

KITSELAS AGREEMENT-IN-PRINCIPLE

CHAPTER SUMMARIES

Chapter 1

Definitions

Chapter Summary

The Agreement in Principle (AIP) uses many definitions to avoid repetition and make drafting easier. Anytime a definition is relied upon, the words are capitalized, and a reader should check for its definition in this chapter.

Chapter 2

General Provisions

Chapter Summary

The General Provisions chapter will apply to the entire treaty and its purpose is to set out the legal framework for the treaty. It clarifies what is to become of Kitselas's Aboriginal rights, how Kitselas laws will work with federal and provincial laws, and how the treaty can be interpreted and amended.

Nature of this Agreement

The Agreement in Principle (AIP) is not legally binding on Kitselas, Canada or BC.

The AIP will be used as a basis for negotiating the actual treaty called the Final Agreement.

The parties have agreed to leave fish negotiations until they negotiate the Final Agreement, and they will make any changes they need to in the treaty in regards to fish at that time.

Nature of the Final Agreement

The Final Agreement is what we refer to as the treaty and it will be legally binding.

If Kitselas accepts it by a vote, the Final Agreement will become a treaty within the meaning of section 35 the *Constitution Act, 1982*.

Canada and BC will pass laws to make the treaty a law.

If the Kitselas people do not vote to accept the treaty, the treaty will not be legally binding on anyone.

Assurances

All the parties must be assured that the people signing the treaty have the legal authority to do so and the expressed approval of the people.

Constitution of Canada

The treaty will receive constitutional protection, but it will not change the Constitution of Canada, including the distribution of powers between Canada and BC, nor will it change the identity of the Kitselas as an aboriginal people of Canada.

The *Canadian Charter of Rights and Freedoms* will apply to the Kitselas Government and Kitselas people will have all of the rights and protections under the Charter.

Character of Kitselas Lands and Other Kitselas Lands

Kitselas Lands will not be Indian Reserves, and the *Indian Act* will not apply to Kitselas Lands.

Application of Federal and Provincial Laws

The many licenses, permits and other authorizations that are required to be issued to Kitselas under the treaty (for example the commercial recreation tenure, water licenses, fishing licences and so on) will be governed by federal and provincial laws except in areas that the treaty has different rules. In those cases, the treaty and Kitselas laws will apply.

Federal and provincial laws will apply to the Kitselas people and Kitselas lands. However, if there is any conflict between the treaty and those federal and provincial laws, the treaty and the rules agreed to in the treaty will apply to the extent of the conflict.

Relationship of Laws

The Courts already have a number of existing rules in regards to conflict of laws between Canada and BC. This section explains how those rules will or will not apply to Kitselas laws after the treaty.

In general, Canada maintains law-making and priority over matters that the parties agree are of a national interest, such as criminal law and national defense. Kitselas has law-making and priority over matters that are of internal interest to them, such as in regards to Kitselas Lands, programs, services, and rights.

Unless otherwise provided for in the treaty, Kitselas laws will not apply to Canada and BC.

Application of the *Indian Act*

Canada will still keep track of which people among the Kitselas qualify as status Indians under the *Indian Act*, for example for determining who is eligible for health and education benefits.

Otherwise, the *Indian Act* will no longer apply to Kitselas or Kitselas people. (See the Tax chapter for details about the phasing out of the tax exemption under the *Indian Act*.)

The *First Nations Land Management Act* and the Kitselas Land Code will no longer apply to Kitselas either.

The Transition Chapter provides details on the process for removing Kitselas out from under the *Indian Act* and the *First Nations Land Management Act*.

Other Rights, Benefits and Programs

Kitselas people will still be eligible for the same rights and benefits as other Canadians would be.

Kitselas people will still be eligible for the same rights and benefits as other Indians are under the *Indian Act*, including health and education.

If the Kitselas government has assumed responsibility and funding for managing programs or services, Kitselas and its people cannot receive double benefits from both Canada and their government.

Court Decisions

If a court determines that a provision of the treaty is invalid, the Parties will make their best efforts to amend the treaty to replace the invalid provision. The rest of the treaty will continue unaffected.

The Parties have agreed not to challenge the validity of any provision of the treaty.

If one of the Parties breaches the treaty, the treaty continues to be valid, and the parties are still required to meet their obligations under the treaty.

Certainty

Full and Final Settlement

The treaty is a settlement for Kitselas's land claims, except Specific Claims (see below).

Exhaustively Set Out Rights

The treaty sets out what all of the Aboriginal rights and title of Kitselas will now be.

Modification and Continuation

Aboriginal rights will continue as defined by the treaty.

Any Aboriginal title Kitselas had before the treaty will now consist of the lands set out in the treaty.

Purpose of Modification

The purpose of modification is to ensure that Kitselas's rights are clearly defined and Kitselas's ability to exercise their rights are protected by section 35 of the *Constitution Act, 1982* and to clarify the obligations of Canada and BC to Kitselas.

Rights Not Extinguished

Aboriginal rights are not extinguished but continue as defined by the treaty.

Release of Past Claims

Kitselas agrees that after the treaty, it will not sue Canada and BC for any past violations of Aboriginal rights. (It can still sue Canada and BC if they do not meet their obligations under the treaty.)

Indemnities

Kitselas agrees to try to help protect Canada and BC from any law suits that claim damages from Canada and BC for past violations of Aboriginal rights or anything Canada and BC do in accordance with the treaty.

Kitselas, Canada, and BC all agree to defend the treaty against anyone who tries to legally challenge it.

Specific Claims

Kitselas can still seek Specific Claims against Canada. (Specific Claims are any past wrongs committed by the Government of Canada not in regards to rights or title generally but in regards to particular events or actions, illegally taking back some Reserve land for example).

Other Aboriginal People

Kitselas's treaty is not meant to affect the rights of other First Nations.

If a court rules that another First Nation has an Aboriginal right, and that ruling negatively affects Kitselas's rights under the treaty, that section of the treaty will no longer operate, but the rest of the treaty will continue as much as possible.

Similarly, if another First Nation concludes a treaty with Canada or British Columbia, and the provisions of the other treaty negatively affects the Kitselas treaty, that section of the Kitselas treaty will no longer operate, but the rest of the treaty will continue as much as possible.

If Kitselas loses land or rights as a result of another First Nations treaty or the ruling of a Court, Canada and BC must provide Kitselas people with additional or replacement rights, or lands, or other compensation.

If, after negotiating, the Parties are unable to agree on the compensation, the matter will be dealt with by litigation or arbitration under the Dispute Resolution Chapter.

