

# Understanding the Agreement - in - Principle



Kitselas Treaty

# Six Stages of the Treaty Process

## *Stage 1 - Statement of Intent*

The First Nation files a Statement of Intent with the BC Treaty Commission to negotiate a Treaty. Kitselas first signed the Statement of Intent in 1990 as part of the Tsimshian Tribal Council.

## *Stage 2 - Preparations for Negotiations*

An initial meeting is held to exchange information, discuss research, identify main issues of concern and determine the readiness of all parties to begin negotiations.

## *Stage 3 - Negotiation of Framework Agreement*

This is the agreed upon agenda that identifies the issues to be negotiated, the goals of the negotiation process, and a timetable for negotiations.

 **WE ARE HERE!**

## *Stage 4 - Negotiation of an Agreement - in - Principle (AIP)*

Negotiations at this stage will form the basis for the Treaty. The provincial government has indicated AIPs are subject to public review before ratification. The AIP lays the ground work for the Final Agreement negotiations - if the Kitselas vote in favour of the AIP then they will move into the final treaty negotiations. The AIP is NOT legally binding.

## *Stage 5 - Negotiation of Final Treaty*

The Treaty that is concluded at this stage will formalize the relationship between all parties, certain issues of a legal or technical nature are resolved or any outstanding items are re-opened. At the completion of this stage a final agreement will be signed that IS legally binding.

## *Stage 6 - Implementation of a Treaty*

Plans for long-term implementation of Treaty happen here.

This introduction briefly explains the purpose behind each chapter in the Agreement - in - Principle (AIP). A series of brochures entitled "Kitselas Agreement-in-Principle: FAQ" will provide additional details on the various chapters in the AIP and the many frequently asked questions related to the current negotiations.

## **Definitions**

Words have different meanings to different people. Within a formal written agreement, words have a very specific meaning. To avoid any confusion on what was agreed to and how the agreement is interpreted, a definition section is required. All words that need a definition in the Agreement begin with a capital letter and every word defined in the agreement has been negotiated and agreed to by all three parties.

## **General Provisions**

In this chapter, the rights of the Kitselas people are clearly defined and state that the treaty is a Land Claims Settlement and all issues have been negotiated and an agreement has been reached. The final agreement will be protected by Section 35 of the Canadian Constitution. This means that no Government can make changes or cancel the agreement without the consent of the Kitselas people.





## **Lands**

Treaty negotiations are all about land. In the 1800s settlers began to occupy our lands and we have struggled for the last 150 years to regain control over them. While it is not possible to return all of our lands, through treaty we have an opportunity to reclaim some parts of our homelands that have been lost and secure those lands for all time. Through other arrangements and other provisions within the treaty the Kitselas people will be able to use the resources on lands in the same manner the people of Terrace use resources outside of the Terrace area.

## **Land Title**

The Land Title Chapter lays out how we register land transactions after treaty. The current system of land registry under the Department of Indian Affairs cannot be relied on and will not be available for our use after treaty as we will no longer be governed by the Indian Act or under the control of the Department of Indian Affairs. After Treaty we will have the choice of either creating our own Land Registry system or using the Provincial Land Registry.

## **Subsurface Resources**

Under the Indian Act the people of Kitselas do not own any resources anywhere underground. We have no legal claim to anything found under our reserves. After a treaty the Kitselas people will be the owners of any minerals and will have the authority to control and charge fees for anyone wanting to mine or drill on our lands.

## **Water**

All water use in British Columbia requires a license from the province. License holders have exclusive rights to the use of water. No one else can use the water without permission. The licensing system is designed to protect the water for the user. Water is used for any number of purposes such as: farming, livestock, industry, generating power and other uses. It is in our best interest to reserve a large volume of water for our use, not only as drinking water but for any industrial use in the future. Under the agreement Kitselas will not own the water but will be able to control who uses it and how it is used.





## Forest Resources

This Chapter makes it clear that after treaty the Kitselas will be the owners of all timber and resources on Kitselas Lands. Under the Indian Act all of the timber and resources are owned and controlled by the Government of Canada. Kitselas only controls the timber and resources on reserve lands under the Land Management Act. We need a share of the revenue the Government of BC makes on the sale of timber, minerals and other resources on our former traditional territory. We are currently negotiating for revenue sharing.

## Access

This Chapter sets the rules on how other people will be allowed to use lands owned by the Kitselas People. After treaty, Kitselas lands will be treated as crown lands until we make our own laws, such as trespass laws, or turn them into private lands. Even though we will have much more control over our lands than we did under the Indian Act, we are still part of Canada and BC and their laws will apply to us except where the treaty states otherwise.

