

# **LHEIT-LIT'EN TREATY FRAMEWORK AGREEMENT**

This Agreement is dated August 26, 1996

**BETWEEN:**

The Lheit-Lit'en Nation ("the Lheit-Lit'en")

**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 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.

B. The Lheit-Lit'en, as original people within the Territory, have never signed a treaty with Canada or British Columbia, and the Parties agree to negotiate a treaty with the intent of defining rights to land and resources, governance, and other matters listed as substantive issues for negotiations in this Agreement.

C. The parties are committed to conducting negotiations in accordance with a government-to-government relationship and within the framework of the Constitution of Canada. For greater certainty:

Canada is committed to negotiating self-government under its inherent right policy entitled *Aboriginal Self-Government: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*;

The Lheit-Lit'en will approach treaty negotiations from the perspective that the inherent right to self-government is an existing aboriginal right within section 35 of the *Constitution Act, 1982*; and

The perspective of each Party on self-government will not limit or restrict the positions that the other Parties may take on self-government.

D. The Parties are committed to negotiating under the BCTC Process, and have met BCTC requirements to commence treaty negotiations.

E. The Parties acknowledge the importance of providing for public information, public access to the treaty table and consultation with their respective advisory committees, and have therefore signed the Protocol Regarding the Openness of the Lheit-Lit'en Treaty Process.

F. By negotiating a treaty, the Parties seek to establish a new and ongoing relationship on the basis of mutual respect, accommodation and understanding.

## 1. Definitions

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

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

1.3. "BCTC Process" means 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, or his or her designate, appointed by each of each Parties for the treaty negotiations contemplated by the BCTC Process.
- 1.5. "Final Agreement" means the agreement signed and ratified by the Parties at the end of Stage 5 of the BCTC Process.
- 1.6. "Main Table" means the table at which negotiations are conducted and at which each Party is represented by its Chief Negotiator.
- 1.7. "Overlap" means a geographic area within the Territory which is claimed by a First Nation other than the Lheit-Lit'én.
- 1.8. "Sub-Agreement" means an agreement initialed by the Chief Negotiators on a substantive issue listed in Section 5. 1 of this agreement.
- 1.9. "Territory" means that geographic area identified by the Lheit-Lit'én as its traditional territory on the map attached to the Lheit-Lit'én Statement of Intent filed with the BCTC.

## **2. Purpose**

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

## **3. Schedule and Timing**

- 3.1. The Parties will agree on a timeframe- for concluding Agreement-in Principle negotiations at the commencement of Stage 4 of the BCTC Process.

## **4. Parties**

- 4.1. The Parties to the Agreement-in-Principle and to the Final Agreement will be the Lheit-Lit'én, Canada and British Columbia.

## **5. Substantive Issues For Negotiation**

- 5.1. The Parties are committed to negotiate the following substantive issues and implementation issues with the intention of concluding an Agreement in-Principle. This list is not exhaustive.

### 5.1.1. Land

#### 5.1.1.1. Selection and retention

#### 5.1.1.2. Quantum

#### 5.1.1.3. Tenure, title and expropriation

#### 5.1.1.4. Access

#### 5.1.1.5. Parks and protected areas

#### 5.1.1.6. Cultural and heritage sites and resources

#### 5.1.1.7. Environmental assessment, management and protection

5.1.2. Natural Resources

5.1.2.1. Forests

5.1.2.2. Fish and fisheries

5.1.2.3. Wildlife

5.1.2.4. Subsurface

5.1.2.5. Water

5.1.3. Governance

5.1.3.1. Jurisdiction and authority

5.1.3.2. Intergovernmental relations

5.1.3.3. Structure and procedures of Lheit-Lit'en government

5.1.4. Implementation

5.1.5. Financial areas

5.1.5.1. Fiscal arrangements

5.1.5.2. Financial settlement

5.1.5.3. Economic development

5.1.6. General

5.1.6.1. Eligibility

5.1.6.2. Enrolment

5.1.6.3. Ratification

5.1.6.4. Dispute resolution

5.1.6.5. Amendment

5.1.6.6. Certainty

5.2. The negotiation of a substantive 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 substantive issues for negotiation as set out in Section 5. 1.