Periodic Review

The Parties all acknowledge they will have to review the treaty in the future to ensure it is working well for all of the Parties.

If any Party wants to review some portion of the treaty, they will give notice to the other parties.

Unless otherwise agreed, the Parties will review the treaty at least every 15 years.

The parties are not obligated to change the treaty as a result of a review.

Each of the parties is responsible for their own costs during a review.

Amendment Provisions

The Kitselas treaty can only be amended with the consent of all three Parties.

Any party can propose an amendment.

The parties agree that before they consider amending the treaty, they will try to find a solution that does not require amending the treaty.

Interpretation

When drafting the treaty, the parties and their lawyers rely on various conventions. This section indicates the legal drafting conventions the parties have used and provides instructions on how to interpret the treaty.

Consultation

Canada and BC are still required to consult with Kitselas and their obligations and the process is set out in the treaty.

Anything Canada and BC do in accordance with the treaty will not be considered an infringement of Kitselas's Aboriginal rights.

Questions and Answers

Q: Will our Aboriginal rights be extinguished?

A: No, our Aboriginal rights will continue as defined in the treaty, and they will continue to be protected by s. 35 of the *Constitution Act, 1982*.

Q: Will we still be eligible to receive the same health and education benefits that we do as Indians under the *Indian Act*?

A: Yes. You continue to be eligible for extended health benefits and the same education benefits that you do as Indians.

Q: Will the federal and provincial government still have to consult with us?

A: Yes, the governments will have to consult with you anytime your treaty rights might be affected, and the treaty clarifies exactly what the government must do and when. The Supreme Court of Canada has already ruled that if a treaty missed something, the government still has to consult you.

Q: Will we still be able to sign Impact Benefit Agreements or other beneficial Agreements after the treaty is signed?

A: Yes. Plus, you will be a legal entity on your own and will not need permission from Canada to enter into Agreements.

Q: Are current consultation and accommodation policies a better alternative to treaty?

A: Arguably no. After treaty, the government will still have to consult with Kitselas, and the treaty provides more land, cash, independence and law-making than would ever be provided by consultation or an Impact Benefit Agreement.

Q: Why do we negotiate an AIP first? Why can't we skip straight to Final Agreement negotiations?

A: This is the process jointly developed by the First Nations Summit, Canada, and BC, which also led to the development of the BC treaty Commission. Now that all of the parties agree on basic principles, they can all focus resources on completing a Final Agreement.

Q: How long will it take before the Final Agreement is finished?

A: Other First Nations, such as Nisga'a, Tsawwassen, and Maa-Nulth have taken at least a couple of years to conclude the Final Agreement. It will probably be 3 to 5 years.

Q: Will we get a chance to vote on the Final Agreement?

A: Yes. We will be required to have another vote when the Final Agreement is finished on whether to accept the treaty or not.

Q: Is it better if there is uncertainty about our Aboriginal rights and title?

A: Arguably no. The Supreme Court of Canada has already said, in *Beckman v. Little Salmon/Carmacks* that the crown, Canada and British Columbia, cannot use a modern treaty in such a way that has a negative effect on the special relationship the crown has with Aboriginal people. To do so would be inconsistent with the primary purpose of s. 35, which is the reconciliation of crown and Aboriginal interests. So, if Canada or British Columbia tried to take advantage of the fact that your Aboriginal rights and title were defined in the treaty, for example, by developing lands just off of your treaty settlement lands, they could be sued.

Chapter 3

Lands

Chapter Summary

The Lands chapter acknowledges Kitselas ownership of at least 36,158.7 hectares of land, which includes existing Reserve land and provincial crown land. Kitselas will own these lands in fee simple and be able to develop and manage these lands themselves. As we will see in other chapters, Kitselas will own the forest resources and subsurface resources on these lands, and it will have a variety of law-making abilities on these lands.

General

Once the treaty is in effect, Kitselas will own 36,158.7 hectares of lands and those lands will be set out in maps in an Appendix (This amount is likely to increase slightly in Final Agreement negotiations).

Kitselas Lands do not include lands owned by other people, lands under water, such as the land under a lake or a river, or some major roads and railways.

After the AIP is signed, Canada and BC will take steps to protect Kitselas Lands, including protection of the forests and minerals. They will also prevent those lands from being sold to anyone else.

Other Kitselas Lands

During Final Agreement negotiations, the parties will negotiate for more lands.

During Final Agreement negotiations, if the parties find other land owners nearby willing to sell lands to Kitselas, the parties will consider adding those to Kitselas Lands too.

Those lands will not include the subsurface rights (minerals etc.) unless those can also be bought or if BC owns them.

Ownership of Kitselas Lands

Kitselas will own its lands in fee simple, the same as most land owners, which means there will be very few restrictions on those lands.

Kitselas can transfer or sell its lands, and it does not need permission from Canada or BC to do so.

If Kitselas does transfer or sell its lands, they continue to be Kitselas Lands (Kitselas would still have law-making and jurisdiction).

If Kitselas transfers or sells its lands, it will register them with BC's Land Title Office first. (See the next chapter for more information on the Land Title Office.)

If Kitselas transfers or sells its lands to a non-Aboriginal person or company, the limitations in the treaty in regards to expropriation will no longer apply.

If Kitselas, Canada, and BC agree to remove lands from Kitselas Lands, they can do so.

Other people cannot claim to have an interest in Kitselas Lands based on past use, such as squatter rights.

If some of Kitselas Lands happen to be given back to BC after treaty (when someone dies with no family for example), BC will immediately transfer the land back to Kitselas.

During Final Agreement negotiations, the parties will negotiate details in regards to what to do with a bankruptcy involving Kitselas Lands.

Exterior Boundary Surveys

Canada and BC will figure out how much each of them will have to pay for surveying the boundaries of Kitselas Lands (Kitselas will not have to pay).

If Kitselas obtains other lands after the treaty and there are costs for surveys in regards to those lands, Kitselas will have to pay for its own surveys.

Interests

Kitselas Lands will have no other interests on its lands except those set out in the appendix.

Where the parties have agreed that there will be other interests, like a right of way, on Kitselas Lands, Kitselas will issue those people replacement certificates acknowledging that their interest continues with Kitselas much the same as it did before.

Replacement of Certificates of Possession and Other Interests

Kitselas will issue replacement certificates for people who own Certificates of Possession under the *Indian Act* or any interest granted to members through the *First Nations Land Management Act*.