## Roads

On Kitselas lands some roads will be owned by Kitselas and some will be owned by the Province of BC. The advantage of owning roads is having control over who uses the roads and how the roads are used. The disadvantage of ownership is the cost of maintenance such as grading, snow removal and repairs. This Chapter lays out how the road systems including railways will be managed.



## Fisheries

The Fisheries Chapter is intended to set out the right to fish. Fisheries negotiations are largely incomplete. At the beginning of 2008 the Government of Canada and the Department of Fisheries suspended negotiations in fisheries for all First Nations in British Columbia and we have not discussed fisheries at the Treaty table for over three years. The position of Kitselas is that Canada must reopen fisheries negotiations if we are to come to a Final Agreement. Canada's reason for suspending fisheries negotiations was to allow for the completion of a Government study of Fraser River salmon stocks. No reason was given on how that affects Skeena River stocks. **All nations in negotiations, including Kitselas, will not conclude a treaty that does not include Fish.**

## Wildlife

For the Kitselas people the Wildlife Chapter sets out the right to hunt. If the Governments of Canada and BC agree to NOT limit the number of animals we can hunt, very little will change for the hunter. The only change to hunting will be the requirement of a hunting permit which will be issued by the Kitselas Government to any Kitselas hunter, the same way Kitselas now issues fishing permits. Game animals hunted by Kitselas people, such as moose, deer, goats and any other animals can be limited by conservation measures as they are now. Kitselas Government will play a role in deciding when to limit hunting for conservation purposes.



## Migratory Birds

The Migratory Birds Chapter sets out the right to hunt migratory birds, such as ducks and geese in the hunting area. The same rules of conservation in the Wildlife Chapter will apply to hunting of migratory birds. British Columbia has jurisdiction over wildlife. The Government of Canada has jurisdiction over migratory birds, which is why there are two chapters related to hunting. Kitselas Government will have to work with both governments on the two separate jurisdictions.



## Environmental Assessment and Protection

In Canada, governments are required to consult with citizens on any development - it is an important part of democracy. It is especially important to Canadian citizens if the environment they live in will be affected by a project of Government. Indians on-reserve under the Indian Act are not considered citizens in the same manner as people living in Terrace, for example, and are never consulted on any development, except when forced to by the courts. Environmental Assessment means reviewing major projects, like pulp mills or oil pipelines, while they are being planned. Kitselas people will be consulted on major projects after a Treaty in the same way all other citizens of Canada are consulted. Also, after treaty the Kitselas people will play a role in the development of the lands surrounding the Kitselas land base.

## Role/Rights of Kitselas throughout the Kitselas area

The Government of British Columbia has the authority to develop lands and resources in the province and must give the people living in those areas the opportunity to participate in the planning and development. Indians on-reserve are considered by the Provincial Government as a federal jurisdiction and are never included in the planning and development of the area. After a treaty Kitselas People will not be considered Indians on-reserve but as full citizens of British Columbia and will participate in the planning and development of the province.





## Self Government

The Kitselas Band Council and the Band Office operates under the authority of the Indian Act and the Land Management Act. All of the policies that guide the Band Council operations are made by someone else. For example, education and social services policies are made by employees of the Department of Indian Affairs. Health Care policy is made by employees of Health Canada. Fisheries policy is made by the Department of Fisheries. Everything the Kitselas People do is controlled by someone else. All of this will change the day after a treaty is final. The Kitselas people will be responsible for their own laws and policies.

To prepare for that change, the Kitselas people will have to be involved in the development and approval of a document called a Constitution that details how we are to be governed. The Treaty will NOT determine how the Kitselas people will be governed. The Kitselas people will determine and agree amongst themselves, through a consultation process, on what a Constitution will look like. The consultation process will end with a referendum to finalize a Constitution.

Even though the Kitselas people will control their own government, we cannot operate in isolation from the rest of the country and must live and interact with the rest of Canada and British Columbia. Much of the Self-Government Chapter sets out how Kitselas Government will interact with Canada and British Columbia. The chapter sets out most of the laws that the Kitselas Government will be able to make, many of the other chapters include additional law making power as well.



## Indian Act Transition

The Indian Act in total will no longer apply after the treaty. There are some things that cannot end in a single day, they will have to be phased out over time. The Indian Act Transition Chapter sets out what needs to continue after a Final Agreement and how they will be phased out. The one section in the Indian Act that will continue to apply is the section on who is an Indian. Kitselas people will still be “Indians” under the Canadian Constitution. IMPORTANT: phasing out of the Indian Act does NOT mean program funding for health and education will no longer be available, please see notes in the Fiscal Relations Chapter for more information on this common misconception.



