of Tsawwassen First Nation to trade and barter fish and aquatic plants harvested for domestic purposes.
- Tsawwassen First Nation will develop an annual fishing plan for their annual harvest and will review this plan with a Joint Fishing Committee (JFC) open to representatives from Tsawwassen First Nation, British Columbia and Canada.
- In order to provide Tsawwassen First Nation with commercial fishing opportunities, Canada will issue licences consistent with arrangements, including method of harvest, to be agreed by the Parties before the Final Agreement. These licences will represent a fishing capacity equivalent to 0.78 percent of Canadian commercial total catch of Fraser river sockeye salmon, 0.78 percent of Canadian commercial total catch of Fraser river pink salmon and 3.27 percent of terminal commercial catch of Fraser River chum salmon.
- Any Tsawwassen First Nation commercial fishery will not be part of the Final Agreement and will not be a treaty or land claims agreement and will not affirm or recognize any rights. The parties will negotiate how the Final Agreement will refer to any commercial arrangements for Tsawwassen First Nation fisheries.
- Any commercial fishery will have the same priority as other commercial fisheries in fisheries management decisions made by the Minister of Fisheries and Oceans, and these fish may be sold once harvested.
- A fund of \$1,000,000 will be established on the effective date of the treaty to enable Tsawwassen First Nation to increase its commercial fishing capacity.
- Before Final Agreement, Canada and Tsawwassen First Nation will negotiate and attempt to reach agreement on a one-time payment of up to \$1,000,000 by Canada that will be used for the establishment of a Tsawwassen First Nation Fisheries Fund.

Wildlife and Migratory Birds

- Tsawwassen First Nation will have the right to harvest wildlife and migratory birds for domestic purposes.
- Harvesting will be subject to measures necessary for conservation, public health or public safety.
- Tsawwassen First Nation may trade and barter wildlife but the parties must agree on the geographic scope of the right.
- The boundary of the migratory bird harvest area is Tsawwassen territory.
- The Final Agreement will set out the boundaries of a wildlife harvest area.

Parks, Protected Areas and Gathering

- Tsawwassen members may gather plants and strip bark for domestic purposes in provincial parks and protected areas, and national park and park reserves in Tsawwassen territory.
- All gathering activities are subject to measures necessary for conservation, public health and public safety.

Culture and Heritage

- Tsawwassen First Nation may make laws on Tsawwassen Lands in respect of Tsawwassen First Nation culture, heritage and language, Tsawwassen artifacts owned by Tsawwassen First Nation and Tsawwassen artifacts discovered within Tsawwassen Lands.
- Aboriginal artifacts found on Tsawwassen Lands after the Final Agreement will be deemed to belong to the Tsawwassen First Nation.
- Human remains, associated burial objects and other burial objects of Tsawwassen origin removed from Tsawwassen heritage sites and in the possession or under the control of Canada or British Columbia will be returned to Tsawwassen First Nation, according to federal and provincial policies and protocols.
- British Columbia will provide to Tsawwassen First Nation a one-time payment of up to \$1,000,000 for cultural purposes as determined by Tsawwassen First Nation.
- The parties will negotiate a process through which geographic features or places in Tsawwassen Territory may be renamed with Tsawwassen names.

Environmental Management

- Tsawwassen First Nation will have the authority to make environmental laws, including management, protection or preservation of the environment on Tsawwassen Lands.
- Tsawwassen First Nation may participate in established federal or provincial environmental assessment processes for proposed projects that may have adverse effects on its Lands or treaty rights.
- No projects reviewable under federal or provincial legislation located on Tsawwassen Lands will proceed without the consent of Tsawwassen First Nation.