Anyone who had a Certificate of Possession or an interest granted through *First Nations Land Management Act* on a Kitselas Indian Reserve will continue to have the same rights to his or her land after the treaty.

Submerged Lands

Kitselas Lands do not include submerged lands, such as lakes and rivers.

Submerged lands that are already a part of a Kitselas Indian Reserve will be part of Kitselas Lands.

BC will not try to sell or allow any long term leases of submerged lands within Kitselas Lands without consent from Kitselas.

Having ownership of submerged lands from a former Reserve does not include exclusive ownership of fish or fish habitat.

Accretions to First Nation Lands

If Kitselas's Land happens to grow in size because a nearby body of water, like a lake or a river, gets smaller, Kitselas will own that land too.

Indemnity and Confirmation

Kitselas is not responsible if there is a mistake in the treaty and somebody accidentally loses his or her land and successfully sues over the mistake (BC would have to pay).

Site Remediation on Kitselas Lands

BC does not have to inspect all of Kitselas Lands for contamination prior to the treaty.

Instead, the parties will identify which parcels of Kitselas Lands might be in need of environmental cleanup, called remediation, and when Kitselas later decides to develop those lands, they will notify BC, and BC will see if the lands do in fact need remediation. If they do, BC will clean up those lands and pay for the costs.

BC does not have to pay costs for any contamination that occurs after the treaty comes into effect.

Additions to Kitselas Lands

If Kitselas buys other lands within its territory that it owns in fee simple, and Canada and BC agree, they can add those lands to Kitselas Lands (gaining law-making over them).

If the lands Kitselas wants to add are within the City of Terrace, the City must consent too. If the lands Kitselas wants to add are claimed by another First Nation, the other First Nation must consent.

Canada and BC do not have to pay for any costs associated with adding the lands.

If BC still owns the subsurface rights to the lands Kitselas is adding, BC will transfer those subsurface rights to Kitselas.

If there were other interests on these new lands, such as a right of way, which are held by other people, those people will continue to hold those interests.

Expropriation

Kitselas and BC will negotiate details in regards to expropriation by BC during Final Agreement.

Canada acknowledges that it will try to avoid expropriating Kitselas Lands, that they can only expropriate in accordance with federal laws that allow it, and that they will only expropriate the most limited interest for the most limited time.

Nothing in the treaty is meant to affect the ability of Canada to respond to an emergency in accordance with federal laws.

Law-Making

Kitselas can make laws in regards to land management, land use planning, and development on Kitselas Lands.

Kitselas can allocate or create other interests in its lands, including allocating fee simple ownership to its people if it wants to.

Kitselas can create its own land registry system for its own lands if it wants to.

Kitselas can create its own laws in regards to expropriation by Kitselas on its own lands.

Kitselas law in regards to its lands prevails over federal and provincial law.

Agricultural Land Reserve

During Final Agreement negotiations, the parties will negotiate details in regards to farm lands within Kitselas Lands.

Questions and Answers

Q: What's the difference between Kitselas Lands and our traditional territory?

A: Kitselas Lands are the lands that Kitselas will own itself. Kitselas will be able to manage these lands and will have a variety of new law making authorities on these lands as set out in the self-government chapter. The traditional territory is the broader boundary that includes all of the land that Kitselas has ever used. Kitselas will not own the traditional territory but will continue to have rights to hunt and fish throughout it.

Q: What is fee simple ownership?

A: This is the standard ownership that most people have for lands that they own. It has the fewest restrictions on selling it or transferring it. It is considered the highest level of interest someone can have in land other than a government. As we will see throughout the treaty, Kitselas will have many characteristics similar to the government too, including law-making.

Q: What is Aboriginal title and the difference between Aboriginal rights?

A: Aboriginal title is a special kind of Aboriginal right that grants a kind of ownership to the land itself as opposed to more general Aboriginal rights, which are only a right to conduct certain site-specific activities not a right to the land. This chapter essentially

provides the lands that you will get in place of Aboriginal title.

Q: What is better fee simple or Aboriginal title?

A: Both have different advantages. Fee simple is what realtors, bankers, lawyers, and most importantly buyers are most familiar and most comfortable with. The Courts have said that Aboriginal title, like Reserve land, could only be sold or transferred with permission from Canada. Aboriginal title includes things that fee simple does not, like subsurface rights and self-government, but the treaty is giving those too along with fee simple, so treaty provides the best of both.

Q: Will our Aboriginal rights and title in our territory be reduced?

A: No, you will continue to have Aboriginal rights throughout your traditional territory just as you do now. Based on what the Courts say, you probably do not have Aboriginal title throughout your traditional territory but only on those lands that were of “central significance”, normally lands where your people lived or conducted certain ceremonies. Under the *Indian Act*, Kitselas owns nothing, not even Reserve lands, and under treaty, Kitselas will own over 36,158.7 hectares of land.

Q: Could we get more land if we sued in Court?

A: It is very unlikely. So far, the Courts have never once granted land to a First Nation based on a claim for Aboriginal title. The Courts say that Aboriginal title exists generally, but they encourage First Nations, Canada and BC to negotiate. Even if the Courts did grant you Aboriginal title, it would not be as valuable as owning lands in fee simple like is done in treaty.

Q: Why isn't Kitselas getting submerged lands, like lakes and rivers?

A: The Courts are very reluctant to acknowledge Aboriginal title of submerged lands for any First Nation. This could be in part because First Nations cannot claim to have lived on water, which would normally be required for a claim to Aboriginal title or because the courts believe fish were inevitably a shared resource by First Nations.

Q: Will we need permission from Canada to develop our lands?

A: No. Kitselas will be able to develop its lands however it would like to, and it will not need permission from Canada, BC, or the City of Terrace. The developments will still have to conform with environmental laws, but aside from that, Kitselas will have a variety of development options on their lands.

Q: I own a Certificate of Possession (CP). Will the treaty affect that?

A: No. The treaty automatically grants the same rights back to CP holders. It will be a little bit different in that Canada will no longer be involved in your CP. Instead, your CP will be through the Kitselas government, but your rights are the same. Later, if Kitselas wants to convert that into a fee simple interest, which is even greater than a CP, Kitselas could do that.

Q: I was allotted land through the Kitselas Land Code. Will the treaty affect that?

A: No. Again, the treaty automatically grants the same rights back to people allotted lands through the Kitselas Land Code.

Q: Will we own our own homes after the treaty?

A: That will be up to you and your government. The treaty allows for that as a possibility. The Kitselas government could grant your homes to you in fee simple. Most people agree it is potentially a very good benefit and is worth serious consideration.

