

LHEIDLI T'ENNEH TREATY NEGOTIATIONS

SUMMARY OF AGREEMENT-IN-PRINCIPLE

Canada



Lheidli T'enneh



This is a general summary of the Lheidli T'enneh Agreement-in-Principle (AIP) for public information purposes, and is without prejudice to legal and negotiating positions the parties may wish to take in the future. The chief negotiators from Lheidli T'enneh, Canada and British Columbia have recommended the AIP for approval by their principals, which are the Lheidli T'enneh Chief and Council, upon recommendation of the Community Treaty Council, and the federal and provincial cabinets.

This AIP represents broad consensus among the three parties on the language and provisions contained in the document. It is not a legally binding document. If approved by the principals, the document will form the basis for negotiating the Final Agreement and the Governance Agreement.

For more information, please contact any of the people listed at the end of this document. The AIP is available at http://www.bctreaty.net/nations_2/lheidli.html.

Introduction

The Lheidli T'enneh AIP deals with land, cash, resources, culture and related self-government provisions. The AIP sets out certain law-making authorities related to Lheidli T'enneh's management of their lands, resources, and culture. It notes that a separate Lheidli T'enneh Governance Agreement will be negotiated between AIP and Final Agreement, and will lay out authorities that will be contained in that agreement.

The AIP is the foundation for Final Agreement negotiations and completes stage 4 of the 6-stage BC treaty process.

Agreement-in-Principle Overview

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 Lheidli T'enneh'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.
- With respect to the Governance Agreement, Lheidli T'enneh 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.
- Any other right either not addressed in the Governance Agreement or modified into a right set out in the Final Agreement, may be incorporated into the agreements through an orderly process that requires the agreement of all three Parties.

- The *Canadian* constitution, including the *Constitution Act, 1867* and the *Constitution Act, 1982* will not be altered, and the Canadian *Charter of Rights and Freedoms* will continue to apply to Lheidli T'enneh citizens.
- Federal and provincial laws will continue to apply.
- Where Lheidli T'enneh has law-making authority, federal and provincial laws will apply concurrently.
- Lheidli T'enneh will own treaty lands (referenced in the AIP as “Lheidli T'enneh Lands”), which will neither be Indian Reserve lands nor lands reserved for Indians and to which the *Indian Act* will no longer apply.

Land

- On the effective date of the Final Agreement, land provided to Lheidli T'enneh will total approximately 4,027 hectares, including 3,120 hectares of provincial Crown land, 240 hectares of federal Crown land, and Lheidli T'enneh's current 667 hectares of Indian reserve land.
- Prior to the Final Agreement, up to 150 additional hectares of land may be negotiated, which may include the purchase of land on a willing-seller, willing-buyer basis.
- Existing third-party legal interests on proposed treaty lands will be identified and protected.
- Expropriation of treaty lands may occur only in accordance with the provisions of the Final Agreement. This will include provisions to avoid expropriation where reasonably feasible, to provide fair compensation, and to use replacement land as compensation where the parties so agree.
- Lheidli T'enneh will be able to add to its treaty lands in the future, subject to the agreement of Canada and British Columbia, and the consent of the City of Prince George if the lands are within municipal boundaries. The interests of the Regional District of Fraser-Fort George will also be considered in any such decision.
- Lheidli T'enneh will have law-making authority concerning the management and development of treaty lands.
- A process will be developed between AIP and the Final Agreement to exclude existing federal Crown land and Indian Reserves from the Agricultural Land Reserve (ALR). The ALR does not apply to those lands at present. British Columbia will also apply to the Agricultural Land Commission to seek removal of two other parcels, which consist of approximately 670 hectares, near the existing Shelley Indian Reserve.
- British Columbia will work with Lheidli T'enneh to pursue an opportunity for a Commercial Recreation Tenure in the Willow River watershed to be effective after the Final Agreement.

Access and Roads

- There will be public access to treaty lands for recreational and non-commercial use, including hunting and fishing.
- Lheidli T'enneh may regulate such public access to prevent removal of resources owned by Lheidli T'enneh and to prevent nuisance and damage to its lands and resources.
- There will be access across treaty lands to existing third-party tenures and private properties identified in appendices to the treaty.
- Provincial and federal representatives, including persons acting in an official capacity pursuant to lawful authority, may access treaty lands to carry out their duties.
- Crown roads and existing railroads will not form part of treaty lands and will remain under provincial ownership and jurisdiction.
- Specified public utility rights-of-way will continue on treaty lands.

Water

- Prior to Final Agreement, the parties will negotiate a volume of water to be reserved for Lheidli T'enneh.
- Storage, diversion or use of water by Lheidli T'enneh will be licensed in accordance with provincial law.
- Lheidli T'enneh may participate in water planning processes within the Upper Fraser River watershed.
- A water reservation will be established to investigate the suitability of certain streams for hydro power purposes.

Forest Resources

- Lheidli T'enneh will own and manage the forest resources on treaty lands.
- Lheidli T'enneh may make laws with respect to forest resource management consistent with provincial standards for private lands.
- British Columbia and Lheidli T'enneh will pursue the issuance of a direct award of an area-based forest tenure, which would be separate from the Final Agreement, in accordance with an Interim Measures Agreement signed on March 3, 2003.