Governance

- The AIP sets out provisions concerning matters such as: the nature of the Tsawwassen First Nation government, law-making authorities, the requirements for a Tsawwassen First Nation constitution, processes for appeal or review of administrative decisions, Tsawwassen First Nation membership and the relationship of the Tsawwassen First Nation government with residents of Tsawwassen Lands who are not Tsawwassen members.
- Tsawwassen First Nation will have a constitution that will include principles such as accountability and a democratically-elected government.
- The parties intend to negotiate the nature and scope of each Tsawwassen First Nation power to make laws to be set out in the Final Agreement or in a governance agreement, including to whom Tsawwassen law applies, and where and when Tsawwassen law applies. A governance agreement would not be part of the Final Agreement and would not be a treaty or a land claims agreement.

Local and Regional Government Relationships

- The parties acknowledge that access to services is a vital issue for a self-governing community, and that this is a critical issue for Tsawwassen First Nation that must be resolved before Final Agreement.
- The parties will initiate a treaty related measure to support development of intergovernmental relationships, and options and issues concerning membership in the Greater Vancouver Regional District.

Capital Transfer

- Tsawwassen First Nation will receive \$10,100,000 according to a negotiated schedule of payments.
- A fund of \$1,000,000 will be established on the effective date of the treaty for Tsawwassen First Nation economic development purposes.
- Cash payments to Tsawwassen First Nation identified in the AIP total \$14.2 million.

Fiscal Relations

- Fiscal Agreements with Tsawwassen First Nation will be negotiated for funding of agreed-upon programs and services, but will not be part of the Final Agreement.
- Tsawwassen First Nation will contribute to the funding of its activities from its own revenues.

Taxation

- Tsawwassen First Nation will have law-making authority in respect of direct taxation of Tsawwassen members on Tsawwassen Lands.
- British Columbia agrees not to impose property tax on persons on Tsawwassen Lands if British Columbia and Tsawwassen First Nation successfully negotiate, before the Final Agreement, the terms and conditions for the taxation of all persons on Tsawwassen Lands.
- Due to the fact that section 87 of the *Indian Act* will not apply after the effective date, the parties agree to negotiate before the Final Agreement transitional tax measures.

Eligibility and Enrolment

- The AIP sets out the eligibility criteria for the enrolment of individuals as beneficiaries under the Final Agreement.

Implementation

- Before the Final Agreement, Canada, British Columbia and Tsawwassen First Nation will conclude an implementation plan, which is not to be part of the Final Agreement.