Chapter 4

Land Title

Summary

In BC, the provincial government has a Land Title Office that maintains all of the official records and documents in regards to who owns land, including the size and shape of parcels of land but also who has various other interests on those lands, such as mortgages or right of ways. Currently in the Land Title Office, Reserve lands are usually registered with Canada as the owner, but after treaty, Kitselas will be able to register lands in its own name, making them easier to sell and get mortgages. The Land Title chapter provides specific details about what will be done in regards to BC's system and Kitselas Lands.

The Federal land registry will no longer apply to Kitselas as they did under the Reserve system and the *First Nations Land Management Act* system. Federal land registry laws will only apply to any federal Crown lands or interests that are within Kitselas Lands.

BC's land title system, called a Torrens system, will not apply to Kitselas Lands unless Kitselas chooses to register parcels with BC's Land Title Office.

If Kitselas does apply for some of its lands to be registered in the BC system, then provincial law in regards to land title will apply to those lands.

Only the Kitselas First Nation, not an individual member, can initially apply to register Kitselas Lands with BC's system.

Kitselas will not have to pay fees for initial registration of its lands.

If Kitselas applies to register its lands, it must also provide the various documents required for its application.

If Kitselas provides all the proper documents, BC will accept the lands for registration in their system for free.

Kitselas First Nation can cancel the registration later if they like, but only Kitselas, not an individual.

Questions and Answers

Q: What does this chapter mean? What does it do?

A: This chapter is all about all the different legal documents and records in regards to land, and for the most part, this chapter keeps things as they are to start. If Kitselas wants to register its lands later, it can. Kitselas will probably want to register lands that it plans on selling or developing.

Q: Can you give me an example of what this means for me?

A: If you possess land in a Reserve already, then you will continue to possess it as you currently do after treaty. If, however, Kitselas later decides to give fee simple ownership of lands to its people, Kitselas government needs to prepare all the necessary documents and then can apply to BC's system on your behalf. BC will accept it as long as Kitselas provides the proper documents, and then BC would register you as the owner for free. This will be up to Kitselas if it wants to do that or not.

Chapter 5

Subsurface Resources

Chapter Summary

Subsurface Resources includes anything below the surface of the ground, such as minerals and metals and also fuels like oils and gases. Unlike most other land owners in BC, Kitselas will own all subsurface resources under their Kitselas Lands. On Kitselas Lands, Kitselas will be able to harvest its resources and use them or sell them however it wants to.

General

Kitselas will own all the subsurface resources under its lands, which includes things like minerals, gravels, metals, & oil if any.

The parties agree that some people who already have claims to subsurface resources on lands that will eventually become Kitselas Lands can continue to have their claims from Kitselas instead of BC, and those will be set out in an appendix. Kitselas will be the ultimate owners.

Kitselas can allow other companies to help it find subsurface resources and to take advantage of using them. If other companies do assist, Kitselas will can charge them fees or taxes or agree on a percentage of revenues to share.

Tenured Subsurface Resources

For those people who are allowed to keep their claims, the BC system will continue to apply to them.

Any revenues that BC receives in regards to these claims will be forwarded to Kitselas.

If any of these owners later lose or give up their claim, those subsurface rights will automatically belong to Kitselas.

Questions and Answers

Q: Does anyone who owns land normally own subsurface resources?

A: No, it is normally not included with fee simple ownership. It is given to Kitselas through treaty as part of their Aboriginal title.

Q: Are there any subsurface resources of value under our Kitselas Lands?

A: The treaty will help give Kitselas more options for exploring its lands to see if there are resources of value. Sometimes even good sand and gravel can be of value for making concrete or for other construction uses. There are also some minerals that are common in northern and central BC that are valuable for various industrial purposes.

Q: How can treaty help protect people from the environmental affects of mining and other such activities?

A: On Kitselas Lands, Kitselas consent will be required for such projects. Within the traditional territory (See the Environmental Protection and Environmental Management chapter for more details).

Chapter 6

Water

Chapter Summary

The Water chapter allocates an amount of water that Kitselas can divert from local streams and sets out details about how the water can be used. If Kitselas wants, for example, it could allow others to receive some of its allocation for a cost, or it can save it for its own communities. Water is likely to become an increasingly valuable resource, and so Kitselas has sought a very large allocation of water to ensure enough for future generations.

Water Reservation

The amount of the water allocation will be determined during Final Agreement negotiations.

The parties will work out details in regards to which streams the water will come from and how much can be diverted.

The water that is diverted can be used for domestic, industrial, or agricultural purposes.

The water allocation granted to Kitselas will have priority over any water licenses granted afterwards.

Water Licences

With Kitselas's consent, a person or a company can apply to BC to receive some of Kitselas's water.

BC will continue to help manage allocations of Kitselas's water to other people but will never give Kitselas's water to someone else without consent from Kitselas.

The amount of water diverted from streams cannot affect the navigability of those streams or exceed minimums needed to maintain fish or fish habitat.

Kitselas can still apply for other water licenses from BC if it would like to.

The treaty is not meant to prevent people who own water licenses from accessing the land and the streams as they need to in order to get their water.

Law-Making

Kitselas can pass laws in regards to how its water is further allocated or used.

Other

Kitselas may sell water in accordance with federal and provincial laws

Hydro Power Reservation

BC will establish a water reservation for Kitselas for Kitselas to see if it is suitable for establishing a hydro power project.

If Kitselas determines that its water reservation is suitable for a hydro power project, BC will establish what is called a hydro power reservation for that water.

If it wants to, Kitselas can participate in planning processes in regards to water anywhere within its traditional territory.

BC will negotiate with Kitselas for the safe protection of any drinking water for any watershed that goes through Kitselas Lands.

Questions and Answers

Q: What is a water license?

A: Water licenses are used by people or companies that need more water, often because they need a lot of water or because they are not located near water services. Sometimes this can be farmers that need water to irrigate their crops, companies that need water for their industrial activities, or homes that do not otherwise have access to water. They get permission from BC by way of a license to divert water from a nearby stream or river.

Chapter 7

Forest Resources

Chapter Summary

Kitselas will own all forest resources on its own lands, including trees and various plants, and this chapter sets out how Kitselas's forestry activities will work with the Provincial

system. It sets out how Kitselas, BC, and Canada will work together to manage forest health and forest fires. Kitselas negotiators will also seek a Tree Farm License from BC during Final Agreement negotiations which would allow Kitselas to undertake its own logging within its traditional territory.