## Capital Transfer and Negotiation Loan Repayment

A significant part of the Treaty will be a cash settlement. After treaty this money will be paid to Kitselas over a number of years. Other monies agreed to, such as an economic development fund, forestry development fund, and fisheries development fund are paid in the first year. The Loan Repayment section has not yet been negotiated. Kitselas and all of the other First Nations in treaty negotiations are operating on money loaned by Canada through the BC Treaty Commission. After a treaty those loans will have to be paid back to Canada.

### Fiscal Relations (Money)

**All of the funding Kitselas receives now for education, housing, health and various programs, like drug and alcohol abuse programs, will continue to be funded by the Government of Canada.** It is very important to remember that program funding is not part of a treaty. Treaty settlement monies will **NOT** be for the operation of programs (health, education, housing or otherwise). Currently Kitselas enters into a funding agreement once every year and receives an annual transfer. The difference after treaty will be how the funding agreements are negotiated. A separate agreement called a Fiscal Financing Agreement will be negotiated when we get a Final Agreement and renegotiated every five years.

**Funding for programs will continue for Kitselas as long as there is program funding for other First Nations in Canada. After the treaty, Kitselas people will continue to be “Indians” and will continue to be eligible for all programs and services available to all Indians in Canada.** Kitselas people will also be eligible for any programs and services available to any citizen of Canada and British Columbia.





## Taxation

After a treaty the Indian Act will no longer apply to any of us. The only sections in the Indian Act that will continue to apply are the sections that define who is an “Indian” and who can be registered as an “Indian”. Taxation is still under negotiations and has not been agreed to by Kitselas. All other Treaties signed to date have agreed to clauses 14 to 19 which deal with tax exemption under the Indian Act. The logic used by others is “if we are to govern ourselves and raise our own revenue, we will need taxing powers.” Taxes are used by municipal and provincial governments to raise funds that will cover the expenses of running a self-sufficient community. Without property taxes, a municipal government, such as the City of Terrace, could not repair roads, build community centres or provide the community with basic needs like water, sewage or garbage removal.

If the Indian Act no longer applies and there are no longer any Indian Reserves, the taxation laws of Canada and British Columbia will begin to apply to our lands and to our people. In order for us to be able to control how we are taxed and what is done with the money raised by taxation, our taxation must be different from the way the rest of Canada is taxed. This can be achieved through side agreements called a “Tax Agreement” and a “Tax Treatment Agreement”. Having the ability to determine how our tax dollars are spent would be an exercise in self-government.



### Section 87 of the Indian Act provides for tax exemption, it reads:

**87. (1)** Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83\*, the following property is exempt from taxation, namely,

- (a) the interest of an Indian or a band in reserve lands or surrendered lands; and
- (b) the personal property of an Indian or a band situated on a reserve.

**(2)** No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (1)(a) or (b) or is otherwise subject to taxation in respect of any such property.

**(3)** No succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any property mentioned in paragraphs (1)(a) or (b) or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under the Dominion Succession Duty Act, chapter 89 of the Revised Statutes of Canada, 1952, or the tax payable under the Estate Tax Act, chapter E-9 of the Revised Statutes of Canada, 1970, on or in respect of other property passing to an Indian.

*\* Section 83 of the Indian Act provides band councils the authority to levy and collect taxes if they choose.*



## Culture and Heritage

This chapter does three things:

1. Gives Kitselas the authority to make laws on our culture and language. Under the Indian Act and through other laws in Canada, the Government of Canada has authority over our culture and language. A prominent example is the residential school system which forbade the use of our language and the practice of our culture. Even though schools and universities are attempting to teach language and culture, authority is still with the Minister of Indian Affairs. The culture and heritage chapter in the Final Agreement will transfer the authority over language and culture from the Government of Canada to the Kitselas people, including training and certifying our own teachers.
2. Canada and British Columbia have in their museums artifacts belonging to the people of Kitselas. Artifacts, such as masks, clothing, tools and all manner of things that were taken by missionaries, government officials and anthropologists will be returned. A list of items will be prepared after the approval of the AIP and before the completion of the Final Agreement.
3. The Kitselas people had names for all of the streams, mountains and locations within our homeland. These names were changed by the settlers as they homesteaded. Kitselas will not have the authority to change the official registered names, the Province will keep the authority over place names, but is prepared to negotiate with the Kitselas people to change the place names back to their original names if that is what we want.