5.4. The issue of which negotiated provisions will receive constitutional protection will be addressed prior to concluding an Agreement-in-Principle.

## 6. Negotiation Process

- 6.1. The Chief Negotiators will be responsible for the conduct and coordination of negotiations.
- 6.2. Negotiations will be conducted at the Main Table. The Main Table will be responsible for:
  - 6.2.1 .Establishing working groups, side tables and other processes, as agreed;
  - 6.2.2. Managing the negotiation process including the development of work plans and the setting of priorities and Main Table agendas;
  - 6.2.3.Negotiating and concluding an Agreement-in-Principle and a Final Agreement;
  - 6.2.4. Implementing the "Protocol Regarding the Openness of the Lheit-Lit'en Treaty Process" which provides access to the Main Table, access to documents, consultation and public information;
  - 6.2.5. Implementing the "Principles For Information Sharing Among Parties During Lheit-Lit'en Treaty Negotiations";
  - 6.2.6. Implementing detailed procedures, consistent with this Agreement, to guide the Parties during the Agreement-in-Principle and Final Agreement negotiations as outlined in a document entitled "Procedures Agreement for Lheit-Lit'en Treaty Negotiations"; and
  - 6.2.7. Implementing dispute resolution mechanisms, pursuant to Section 14.1.
- 6.3. The Parties will record the results of each negotiation of a substantive issue in a Sub-Agreement. The Chief Negotiators will signify their agreement on a substantive issue by initialling a 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 Parties agree that certain substantive issues identified in Section 5.1 will need regionally coordinated negotiations or province-wide discussions. For greater certainty, the Parties acknowledge that:
  - 6.5.1. The British Columbia Claims Task Force Report recommended that "The organization of First Nations for the negotiations is a decision to be made by each First Nation", and 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";
  - 6.5.2. The determination of the need for and the approach to dealing with any particular substantive issue pursuant to Section 6.5 will be addressed by the Parties during Agreement-in-Principle negotiations; and
  - 6.5.3. Only the Parties to this Agreement will be involved in the ratification of any treaty flowing from this Agreement.

6.6. 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.

6.7. Any Chief Negotiator may request that any initialled Sub-Agreement or the Agreement-in-Principle be reconsidered and amended.

6.8. The Parties will approve the Agreement-in-Principle by signing it.

6.9. 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. Interim Measures**

7.1. The Parties acknowledge that the British Columbia Claims Task Force made the following recommendation concerning Interim Measures:

“16. The Parties negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected which could undermine the process.”

## **8. Overlapping Claims**

8.1. The Lheit-Lit'en will make best efforts to resolve overlaps with First Nations who claim to have an overlap.

## **9. Negotiation Funding**

9.1. Each Party will be responsible for obtaining funding for its participation in the negotiation process.

## **10. Government Programs**

10.1. During the negotiation process, the Lheit-Lit'en will continue to enjoy the same rights and benefits as any citizen of Canada 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.

## **11. Interpretation**

11.1. This Agreement is not intended by the Parties to be legally enforceable and is not intended to define, create, recognize, deny or amend any of the rights of the Parties.

11.2. Neither this Agreement nor any Agreement-in-Principle that may flow from it is intended to constitute a treaty or a land claims agreement within the meaning of Sections 25 and 35 of the *Constitution Act, 1982*.

11.3. Subject to Section 5.4, the Final Agreement is intended to be a treaty and to constitute a land claims agreement within the meaning of Sections 25 and 35 of the *Constitution Act, 1982*.

11.4. These treaty negotiations pursuant to the BCTC Process and all documents related to these negotiations 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.

11.4.1. For greater certainty, the Parties agree that Section 11.4 does not determine the enforceability of any agreement related to this Framework Agreement, nor the admissibility of any such agreement in any proceeding to enforce that agreement.

11.4.2. For greater certainty, the Parties agree that Section 11.4 extends to documents submitted by any of the Parties to other First Nations in accordance with the fulfilment of overlap provisions set forth in Section 8 of this Agreement.