Forest Resources on Kitselas Lands

Kitselas will own all forest resources on Kitselas Lands, which include trees and medicinal plants.

Kitselas will have exclusive authority over its Forest Resources, meaning nobody else can log trees on Kitselas Lands without Kitselas's permission.

Law-Making

Kitselas will be able to make laws in regards to logging on Kitselas Lands.

Federal and provincial laws will prevail over Kitselas laws if they are in conflict.

Timber Marking and Scaling

Provincial laws in regards to weighing and measuring logs and tracking logs will continue to apply to trees and logs taken off Kitselas Lands.

Manufacture and Export of Timber Resources

Kitselas can still export logs to other countries in accordance with federal law.

Forest and Range Health

Kitselas is responsible for the health of forests on Kitselas Lands.

If Canada or BC become aware of health issues for forests on Crown lands that might affect forests on Kitselas Lands, Canada and BC will warn Kitselas.

Kitselas will warn Canada and BC if forest health issues on Kitselas Lands might spread to Crown lands nearby.

BC and Kitselas will co-operate to minimize the affect of theses kinds of forest health issues that affect both of their lands.

The parties will work out during Final Agreement negotiations more details in regards to how information will be shared to help protect forest health issues.

Wildfire Suppression and Control

The parties will enter into a separate agreement in regards to the cost of fighting fires that start on Kitselas Lands, and this agreement will have various other details.

Kitselas, Canada, and BC agree to share the costs of fighting fires that started on Kitselas Lands.

Kitselas will normally pay for one third of the costs of fighting fires on Kitselas Lands up to a maximum set out in the side agreement.

If Kitselas's own negligence starts a fire, the costs for fighting the fire will not be limited.

Kitselas does not have to pay for any costs of fighting fires off of Kitselas Lands.

BC will respond to fires on Kitselas Lands with the same priority they would for Crown lands.

Other forestry companies must finish their own obligations and responsibilities they had before Kitselas Lands are transferred to Kitselas (for example, clean up or tree planting requirements).

BC will still be allowed to do forest research on Kitselas Lands.

During Final Agreement negotiations, the parties will negotiate for BC to give Kitselas a Tree Farm License so it can log other lands in its traditional territory.

Questions and Answers

Q: Will Kitselas be able to stop companies from logging on Kitselas Lands?

A: Yes. Nobody will be able to log on your lands without your permission.

Q: What about logging in Kitselas's traditional territory?

A: During Final Agreement negotiations, Kitselas will seek revenue sharing for any project in its traditional territory. Also, Kitselas will still have to be consulted for any logging that will affect your various treaty rights, hunting and fishing for example, in your traditional territory, and so Kitselas could still negotiate benefit agreements.

Q: Will Kitselas be able to do logging?

A: Yes. Kitselas can log trees on its own lands if it would like to. It is also seeking a Tree Farm License from BC through treaty that will extend the lands it can use for logging.

Chapter 8

Access

Chapter Summary

After treaty, various employees and representatives of the government and utility companies will still need access to Kitselas Lands to ensure various programs and services continue, such as electricity, hot water, or law enforcement. This chapter sets out how these people can access Kitselas Lands to carry out their work. It also sets out details in regards to when the general public can enter Kitselas Lands.

Kitselas will designate some of its lands as private lands (generally those lands where your members live), and those lands will be set out in an appendix.

Any lands which are not designed as private lands by Kitselas will be public lands.

If Kitselas intends to change some of its lands from public to private, it will give notice to Canada and BC.

What Kitselas does with its lands cannot prevent the general public from accessing other public locations, such as lakes or parks.

Other members of the public can still access Kitselas Public Lands for temporary or recreational purposes, but other members of the public cannot take resources from Kitselas Lands or cause damage or be a nuisance.

What Kitselas does with its lands cannot prevent other land owners from accessing the lands they own.

If what Kitselas does with its lands blocks a current way used by people, Kitselas will make sure those people have another reasonable way through Kitselas Lands.

Law-Making

Kitselas can make laws to protect lands and resources, things such as fire prevention, nuisance, protection of sensitive habitat, and emergency response.

Access to Kitselas Lands

People who work for the government or utility companies or their various representatives can access Kitselas Lands to carry out their work.

Anyone enforcing laws or acting in an official legal capacity can access Kitselas Lands as part of their duties.

Kitselas Access to Crown Lands

People who work for the Kitselas government can enter crown lands to do their work if they need to.

Questions and Answers

Q: Why does the treaty need this chapter?

A: A treaty is a constitutionally protected document, meaning it is generally considered part of the highest laws in Canada. Without something like this in the treaty, employees of the government could get charged with trespassing for going on Kitselas Lands. It is also better to be clear about such matters. For example, even now, many police officers are unsure about their enforcement abilities on Indian Reserves. This chapter makes it clear that an officer can access treaty lands to help enforce laws.

Chapter 9

Roads and Rights of Way

Summary

After treaty, Kitselas will own some of the local roads on its lands, and BC will maintain responsibility for many of the major roads that pass through or near Kitselas Lands.

Kitselas Lands will also need to have various right of ways passing through it for things such as railways and transmission lines. This chapter provides details in regards to how those roads and right of ways will exist with Kitselas's laws and Kitselas Lands.

Kitselas Roads and Crown Corridors

Kitselas will own some of the roads on Kitselas Lands itself.

BC will continue to own some roads and right of ways (such as the railway and Highway 16) and those will not be a part of Kitselas Lands. These will be set out in an appendix.

Crown Corridors No Longer Required

If BC no longer needs any of these crown roads or right of ways, it will give them to Kitselas, including subsurface resources if the crown owns those too.

BC will consult with Kitselas in regards to major road construction on or near Kitselas Lands.

Realignment of Crown Corridors

If BC ever needs to realign a crown corridor, for example if it needs to move the path of a provincial road on Kitselas Lands, BC will get the land for the new road, but Kitselas can have the land where the old road used to be added to Kitselas Lands.

If Kitselas does not want the land from where the old road used to be, BC will give financial compensation instead.

Entry on Kitselas Lands Outside Crown Corridors

Employees of BC or utility companies can enter on Kitselas Lands to maintain the right of ways, like removing tree branches from transmission lines.

Trees that are removed still belong to Kitselas.

Employees that do this will minimize the amount of work and damage that they do.

Public Utilities

Companies, like BC hydro or cable companies, can do the repairs and upgrades they need to when customers request services.

