

Heiltsuk Nation Treaty Negotiation

Framework Agreement

This agreement is dated **April 2nd, 1997**.

BETWEEN:

THE HEILTSUK NATION as represented by the Heiltsuk Nation Chief Negotiator. ("Heiltsuk Nation")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of Indian Affairs and Northern Development. ("Canada")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA as represented by the Minister of Aboriginal Affairs. ("British Columbia")

(Collectively the "Parties")

WHEREAS:

A. Heiltsuk Nation asserts it has aboriginal title and rights to all land and sea resources in the Territory and that it has never surrendered, ceded or sold all or any of its aboriginal title or rights to the Crown in Right of Canada or to the Crown in Right of British Columbia.

B. The Constitution Act, 1982 recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada, and treaty rights include rights that now exist by way of land claims agreements or that may be so acquired.

C. The Parties wish to negotiate a treaty which will provide clarity and certainty regarding aboriginal title and rights, jurisdiction, and use and ownership of lands and resources in the Territory.

D. Heiltsuk Nation asserts that the Heiltsuk Nation Hereditary Chiefs and the Heiltsuk Tribal Council, on behalf of the `W'uyalitxv, Wuithitxv, `Qvuqvay'aitxv, Kviayitxv and Xaixais Tribes who comprise Heiltsuk Nation, have mandated the Heiltsuk Nation Chief Negotiator, to enter into negotiations with Canada and British Columbia for the purpose of resolving all outstanding land and sea claims.

E. The Parties have agreed to enter into treaty negotiations within the framework of the Constitution of Canada and in accordance with the BCTC Process.

F. The Parties acknowledge the importance of providing public access to the treaty process while recognizing the need to conduct effective negotiations and consequently the Parties have provided for public access to the process in the "Openness Protocol for the Heiltsuk Nation Treaty Negotiations".

G. The British Columbia Claims Task Force recommended that each of the Parties be at liberty to introduce any issue at the negotiation table which it views as significant to the new relationship. Heiltsuk Nation has introduced the issue of social impacts of settlement. The Parties acknowledge the Heiltsuk Nation may express its views related to the social and cultural impacts of settlement during the course of discussing treaty negotiation issues listed in section 5.1.

Therefore the Parties agree as follows:

1. DEFINITIONS

1.1 "**Agreement in Principle**" means the agreement approved as evidenced by the signatures of the Parties at the end of Stage 4 of the BCTC Process, and comprised of various Sub Agreements and other provisions, as agreed.

1.2 "**BCTC Agreement**" means that B.C. Treaty Commission Agreement dated September 21, 1992 and signed by Canada, British Columbia, and the First Nations Summit.

1.3 "**BCTC Process**" means that the six stage negotiation process described in the Report of the British Columbia Claims Task Force dated June 28, 1991, and referred to in the BCTC Agreement.

1.4 "**Chief Negotiator**" means the negotiator appointed by each of the Parties for the treaty negotiations contemplated by the BCTC Process.

1.5 "**Final Agreement**" means the agreement ratified by the Parties at the end of Stage 5 of the BCTC Process.

1.6 "**Heiltsuk Nation**," also known as Heiltsuk First Nation, is a First Nation for the purposes of this Agreement and the BCTC process.

1.7 "**Main Table**" means the primary table at which negotiations are conducted and at which each Party is represented by its Chief Negotiator or designate(s).

1.8 "**Overlap**" means a geographic area within the Territory which is claimed by a First Nation other than Heiltsuk Nation.

1.9 "**Sub Agreement**" means a component of the Agreement in Principle, initialled by the Chief Negotiators, on treaty negotiation issues set out in section 5.

1.10 "**Territory**" means that geographic area identified by Heiltsuk Nation as its traditional territory on the map attached to the Heiltsuk Nation Statement of Intent filed with the British Columbia Treaty Commission.

2. PURPOSE

2.1 The purpose of this Agreement is to guide the conduct of treaty negotiations among the Parties and to set forth the treaty negotiation issues, process and timing required to complete the Agreement in Principle stage of the BCTC Process.

3. SCHEDULE AND TIMING

3.1 The Parties will negotiate with the intention of concluding an Agreement in Principle within 48 months of the signing of this Agreement.

4. PARTIES

4.1 The Parties to the negotiations provided for under this Agreement and to the Agreement in Principle will be Heiltsuk Nation, Canada and British Columbia.