Subsurface and Mineral Resources

- Subsurface resources on treaty lands will be owned by Lheidli T'enneh, subject to the continuation of interests that existed prior to treaty.

Wildlife

- The federal and provincial Ministers will retain authority, within their respective jurisdictions, to manage and conserve wildlife and wildlife habitat.
- Lheidli T'enneh will have the right to harvest wildlife for food, social and ceremonial purposes within the identified area.
- The right to harvest wildlife will be limited by measures necessary for conservation, public health or public safety.
- Wildlife harvested under the Final Agreement may not be sold, unless federal and provincial laws were to allow sale.
- Lheidli T'enneh may trade and barter wildlife harvested under the Final Agreement with other aboriginal people of Canada, resident in British Columbia.
- Specific allocations will be determined for species of wildlife that have been designated by the provincial Minister due to conservation concerns, and for other species by agreement of the parties.
- Harvesting of designated species by Lheidli T'enneh will be carried out under a Wildlife Harvest Plan that is developed by the Lheidli T'enneh, consistent with the Final Agreement, and approved by the provincial Minister.
- The Wildlife Harvest Plan will address the designation and documentation of harvesters, and methods, timing and location of harvest.
- An information-sharing plan will be developed for species not included in a Wildlife Harvest Plan, and will address monitoring and reporting of such wildlife harvested in an identified area.
- Lheidli T'enneh will have law-making authority with respect to the internal management of their harvest, including the designation and documentation of Lheidli T'enneh hunters.
- Lheidli T'enneh may participate in a regional wildlife management process if one is established.
- Existing guide outfitter tenures and registered traplines will be identified and protected.

Migratory Birds

- The federal and provincial Ministers will retain authority, within their respective jurisdictions, to manage and conserve migratory birds and migratory bird habitat.
- Lheidli T'enneh will have the right to harvest migratory birds for food, social and ceremonial purposes within an identified area.
- The right to harvest migratory birds will be limited by measures necessary for conservation, public health or public safety.
- Migratory birds harvested under the Final Agreement may not be sold, unless federal and provincial laws were to allow sale.
- Lheidli T'enneh may trade and barter migratory birds harvested under the Final Agreement with other aboriginal people of Canada, resident in British Columbia.

- The AIP includes a process to address conservation concerns and the designation of migratory bird populations. Lheidli T'enneh will have law-making authority with respect to the internal management of their harvest, including designation and documentation of Lheidli T'enneh harvesters.

Fisheries

- The federal and provincial Ministers will retain authority, within their respective jurisdictions, to manage and conserve fish and fish habitat.
- Lheidli T'enneh will have the right to harvest fish for food, social and ceremonial purposes. These fish cannot be sold.
- The harvest level for Fraser River sockeye salmon that may be harvested for food, social and ceremonial purposes will be based on a formula that would have resulted in a historical average of 5,000 fish per year.
- The harvest level for Fraser River chinook salmon that may be harvested for food, social and ceremonial purposes will be an average of 500 fish per year.
- Fraser River coho and pink salmon may be harvested incidentally in directed sockeye and chinook fisheries.
- Harvest levels may be set for freshwater fish where there is a conservation concern.
- The right to harvest fish will be limited by measures necessary for conservation, public health or public safety.
- Lheidli T'enneh may trade and barter with other aboriginal people of Canada, resident in British Columbia.
- Lheidli T'enneh will participate in fisheries management through a Joint Fisheries Committee (JFC) made up of representatives from Lheidli T'enneh, British Columbia and Canada.
- Lheidli T'enneh will develop an annual fishing plan for their annual harvest and will review this plan with the JFC.
- The federal fisheries Minister will issue a harvest document authorizing Lheidli T'enneh fisheries each year based on recommendations from the JFC and the annual fishing plan.
- Lheidli T'enneh will also participate in a regional fisheries management advisory process if one is established.
- Lheidli T'enneh will have law-making authority with respect to the internal regulation of their fishery, including who can participate in the harvest of fish and how the harvest will be distributed among Lheidli T'enneh citizens.
- Canada and Lheidli T'enneh will enter into a Harvest Agreement for Fraser River sockeye salmon. The Harvest Agreement will be negotiated outside the treaty and will specify a harvest level of an average of 7,500 fish per year.
- Fisheries under the Harvest Agreement 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.

Environmental Protection

- Lheidli T'enneh may enter into agreements with other governments on environmental protection and environmental emergencies.
- Lheidli T'enneh will be able to make environmental protection laws on treaty lands.
- The Final Agreement will set out the nature and scope of Lheidli T'enneh authority with respect to fish and fish habitat on treaty lands.

Parks

- Prior to the Final Agreement, British Columbia and Lheidli T'enneh will negotiate arrangements with respect to Lheidli T'enneh participation in the management of identified parks.
- Lheidli T'enneh may exercise their right to hunt and fish in parks and protected areas within an identified area, subject to conservation, public health or public safety.