Kitselas agrees that it cannot regulate or impair these companies as they do their work to provide services for customers. (BC Hydro will still have to pay usual rents and fees to Kitselas in accordance with current standards.)

Questions and Answers

Q: Why should Kitselas let BC still own various roads through Kitselas Lands?

A: Whoever owns a road is also responsible for maintaining it and making sure it is safe enough for use. If the owner of a road fails to maintain it, they could be sued (for example if a car owner damages his or her car in a pot-hole). Maintaining the road can be costly and time consuming. For some major roads, it will often be better to let BC

take care of them.

Chapter 10

Fisheries

Chapter Summary

The parties have agreed to negotiate fisheries during Final Agreement negotiations rather than continue to have further delays. The Final Agreement will contain a fisheries chapter and a suitable allocation of salmon for present and future use.

The parties will negotiate fish during Final Agreement negotiations.

The AIP is not intended to affect Kitselas's Aboriginal right to fish in any way.

Questions and Answers

Q: Why are fisheries negotiations being delayed until Final Agreement?

A: Canada has ordered an official Inquiry into the salmon that went missing from the Fraser River. Rather than incur further delays, the parties have agreed to leave fish negotiations for Final Agreement. Kitselas will negotiate a suitable allocation for salmon or there will be no treaty.

Q: Why don't we just wait for Canada to conclude the inquiry?

A: Canada has already had two major delays concluding the inquiry. Each delay can end up costing Kitselas negotiation expenses. There will be plenty of time during Final Agreement to negotiate fish.

Q: Will there be anything in regards to commercial fisheries as part of the treaty?

A: As part of signing treaties, Canada and BC have provided millions of dollars in funding to treaty First Nations to develop commercial fisheries. Kitselas will negotiate this as well during Final Agreement negotiations.

Chapter 11

Wildlife

Chapter Summary

The Wildlife chapter covers Kitselas's right to hunt various animals, not including migratory birds, which are covered in a separate chapter. This chapter includes animals such as bears, moose, deer and others. Under the treaty, Kitselas will continue to have the right to hunt these animals throughout the year and throughout its traditional territory

and beyond.

General

Kitselas will continue to have the right to hunt throughout its traditional territory.

A Kitselas member cannot sell or give their right to hunt to someone else.

If another Tsimshian First Nation concludes a treaty that extends Kitselas right to hunt in other areas too, then the parties will amend the Kitselas treaty to allow this.

The Kitselas right to hunt is limited only by public health, public safety, or conservation measures. (Hunters could not operate a firearm in an unsafe way, for example, or hunt an endangered species.)

The Kitselas right to hunt is for the whole community to enjoy, not just certain individuals.

BC will continue to manage which species need to be protected, including the ability to protect their habitat.

The treaty is not meant to change property rights in regards to wild animals. (Generally nobody owns an animal until it is successfully caught.)

Harvest Areas

Kitselas will be able to hunt in its own traditional territory, and it will not need anyone's permission to do so.

In the traditional territory of other Tsimshian First Nations, Kitselas will enter agreements with those First Nations to share hunting areas.

BC Reasonable Opportunity Language

BC can make decisions with its crown lands as long as it does not affect Kitselas's opportunity to hunt.

If BC does not hurt Kitselas's ability to hunt, then Kitselas will not hunt in such a way that interferes with BC's use of those lands.

Incidental Use

If Kitselas hunters need to do something to exercise their right to hunt, those activities are also allowed (for example, setting up a temporary shelter or camping).

Harvesting on Federal Crown Lands

To hunt on federal Crown lands, Kitselas will have to enter an agreement with the department using those lands.

Harvesting on Fee Simple Lands

Kitselas people may hunt on privately owned lands as long as he or she does it in accordance with federal and provincial law.

To hunt on lands owned by other First Nations, Kitselas needs the permission of that First Nation.

Licences and Fees

Kitselas members will not be required to pay fees for licenses.

Kitselas members will still need to get licenses to operate firearms/guns.

Harvesting Outside the Harvest Area

Kitselas members can still hunt outside their Harvest Area but they must do so in accordance with federal and provincial law.

Documentation

Kitselas members will still need some sort of documentation that shows their name and identity, like a treaty card.

Conservation Measures of a Wildlife Species

If it becomes necessary to conserve a species of animal, BC can establish rules to protect those animals.

BC will consult with Kitselas before implementing rules to protect an animal.

BC will consider a variety of factors when making this kind of decision.

BC will try to minimize the impact of their conservation measures on Kitselas's right to hunt.

BC will provide notice to Kitselas when establishing a protective measure and it will discuss it with Kitselas.

If Kitselas and BC cannot agree about the kind of protection necessary, either one of them can refer it for dispute resolution, including using a neutral arbitrator.

Law-Making

Kitselas can make laws in regards to its hunting rights, and those laws will prevail over federal and provincial laws.

Kitselas will have to make laws to ensure its members abide by any conservation measures that BC puts in place and to require members to produce their documentation when hunting or transporting what they caught.

Wildlife Advisory Management Process

Kitselas will have the right to participate in public planning processes that may affect their ability to hunt.

Trade and Barter and Sale

Kitselas will be able to trade and barter what they have hunted with themselves or other Aboriginals in Canada.

Kitselas can sell what they catch as long as they do so in accordance with federal and provincial law.

Trapping

Traplines that exist on Kitselas Lands will continue to be owned by the same people.

Trapline owners will be allowed to access Kitselas Lands to use their traplines.

If a trapline owner gives up or loses his or her trapline, BC will not grant it to someone else again without the consent of Kitselas.

If a trapline owner agrees to give it to Kitselas, BC will do so.

Guiding and Angling

Anyone who has a Guide Outfitter license or angling guide license will be allowed to keep it.

These guides will be allowed to access Kitselas Lands to carry out their business.

BC will not grant further guide licenses on Kitselas Lands without consent from Kitselas.

Transport and Export

Kitselas members can transport anything they catch under their right to hunt.

Kitselas members can export anything they catch in accordance with federal and provincial law.

Questions and Answers

Q: How will my Aboriginal right to hunt be affected by a treaty?

A: Your Aboriginal right to hunt will continue in the same way but with more clarity in regards to the right. It will still be constitutionally protected.

Q: Can we hunt on provincial crown lands, like parks?

A: Yes as long as your hunting is consistent with the provincial crown's use of the land. For example, you cannot hunt in a way that would be unsafe for people.

Q: Can we hunt on federal crown lands?