Dispute Resolution

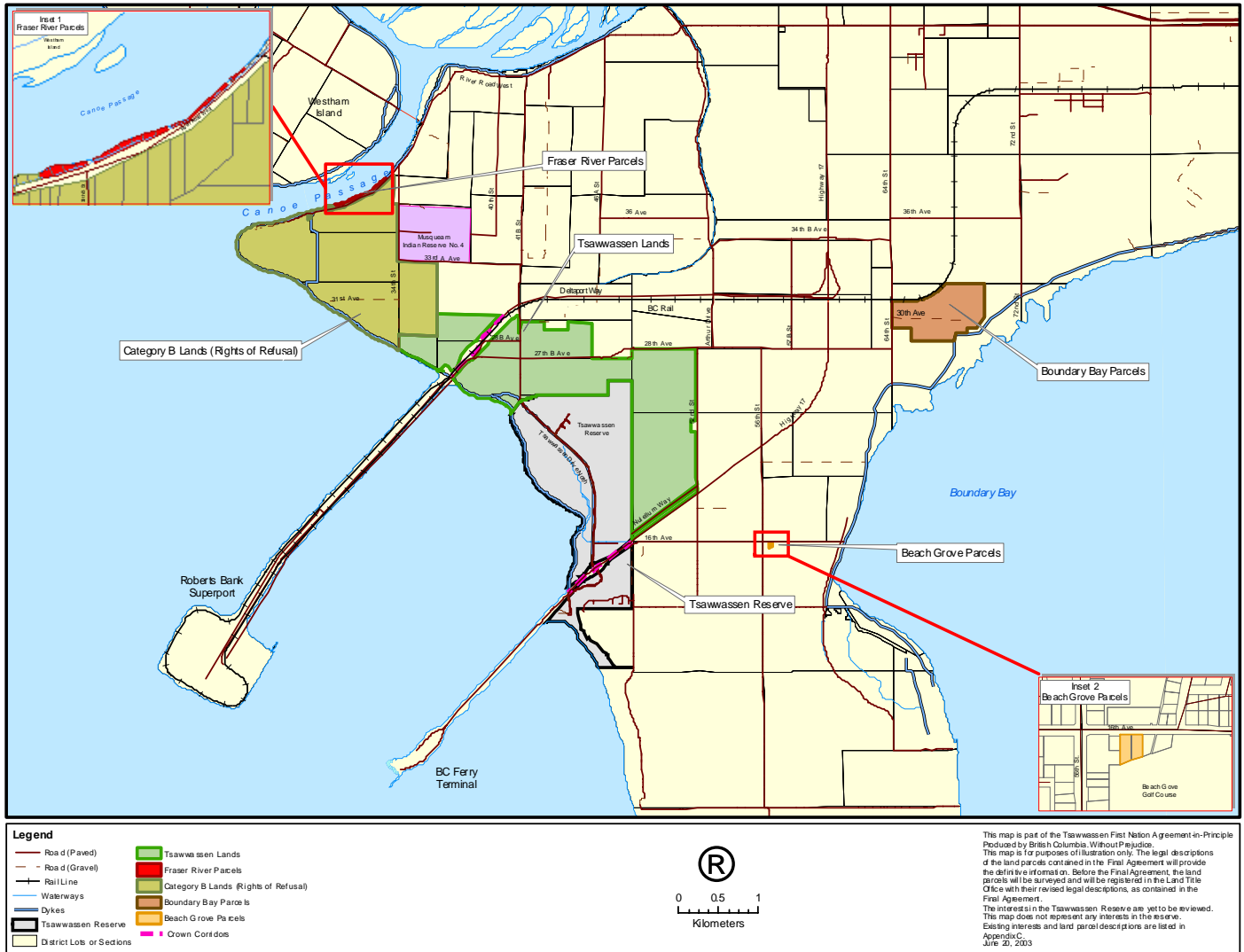
- A dispute resolution process will be in the Final Agreement.

Ratification of the Final Agreement

- Ratification of the Final Agreement by Tsawwassen First Nation requires that a majority of eligible voters vote in favour of entering into the Final Agreement.
- Ratification by British Columbia and Canada requires the signatures of respective Ministers of the Crown and the coming into force of provincial and federal settlement legislation that will give effect to the Final Agreement.

Appendix B Map of Proposed Treaty Lands

Overview of Tsawwassen First Nation Agreement-in-Principle



Appendix C

REVIEW OF THE TREATY REFERENDUM PRINCIPLES AND THE TSAWWASSEN FIRST NATION AGREEMENT IN PRINCIPLE

1. Private property should not be expropriated for treaty settlements.

No privately owned land will be expropriated by governments to transfer to the Tsawwassen First Nation as part of the Tsawwassen First Nation treaty negotiations.

Draft AIP:

- Only Crown lands are included.

2. The terms and conditions of leases and licences should be respected; fair compensation for unavoidable disruption of commercial interests should be ensured.

The Province will ensure that the terms and conditions of leases and licences are protected. Should there be an impact on licensees or leaseholders as a result of a treaty settlement, fair compensation will be paid.

Draft AIP:

- All Crown leases and licences on lands being transferred to Tsawwassen First Nation will continue under the same terms and conditions for the remainder of their terms.
- All other existing legal interests on lands that will become Tsawwassen Lands are listed in the AIP and will continue once the lands are transferred to Tsawwassen.
- The Final Agreement will provide for continued unimpeded access to legal interests on or adjacent to Tsawwassen Lands.

3. Hunting, fishing and recreational opportunities on Crown land will be ensured for the use and benefit of all British Columbians.