## **12. Amendments**

12.1. Subject to Section 5.3, this Agreement may only be amended by agreement of the Parties in writing.

## **13. Approval of this Agreement**

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

13.2. The Parties will approve this Agreement by signing it.

13.3. The Chief of the Lheit-Lit'en is authorized to sign this Agreement on behalf of the Lheit-Lit'en.

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

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

## **14. Dispute Resolution**

14.1. Should an impasse be reached, the Parties may either 'individually or collectively approach the BCTC for assistance, or may use a mutually agreed-upon alternative dispute resolution mechanism.

## **15. Suspension of Negotiations**

15.1. Any of the Parties may, for any reason, suspend the negotiations contemplated by this Agreement. Should any Party suspend the negotiations, the Chief Negotiator of that Party will advise the Chief Negotiators of the other Parties and the BCTC within a reasonable period of time of the suspension commencing and, within 30 calendar days of the suspension commencing, the Party suspending the negotiations will provide written confirmation setting out reasons for the suspension.

Signed on behalf of the Lheit-Lit'en Nation

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Barry Seymour  
Chief

Signed on behalf of Her Majesty The Queen in Right of Canada

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The Honourable Ron Irwin  
Minister of Indian Affairs and Northern Development

Signed on behalf of Her Majesty The Queen in Right of British Columbia

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The Honourable John Cashore  
Minister of Aboriginal Affairs

## **OPTIONS TO CONSIDER IN NEGOTIATING OWNERSHIP AND AUTHORITY OVER TREATY SETTLEMENT LAND**

### **Title**

Title generally always refers to ownership of land. There are different types of titles to land in Canada.

First there are federal titles (land under federal jurisdiction and registered in a federal land registry). Reserve lands are federal jurisdiction lands. The title to all reserve lands in Canada is registered in the name of Minister of Indian Affairs with the restriction that they be held by the Minister "for the use and benefit of First Nations". Federal parks such as Banff National Park are also federal lands. There are also federal "crown" lands which fall into this category. In most cases no provincial laws apply on federal lands.

Second, there are provincial titles (land under provincial jurisdiction and registered in a provincial land registry). Most land which is within the boundaries of municipalities and regional districts are provincial titles. These would include privately owned lots and houses in cities or municipalities, provincial "crown" lands, provincial parks and municipal lands.

In negotiating a treaty, we may be creating different types of titles which have not yet existed in Canadian history. ( refer to Nisga'a Agreement in Principle - provincial reserves - cite examples.)

The current federal and provincial negotiating position is that they both do not want current reserves to remain federal lands. This has many implications which could change how these lands are classified and treated. The fact that current reserves are federal jurisdiction lands brings the benefit of exemption from taxation and the protection from seizure of assets located on reserve. As well the provinces laws do not apply on reserve. The Nisga'a Agreement in Principle has provisions which change the status of reserves and make them subject to provincial forestry, mining, heritage protection and taxation laws.

For example

Should discuss Lands Proposal and its benefits - how it deals with provincial jurisdiction.

Both federal and provincial titles may be subject to restrictions. Some may come with mineral and oil and gas rights while others may not have these subsurface rights. There may be restrictions on the resources which are on the surface of the land as well such as timber or wildlife.

Our treaty negotiation team needs guidance from the community members on what type(s) of ownership they would like to see Lheit Lit'en having over its current reserve

lands and any other lands in the traditional territory which become part of the treaty settlement.

In the following pages, some illustrations are provided of what is contained in various treaty agreements dealing with ownership of land and what laws apply to those lands. These options should be looked at with a view to what would best suit Lheit Lit'en's situation. Lheit Lit'en is not obligated to choose from these options. They are provided only to assist the membership in determining what is the best approach for Lheit Lit'en.

## **Tenures**

Tenures generally refer to the ways interests in land are held. This means interests other than title or ownership of the land itself. There are many types of tenures. There are leases which allow for certain types of uses like residency or commercial business activity. There are easements and rights of way which permit access to land for the purpose of servicing hydro installations or railways and also for the purpose of allowing those installations to be present on reserve lands.

Off reserve it may be possible to negotiate some interest (tenure) or authority for Lheit Lit'en to lands which are part of the traditional territory but not reserve land. Some examples could be forestry tenures such as Tree Farm Licences and Wood Lot Licences. There is also the possibility of negotiating interests in minerals or other subsurface resources. In the Nisga'a example there are provisions dealing with fishing rights as well which could be considered a type of tenure.