A: Only with an agreement with the federal department. Unlike the provincial government, the federal government does not normally own vacant crown land. Federal land consists mostly of things like nursing stations, post offices, or RCMP housing. Very few of these lands are suitable for hunting on.

Q: Can we hunt on the Indian Reserves of other bands?

A: Not without permission from that First Nation. The courts and the government normally say that Indian Reserves are like Aboriginal title for a First Nation, meaning that nobody else can hunt there without permission.

Q: Will anyone else be able to hunt on Kitselas Lands?

A: No, not without Kitselas's permission.

Q: What can we do about members who abuse their right to hunt for their own benefit?

A: Kitselas will be able to make its own laws in regards to Kitselas's hunting rights. Kitselas could make laws to ensure the whole community benefits from hunting.

Chapter 12

Migratory Birds

Chapter Summary

This chapter ensures that Kitselas will continue to have the right to hunt migratory birds. Their right will not be extinguished and will continue to have constitutional protection. Kitselas members will be able to hunt migratory birds throughout the year and throughout their traditional territory. This chapter is very similar to the previous chapter except that it covers migratory birds, such as ducks, instead of animals. It does not include birds that do not migrate, such as most grouse or domestic birds, like chickens.

Note – Please see the previous chapter on Wildlife for more details. The majority of the same rights and obligations in that chapter apply to migratory birds as well. Only exceptions to the previous chapter are explained in detail below.

General

Kitselas members will continue to have the right to hunt migratory birds throughout the year.

Conservation Measures

Canada will consult with Kitselas when implementing protections.

Also, when protections are put in place, because it is very difficult to estimate migratory bird populations, those protections are not likely to be based on a formula or a quantity like they might be for animals.

Consultation on International Negotiations on Migratory Birds

Canada will consult with Kitselas in regards to any International Treaties it negotiates that might affect Kitselas's ability to hunt migratory birds.

Questions and Answers

Q: Why is there a separate chapter about Migratory Birds if everything is so similar?

A: Migratory Birds are part of federal jurisdiction whereas most other wildlife is part of provincial jurisdiction. This is because most migratory birds fly across provincial boundaries or even international boundaries.

Chapter 13

Environmental Assessment and Environmental Protection

Chapter Summary

Environmental assessments are designed to help prevent damage to the environment before a project begins by requiring public hearings, expert submissions, and an official report or assessment before the project starts. This is different from environmental protections laws, which are designed to penalize people or companies who have already damaged the environment. This chapter sets out how those laws will apply on Kitselas Lands. Environmental assessment and protection will continue to apply on Kitselas Lands, and Kitselas's consent will be required for any project on their lands.

Environmental Assessment

No project that triggers an environmental assessment will proceed on Kitselas Lands without the consent of Kitselas.

Canada and BC will still be allowed to expropriate lands in accordance with the Final Agreement, but they must meet various requirements in regards to expropriation. (See the Lands chapter and appendices for more details.)

Kitselas Participation in Environmental Assessments

If a project in Kitselas's traditional territory triggers an environmental assessment and is expected to negatively affect Kitselas's treaty rights, such as its hunting or fishing rights, Kitselas will be able to participate in that process and get the information it needs.

BC will respond to Kitselas's concerns before the project proceeds.

Law-Making

For Kitselas Lands, Kitselas may make their own environmental assessment laws in regards environmental assessments and environmental protection.

Their laws must meet the same standards as federal law.

Federal and provincial laws will prevail in the event of a conflict.

Questions and Answers

Q: Will Kitselas be able to stop projects from proceeding on Kitselas Lands after treaty?

A: Kitselas will have a much better ability to prevent developments from happening on its lands if it does not want them to proceed. Kitselas Lands will be constitutionally protected, and Kitselas's consent will be required for any projects to proceed on their lands. The governments do maintain the ability to expropriate land, but their ability to expropriate must meet a number of requirements as set out in the lands chapter and appendices. For the first time in history, it will be easier for the government to have projects go on lands other than Kitselas's.

Q: What will Kitselas's role be in environmental assessments?

A: Kitselas will be involved from the beginning for any environmental assessment that

might affect Kitselas's hunting or fishing rights. If the project is going to be on Kitselas Lands, Kitselas consent will be required unless the government can meet the requirements for expropriation. See the Lands chapter for limits on government expropriation on Kitselas Lands.

Chapter 14

Parks, Protected Areas, and Public Planning

Chapter Summary

In BC, various lands are protected either so they can be preserved and enjoyed as a park or to protect various sensitive habitat. Some of those lands are located within Kitselas's Area or traditional territory. This chapter sets out how those laws will apply in Kitselas's Area. It also sets out how Kitselas will be able to designate and protect its own lands and how Kitselas will be allowed to participate in planning processes conducted by BC and local governments to plan for future use of lands, such as city expansion for example.

Public Planning Processes

Kitselas will be able to participate in any public planning processes that BC establishes.

Kitselas can make proposals and bring matters forward in planning processes that it thinks are important.

If they do not accept a proposal from Kitselas, BC will meet with Kitselas and provide written reasons.

New Relationship

Nothing in the treaty will prevent Kitselas from participating in future programs and services or processes that BC develops in regards to improving its relationship with First Nations in BC.

Parks and Protected Areas

Kitselas can propose to create new parks or other protected areas in its traditional territory.

BC will not create new parks or protected areas on Kitselas Lands without Kitselas's permission.

Kitselas may still exercise its rights to hunt and fish in parks and protected areas unless the Final Agreement provides otherwise. (For example, unless there was a protective measure in place for an endangered species. See the Wildlife chapter.)

Kitselas can still gather plants in parks and protected areas.

BC will consult with Kitselas if a new park or protected area in the traditional territory is going to affect Kitselas's various rights, including hunting and fishing.

National Park and National Marine Conservation Area Establishment

Canada will consult with Kitselas prior to establishing a National Park in the Kitselas Area.

Questions and Answers

Q: What is the difference between a park and protected area?

A: ‘Protected areas’ refers to some of the different conservancies that are created to help protect different habitat for animals or protect special kinds of trees or plants. Legally, they are similar. Parks are, of course, often used for a variety of recreational purposes as well, which would normally not be allowed wherever they are trying to protect something.

Chapter 15

Gathering

Chapter Summary

This chapter ensures that Kitselas’s right to gather plants and various other items continues, including medicinal plants, berries, mushrooms, cedar boughs, and others. Kitselas’s right to gather will not be extinguished and will be constitutionally protected under the treaty.