The public will still be able to hunt, fish, and engage in recreational activities in the Roberts Bank area of Delta.

Draft AIP:

- Tsawwassen First Nation will have treaty rights to harvest wildlife, migratory birds and fish within defined harvest areas that will include treaty and non-treaty land.
- The Tsawwassen First Nation treaty rights to harvest wildlife, migratory birds and fish will be limited by measures necessary for conservation and public health or safety.
- Tsawwassen First Nation's land will be relatively small compared to First Nations in rural areas, given its urban location. The total land area included in the AIP, including the present Reserve, does not exceed 720 ha. and will be considered private land.
- The public will continue to have access to Crown-owned portions of the dyking system that pass through treaty lands.

4. Parks and protected areas should be maintained for the use and benefit of all British Columbians.

The Final Agreement will not affect public access to provincial parks. Both the Province and Tsawwassen First Nation have an interest in preserving the ecological integrity of provincial parks in the Lower Mainland.

Draft AIP:

- Prior to the Final Agreement, British Columbia and Tsawwassen First Nation will negotiate and attempt to reach agreement on the streamlining of Tsawwassen's treaty rights with park management and park operations agreements, outside of the Final Agreement.
- Tsawwassen First Nation members will have non-exclusive gathering rights within certain federal and provincial parks and protected areas.

5. Province-wide standards of resource management and environmental protection should continue to apply.

Tsawwassen First Nation development on Tsawwassen First Nation Lands will meet or exceed standards of resource management and environmental protection that apply across the province.

Draft AIP:

- Federal and provincial laws (which would include environmental and resource management legislation) will apply to Tsawwassen First Nation, Tsawwassen First Nation Government and institutions, Tsawwassen First Nation people and Tsawwassen Lands.
- Tsawwassen First Nation will have law-making authority with respect to environmental protection on Tsawwassen Lands.
- Federal and provincial laws will prevail in the event of a conflict between a Tsawwassen First Nation environmental protection law and a federal or provincial environmental protection law.

6. Aboriginal governments should have the characteristics of local government, with powers delegated from Canada and British Columbia.

Tsawwassen First Nation will have authority, much like a local government, over such things as fire protection, public works, traffic and transportation and business licensing. These law-making authorities will be set out in a separate governance agreement that will not be part of the Final Agreement. Tsawwassen First Nation law-making authority will be put into effect through federal and provincial legislation.

Draft AIP:

- The AIP provides Tsawwassen First Nation with certain authorities over lands and over matters integral to the preservation of their cultural identity. Including land-related provisions in the treaty meets the provincial goal of achieving section 35 certainty with respect to land and resource ownership and management.
- The AIP does not expressly state that the source of the First Nation's authority is delegated. This is not necessary, since the delegation of Tsawwassen First Nation authorities will be implemented and given force and effect by Canada and British Columbia through the enactment of federal and provincial legislation.

7. Treaties should include mechanisms for harmonizing land use planning between aboriginal governments and neighbouring local governments.

This issue is acknowledged by the Parties as being significant and will be addressed before Final Agreement negotiations through discussion at an Intergovernmental Technical Working Group. Representatives from the Corporation of Delta, the Greater Vancouver Regional District and the Lower Mainland Treaty Advisory Committee (LMTAC), including the LMTAC Representative from Richmond, will be participating in these discussions.

Draft AIP:

- Participation of Tsawwassen First Nation Government in the Regional District will be negotiated.
- Tsawwassen First Nation may enter into agreements with local government in respect of the costs and delivery of services to and from local governments.

8. The existing tax exemptions for aboriginal people should be phased out.

Following a transition period, Tsawwassen First Nation citizens will no longer be exempt from taxation.

Draft AIP:

- Prior to the Final Agreement, the Parties agree to negotiate transitional measures to address the fact that the section 87 tax exemption under the *Indian Act* for individual income and transactional taxes will no longer apply.