Culture and Heritage

- Lheidli T'enneh may make laws on treaty lands to conserve and protect Lheidli T'enneh culture and language, to deal with ancient human remains and to regulate access to Lheidli T'enneh cultural heritage resources.
- Lheidli T'enneh artifacts found on treaty lands after the Final Agreement will be deemed to belong to the Lheidli T'enneh unless another person establishes ownership.
- The disposition of Lheidli T'enneh artifacts found outside treaty lands will be negotiated outside the Final Agreement.
- The parties will negotiate the transfer of agreed-to Lheidli T'enneh artifacts and ancient human remains from the Canadian Museum of Civilization and the Royal British Columbia Museum.
- Certain specified geographic features or places may be named by British Columbia with Carrier names.

Governance

- The governance chapter sets out provisions for the Final Agreement concerning matters such as: the nature of the Lheidli T'enneh government, the requirements for a Lheidli T'enneh constitution, requirements respecting financial administration, processes for appeal or review of administrative decisions, Lheidli T'enneh membership, and the relationship of the Lheidli T'enneh government with individuals who are not Lheidli T'enneh citizens but reside on treaty lands.

- Lheidli T'enneh will have a democratically-elected government which will provide for at least one elected representative from non-Lheidli T'enneh citizens residing on treaty lands.
- Lheidli T'enneh will have various law-making authorities. Some will be set out in the Final Agreement and some will be set out in a separate Governance Agreement that will not form part of the Final Agreement.
- The Governance Agreement will be negotiated prior to the Final Agreement and will come into effect at the same time as the Final Agreement.
- The Governance Agreement may address matters such as education, child and family services, solemnization of marriage and emergency preparedness on treaty lands.
- Together, the Final Agreement and the Governance Agreement will enable Lheidli T'enneh to control its own affairs, manage its public institutions, administer its collective economic interests and participate effectively in regional planning processes.

Local and Regional Government Relationships

- Lheidli T'enneh Government may participate on the Board of the Regional District of Fraser-Fort George by mutual agreement.
- Lheidli T'enneh Government may enter into agreements with local government to coordinate activities and proposed land use on and off treaty lands.
- Lheidli T'enneh will invite the Regional District of Fraser-Fort George to participate in development of laws concerning planning, zoning and development of treaty lands that are proposed for industrial purposes.

Transition

- The Final Agreement will have transitional provisions for governance matters related to the *Indian Act* and the Lheidli T'enneh First Nation Land Code that was enacted under the Framework Agreement on First Nation Land Management.

Fiscal Relations

- Fiscal agreements with Lheidli T'enneh will be negotiated every five years for funding of agreed-upon programs and services.
- Fiscal agreements will not be part of the Final Agreement.
- Lheidli T'enneh Government will contribute to the funding of its activities from its own revenues. It is the parties' shared objective that this contribution will be increased over time to reduce Lheidli T'enneh's reliance on federal and provincial funding.

Capital Transfer

- Lheidli T'enneh will receive \$12.8 million dollars (less any funds used to acquire up to 150 additional hectares prior to the Final Agreement), according to a negotiated schedule of payments.
- When the Final Agreement is initialled by the parties, Canada will determine the outstanding amount of the negotiation loans made by Canada to Lheidli T'enneh, and will prepare a schedule for the repayment of this outstanding loan.

Taxation

- Lheidli T'enneh will have law-making authority in respect of direct taxation of Lheidli T'enneh citizens on treaty lands.
- British Columbia agrees not to impose property tax on persons on treaty land if British Columbia and Lheidli T'enneh successfully negotiate, prior to the Final Agreement, the terms and conditions for the taxation of persons who are not Lheidli T'enneh citizens and the provision of provincial services on treaty lands.
- Prior to the Final Agreement, the parties agree to negotiate transitional tax measures to address the fact that section 87 of the *Indian Act* will no longer apply after the Effective Date.

Eligibility and Enrolment

- The AIP sets out the eligibility criteria for enrolment as a beneficiary under the Final Agreement.
- An Enrolment Committee and Enrolment Appeal Board will be established, and associated costs will be covered by Canada and British Columbia.

Ratification of the Final Agreement

- A ratification committee, comprised of representatives of Lheidli T'enneh and Canada, will be established to oversee the ratification process.
- Ratification of the Final Agreement by Lheidli T'enneh requires at least 50% plus one of eligible voters to 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.

Implementation

- Prior to the Final Agreement, Canada, British Columbia and Lheidli T'enneh will conclude an implementation plan, which is not to be part of the Final Agreement.
- The implementation plan will identify the activities to be undertaken to fulfill the obligations of the Final Agreement, and the parties' responsibilities and timelines

for carrying out those activities.

Dispute Resolution

- A dispute resolution process is set out in the AIP.
- The dispute resolution process will apply to conflicts or disputes regarding the interpretation, application or implementation of the Final Agreement or a breach or anticipated breach of the Final Agreement.
- The parties agree that, as a general principle, they will work to prevent or minimize disagreements and to resolve disagreements, should they arise, in a non-adversarial, collaborative and informal manner.

For more information, please contact:

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