5. TREATY NEGOTIATION ISSUES

5.1 A list of the treaty negotiation issues which the Parties intend to address in the negotiations is set out below. The list is not intended to be exhaustive and may be amended by agreement in writing of the Chief Negotiators.

1. Heiltsuk Nation governance including:

- jurisdiction/powers and authorities
- structure of government and procedures
- fiscal arrangements
- programs and services, including remedial and developmental programs, and standards and authorities to deliver programs and services
- culture and language including restoration and development;

2. Taxation;

3. Intergovernmental relations;

4. Eligibility and enrolment;

5. Culture, heritage and traditional resources:

- return of artifacts including restoration, replication and conservation

- access to traditional resources including food, medicine and clothing

- heritage and sacred sites including access, protection restoration and maintenance;

6. Lands, intertidal lands, submerged lands, existing reserves, major village sites, surface and sub-surface rights, quantum, selection, tenure, access and expropriation;

7. Environmental management, assessment and protection including remediation;

8. Benefits arising from the reserve system;

9. Offshore areas and ocean management;

10. Ownership, use and management of renewable resources including forestry and flora, fish and marine resources, wildlife, water, including habitat rehabilitation, enhancement and conservation;

11. Ownership, use and management of non-renewable resources including oil, gas, minerals (precious and non-precious), aggregates;

12. Parks and protected areas;

13. Resource revenue sharing;

14. Dispute resolution;

15. Approval and ratification;

16. Implementation plan framework;

17. Government and other programs;
18. Amendment;
19. Financial component including cash and other considerations;
20. Economic development;
21. Certainty;
22. Communications and transportation.

5.2 The negotiation of a treaty negotiation issue listed in Section 5.1 does not commit any of the Parties to conclude an agreement on that issue, or any component of that issue.

5.3 The Chief Negotiators may, by agreement in writing, amend the list of treaty negotiation issues for negotiation as set out in Section 5.1

5.4 The Chief Negotiators may agree that any treaty negotiation issue or elements of a treaty negotiation issue may be more appropriately dealt with in a different manner or outside the treaty negotiation process.

5.5 The Parties agree that Heiltsuk Nation may consult with its neighboring First Nations, including but not limited to Kitasoo/Xaixais, Haida, Haisla, Nuxalk, Oweekeno and Gwasala on treaty negotiation issues within and beyond the boundaries of the Territory but which have implications for the treaty negotiations, prior to concluding an Agreement in Principle. 5.6 Upon agreement, the Parties will develop principles, criteria and processes to assist in identifying and resolving treaty negotiation issues which have a regional nature or implications for the treaty negotiations within and beyond the boundaries of the Territory.

6. NEGOTIATION PROCESS

6.1 Negotiations will be conducted at a Main Table for which each Party will appoint a Chief Negotiator.

6.2 The Chief Negotiators will be responsible for:

6.2.1 The conduct and co-ordination of negotiations through the Main Table and at other venues as agreed to; 6.2.2 Managing the negotiation process;

6.2.3 Establishing working groups, side tables, and other processes;

6.2.4 Implementing the "Openness Protocol for the Heiltsuk Nation Treaty Negotiations";

6.2.5 Implementing detailed procedures, consistent with this Agreement to guide the Parties during the Agreement in Principle negotiations as outlined in the "Procedures Agreement among the Heiltsuk Nation, Canada, British Columbia for Treaty Negotiations";

6.2.6 Implementing dispute resolution mechanisms; and,

6.2.7 Negotiating and initialling an Agreement in Principle and a Final Agreement.

6.3 The Parties will record the results of each negotiation of a treaty negotiation issue in a Sub Agreement. The Chief Negotiators will signify their agreement on a treaty negotiation issue by initialling that Sub Agreement.

6.4 Once they have initialled all of the Sub Agreements, the Chief Negotiators will negotiate an Agreement in Principle by consolidating the Sub Agreements and adding necessary provisions, as agreed. 6.5 The Chief Negotiators will signify their agreement on an Agreement in Principle by initialling it, and they will recommend the completed Agreement in Principle to their respective Parties for approval.

6.6 Any Chief Negotiator may request that any initialled Sub Agreement or the Agreement in Principle be reconsidered for amendment prior to the signing of the Agreement in Principle. The initialled Sub Agreement or the Agreement in Principle may only be amended in writing of the Chief Negotiators.