For reserve lands, the Lheit Lit'en community are part of a group of 14 First Nations who have signed an agreement with Canada which recognizes the Bands' authority to manage its reserve lands. This includes the surface and subsurface resources such as minerals, forests and sand and gravel. It also recognizes the authority of the Band to be the law makers for the purposes of regulating member and non-member rights to land and any resources attached to that particular reserve land that previously was under federal jurisdiction. This is an important distinction which makes Lheit Lit'en and the 4 other B.C. Bands very different cases than other Bands in the treaty process.

The land management agreement with Canada clarifies that the title to Lheit Lit'en reserve lands will remain with the Minister of Indian Affairs. This was to ensure that no land would be able to be lost in future from surrendering it for sale and to continue the fiduciary relationship between the Minister of Indian Affairs and the Band. It also makes it clear that the Band has all of the jurisdiction in deciding what interests in reserve land (tenures) will be allotted to who and what laws will apply to those land interests. In other words Lheit Lit'en could take the position at the treaty negotiation table that reserve lands are not up for negotiation. This would prevent the application of provincial laws or

authority to the current land base.

If Lheit Lit'en chooses to take the position of "reserve lands not being on the table for negotiation", the only areas the Band needs to develop a negotiation strategy for, is for the land and resource interests it wishes to secure within the traditional territories which are off-reserve. (see examples provided for discussion). The membership should consider, What resources it would like to have control or participation in the control of? What level of influence would they like to exercise in the regulation of the use of these resources? How or through what administrative structure they would like to participate in the decision making governing these resources? and; What training and other preparations do we need to be mindful of in negotiating these interests?

Should we make recommendations or allow the discussion to indicate the preferences in a general way and develop a more acute plan from the general guidance?

## **Expropriation**

Expropriation refers to a governments authority to take lands without consent or agreement for a purpose that serves the greater public interest. The federal government has the authority to expropriate virtually any lands in Canada for any use which has been determined to be in the Canadian public interests. Examples would be harbours, national highway systems, telecommunications, defense installations, airports and national rail systems.

The provincial government also has expropriation authority to expropriate privately owned land in B.C. It does not have powers to expropriate reserve lands but can ask the federal government to expropriate reserve lands for them through a section of the Indian Act which provides for this to take place. In addition to this, British Columbia has an Order in Council 1036 which allows the province to resume ownership of up to 20% of a reserve in B.C. for a public purpose such as highways, hydro installations or health centres. This Order in Council is currently being challenged in court by a group of Bands in the northeastern part of the province and in the Penticton area.

The Lheit Lit'en Chief and Council has the authority to expropriate Lheit Lit'en lands from members for public purposes which would benefit the greater Band membership. This authority comes from the Indian Act. Some examples of what the Council could expropriate for would be schools, graves, water & sewer systems and Band administration buildings.

With respect to reserve lands, the Land Management Agreement that Lheit Lit'en is involved in with Canada, places many restrictions on the federal power to expropriate reserve land. For example the agreements limits the taking of reserve lands to instances which are necessary for a federal public purpose that serves the national interest. It also stipulates that Canada only take the level of interest necessary, meaning that they must take a lesser than ownership interest if possible. In addition if Canada must take the ownership interest, they must give the Band land equal in size and value which becomes reserve. There are also provisions for the return of lands taken by the federal government should they no longer require land they have expropriated.

The provincial situation is much less clear. The Land Management Agreement with Canada does away the provinces ability to get the federal government to expropriate reserve land on its behalf In the rest of Canada this essentially ends the provincial power to expropriate reserve lands. In British Columbia however, we have the Order in Council 1036 as mentioned in this discussion paper earlier, which purports to authorize the province to take back a significant percentage of reserve land that they agreed to transfer to Canada when they entered Confederation, for the making of the original reserves. Once again this provincial Order in Council is currently being fought out in the courts and we will have to wait to see how it goes.

For the purposes of treaty negotiation, expropriation is clearly an authority that we want to limit both Canada and B.C. from being able to use both with respect to reserve lands and any other lands we may succeed in gaining ownership to under treaty. The Land Management agreement provides good protection for Lheit Lit'en reserve land but the lands we negotiate ownership to under treaty remain to be dealt with.