## Dispute Resolution

The purpose of this chapter is to establish a procedure to resolve disputes that we may have with the Governments of Canada and British Columbia over the interpretation of the Treaty. Under the Indian Act the Government of Canada or the Department of Indian Affairs hold exclusive authority over everything in our lives. The government has the authority to simply make a ruling regarding any disputes without input from the Kitselas. Under a Treaty, Kitselas will have our own Government and will no longer be under the Indian Act. The Government of Canada will no longer have authority over the Kitselas people. Because we will be equals with the federal and provincial governments, no party will have authority over the other. A process to settle disagreements is essential. In the Agreement-in-Principle the words “will negotiate and attempt to reach agreement” means if we can’t agree then the Dispute Resolution Chapter kicks in.

## Eligibility and Enrolment

This chapter has three purposes:

- to register all of the people who will vote in the Final Agreement referendum.
- to register all of the Kitselas people who want to be part of the Kitselas Treaty.
- to define who will be eligible for any treaty rights, such as hunting and fishing.

For a treaty to be final, Canada and British Columbia must be sure that the people who vote and approve a Final Agreement are in fact the people who have aboriginal rights in Kitselas land. Canada, British

Columbia and Kitselas all want to be sure the treaty is legal and binding and is not open to anyone challenging the Final Agreement in court after it has been approved by the people.



## Implementation

A modern Treaty is a complicated document with many different parts. A committee, along with Kitselas Administration staff, will have to work on a plan to make sure the treaty is actually workable.

When the AIP is complete and approved we will begin negotiating a Final Agreement which will become our Treaty. While the Final Agreement negotiations are on-going, an Implementation Committee will be established to review the draft Final Agreement and will develop plans to, not only carry out the different parts of the agreement, but also to make sure the parts will work.

After the Final Agreement is approved an Implementation Committee will continue working on treaty implementation for a number of years.





## **Approval of the Agreement - in - Principle**

Kitselas and Kitsumklaum have been working together to negotiate a Land Claims Agreement with Canada and British Columbia, and we are now close to an Agreement-in-Principle.

An Agreement-in-Principle (AIP) is a list of things, or in Treaty language “substantive issues”, that all parties agree will be included in negotiations for a Land Claims Settlement. The instrument used to record a Land Claims Agreement is called a “Treaty”.

**It is important to remember that the Agreement-in-Principle (AIP) is NOT a Final Agreement. The negotiators for Kitselas and Kitsumkalum do not have the authority or the mandate to approve the AIP, it must pass a community approval process.**

If the AIP is approved through a community approval process, stage four of the BC Treaty Commission process will be complete and Kitselas will move into stage five - Final Agreement negotiations. The negotiations will be based on the content of the AIP. Final Agreement negotiations are a completely new set of negotiations and are much more intense and exact, and will require the extensive use of hired experts to make sure the agreement in fact means what the people intend it to mean.

The experience of other groups who have completed Final Agreement negotiations tell us, because the AIP is not a binding agreement, Final Agreements tend to include more than what is included in an AIP. There may be some things not in the AIP that can be negotiated in a Final Agreement. The end of the AIP negotiations is the beginning of REAL Treaty negotiations.





## Approval of the Final Agreement

Once the negotiators are satisfied that they have reached the best agreement possible the following will happen:

- The Treaty Team will, taking as much time as necessary, review and explain the Final Agreement to all Kitselas members regardless of where they live.
- Information meetings will be held in Kitselas for the people who live in either Gitau or Kulspai. Meetings will be arranged for members residing in Terrace, Prince Rupert and Vancouver (as the off-reserve communities where the majority of the Kitselas membership resides).
- Information will be mailed to all Kitselas members to ensure those who are unable to attend meetings have the same information.
- After we have completed the information sessions and are confident that the people are well informed not only on what it contains, but also the effect of the agreement. A community meeting will be called to ask the people attending for instructions to take the Final Agreement to a referendum.
- At the meeting a motion will be proposed, the motion will probably read:  
“Whereas: the proposed Final Agreement has been reviewed and is understood by the members of the Kitselas Nation. Therefore be it resolved that the Kitselas Treaty Office conduct a referendum to accept the Final Agreement as the full and final settlement of the Kitselas Land Claims.”

## The Referendum will have two possible outcomes:

1. If the vote is over 50% “Yes” votes, of all of the Kitselas people registered to vote, the Final Agreement will be considered approved.
  - a. British Columbia will then introduce and pass in the Provincial Legislature a law which will make the agreement legally binding in British Columbia.
  - b. Canada will introduce and pass a similar law in Parliament which would recognize the Kitselas Treaty in Canada protected by the Canadian Constitution.
2. If the result of the vote is less than 50%, the Final Agreement will be rejected and the Kitselas Treaty negotiations will come to an end. The BC Treaty Commission has no process for continuing negotiations if stage five fails.



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***Please contact our office to receive regular updates and information on this important item.***

*Booklet Published 2011.*