6.7 The Parties will approve the Agreement in Principle by signing it. 6.8 After the signing of the Agreement in Principle, the parties will negotiate with the intention of concluding a Final Agreement based on the Agreement in Principle.

7. OVERLAPS

7.1 Heiltsuk Nation shall resolve Overlaps, if any, and report regularly on the status of Overlaps to the Main Table.

8. NEGOTIATION FUNDING

8.1 Each Party will be responsible for obtaining funding for its participation in the negotiation process. The Parties acknowledge that the British Columbia Claims Task Force made the following recommendation: "The First Nation, Canadian and British Columbian negotiating teams be sufficiently funded to meet the requirements of the negotiations".

9. INTERPRETATION

9.1 This Agreement and the Agreement in Principle which may flow from it are not intended to constitute a treaty or a land claims Agreement within the meaning of Sections 25 and 35 of the Constitution Act, 1982.

9.2 The Final Agreement, once in effect, is intended to be a treaty and is intended to constitute a land claims agreement within the meaning of Sections 25 and 35 of the Constitution Act, 1982.

9.3 The Parties acknowledge that it may not be appropriate that certain aspects of the issues negotiated pursuant to Section 5.1, due to their nature, receive constitutional protection. These aspects will be identified prior to concluding the Agreement in Principle. 9.4 The treaty negotiations and all related documents, except for a Final Agreement that is in effect, are without prejudice to the positions of the Parties in any proceedings before a court or other forum and shall not be construed as admissions of fact or liability.

9.5 This Framework Agreement does not create, recognize, affirm, deny or amend any legally enforceable rights.

10. APPROVAL OF THIS AGREEMENT

10.1 The Chief Negotiators, by initialling this Agreement, will signify their intention to recommend it to the Parties for their approval.

10.2 The Parties will approve this Agreement by signing it.

10.3 The Chief Negotiator for Heiltsuk Nation is authorized to sign this Agreement on behalf of Heiltsuk Nation.

10.4 The Minister of Indian Affairs and Northern Development is authorized to sign this Agreement on behalf of Canada.

10.5 The Minister of Aboriginal Affairs is authorized to sign this Agreement on behalf of British Columbia.

11. DISPUTE RESOLUTION

11.1 The Parties are committed to resolving disputes which may arise in the course of negotiating this Agreement, an Agreement in Principle, or Final Agreement and may utilize available dispute resolution mechanisms. The Parties may also ask the BCTC to assist in the resolution of disputes amongst the Parties.

12. INTERIM MEASURES

12.1 The Parties may negotiate and enter into interim measures agreements during the treaty negotiations when an interest is being affected which could undermine the process; however, British Columbia is committed to negotiating interim measures in a manner pursuant to its policies. British Columbia's interim measures policy will not limit or restrict positions that the other Parties may take.

13. GOVERNMENT PROGRAMS

13.1 During the negotiation process, the members of Heiltsuk Nation will continue to enjoy the same rights and benefits as any citizen of Canada and resident of British Columbia and will have access to the various programs and services of Canada and British Columbia in effect from time to time, including those directed to Aboriginal people and their organizations in accordance with the criteria established from time to time for the application of those programs and services.

14. AMENDMENTS

14.1 Except where otherwise provided, this Agreement may only be amended by agreement of the Parties in writing.

15. SUSPENSION OF NEGOTIATIONS

15.1 A Party may suspend the negotiations contemplated by this Agreement and will provide written notice, which sets out the reasons for suspension and the date the suspension commenced to the other Parties and to the BCTC.

15.2 If a Party suspends negotiations, the Parties shall, whenever possible, make all reasonable efforts to enter into appropriate methods of dispute resolution including, upon agreement, referring the matter to the BCTC or independent dispute resolution body. Where appropriate, these efforts will be made prior to the suspension; otherwise these efforts will be made as soon as practicable after the suspension.

Signed on behalf of the Heiltsuk Nation
Chief Negotiator of Heiltsuk Nation

Signed on behalf of Her Majesty the Queen in Right of Canada
The Honourable Ronald A. Irwin Minister of Indian Affairs and Northern Development

Signed on behalf of Her Majesty the Queen in Right of British Columbia
The Honourable John Cashore
Minister of Aboriginal Affairs