Note – Again, this chapter, like the Wildlife Chapter and Migratory Birds Chapter, establishes a right that Kitselas will continue to have throughout its traditional territory. It is subject to many of the same benefits and the same few limitations as these other treaty rights. Please see the Wildlife Chapter for details, and only differences from the Wildlife Chapter will be provided below.

Gathering Rights

Kitselas will have the right to gather plants and this will only be limited by conservation concerns or health and safety concerns.

The parties will negotiate during Final Agreement the details in regards to harvesting logs for domestic use, such as for building household items or for firewood.

Gathering Information

Prior to the treaty, Kitselas will provide information to BC in regards to what sort of plants it gathers.

Kitselas and BC can enter into an agreement to share information about the kinds of plants that are gathered.

If there is not an agreement in place to share information, BC can request information from Kitselas about the plants it is gathering.

Questions and Answers

Q: Does this chapter cover wild berries or mushrooms?

A: Yes, berry bushes are technically a plant, and so any reference to plants includes berries. The AIP also defines plants to include fungi, which includes mushrooms.

Q: Can we sell berries or mushrooms?

A: Just like things are now, you can sell berries or mushrooms in accordance with federal and provincial laws, and currently there are no laws that prevent the sale of wild berries. If BC ever does decide to regulate the sale of wild berries, Kitselas would still have the right to gather for yourself and to trade among other Aboriginal people, but you would have to abide by the new law if you wanted to sell to non-Aboriginal people.

Chapter 16

Self-Government

Chapter Summary

This chapter provides Kitselas with self-government and allows Kitselas to create its own laws for a variety of subject matters, including education, child care, and family and social services. This chapter also sets out what will be contained within a Kitselas Constitution, which will define the structure of the Kitselas government, the process for elections, and provide various protections to Kitselas members. Federal and provincial laws will continue to apply on Kitselas Lands, and if Kitselas does not want to pass a bunch of new laws, it can simply continue to use federal and provincial laws.

General

Kitselas will have the right to self-government and to pass laws as set out in the treaty.

If it would prefer, Kitselas can adopt Federal or Provincial laws instead of pass its own laws.

Legal Status and Capacity

Kitselas will be a legal entity, meaning it can enter into contracts and agreements. It can own land or other things, and it can sue or be sued.

Delegation

Kitselas can delegate its authorities to a variety of other organizations. It could create its own institutions or corporations to handle specific matters, like its own crown corporations for example. It can also ask another government to help manage matters, including other First Nation governments if it wants to cooperate with another organization to save costs.

Structure

The structure of the Kitselas government after treaty will be determined by Kitselas and set out in its own constitution.

Kitselas Constitution

Kitselas will make its own Constitution as follows. The Kitselas Constitution must:

- Be mostly democratic (Hereditary Chiefs could be included as long as the majority of representatives are elected)
- Setup a process for Kitselas to pass laws (Canada and BC for example have a process for a bill to become a law)
- Establish a process for someone to challenge the validity of a law
- Setup a process for an election which must occur at least every 5 years
- Establish financial standards to ensure accountability to members
- Provide for the protection of member's rights
- Setout how the Constitution can be amended

Appeal and Review of Administrative Decisions

Kitselas can setup its own process to hear official complaints about Kitselas's laws.

If a Kitselas member is not satisfied with Kitselas's review of his or her complaint, the member can try to appeal to the Supreme Court of British Columbia.

Registry of Laws

The Kitselas government will have to make its laws available to the public, including Kitselas members, Canada, and BC.

Notification of Provincial Legislation

BC will notify Kitselas if it is considering new laws that could affect Kitselas's rights or law-making abilities.

If Kitselas requests it in writing, BC will meet with Kitselas regarding BC's new law.

Authorities

Kitselas's law-making abilities will be allowed to evolve over time.

Kitselas Government

Kitselas can make laws about the operation of its government. It can also establish different institutions or corporations (like a crown corporations or an economic development corporation), along with laws about how those institutions will operate.

Citizenship

Kitselas can make laws about its own citizenship. However, its laws cannot affect Canadian citizenship or Indian status.

Devolution of Cultural Property

Cultural property could include things like carvings, artwork, jewelry or anything else owned by someone that is of cultural significance to Kitselas. Ones that formerly belonged to a chief or a clan could be of even more significance.

Kitselas can make laws in regards to transferring these items, which would include when these items are sold or given in a will.

Peace, Order and Public Safety

Kitselas will be able to make laws in regards to nuisance, trespass, or any other threats to public safety

Emergency Preparedness

Kitselas can make laws in regards to emergencies and declare local emergencies on its own lands.

Regulation of Business

Kitselas can make laws in regards to business activities and business licenses. However, it cannot make laws about the certification of professionals, like doctors and lawyers.

Buildings and Structures

Kitselas can make laws in regards to building standards.

Traffic

Kitselas can make laws about traffic and parking on its lands.

Health

Kitselas can make laws in regards to health services that are provided to their members or provided by Kitselas (if it establishes its own health community office for example).

Kitselas's laws will only apply to the institutions it creates itself.

Aboriginal Healers

Kitselas can make laws about Aboriginal healers and traditional medicine.

Family and Social Services

Kitselas can make laws about family and social services, including housing and income assistance.

If Kitselas wants, Kitselas and BC can enter agreements so Kitselas can take over providing the service.

Child Protection Services

Kitselas can make laws about child protection services (such as the use of foster parents or other group homes for children that need a guardian).

If Kitselas does pass its own laws, they will also have to ensure the safety and well-being of children.

Kitselas will have to work with BC to share information and ensure their systems work well together.

If there is a Kitselas child in an emergency, and Kitselas is not able to help right away, BC can help and transfer things back to Kitselas when Kitselas is ready to take over.

Child Custody

Kitselas can appear in court for any child custody matter (usually divorces that have gone to court), and Kitselas can help advise the judge about any Kitselas laws that might be relevant. The Judge still gets to make the final decision

Adoption

Kitselas can make laws in regards to the adoption of Kitselas children or Kitselas parents who are adopting a child.

Kitselas laws must still ensure the best interests of the child are the most important consideration.

Kitselas laws cannot change that the biological parents of a child still must consent to putting the child up for adoption.

If the biological parents of a child would rather not have Kitselas laws apply to their adoption, they can use BC's laws instead.

BC will consider the cultural identity of the child when placing a Kitselas child with parents.

Child Care

Kitselas can make laws about child care, such as daycare or pre-school.

Language and Culture Education

Kitselas can make laws about the teaching of the Tsimshian culture or the teaching of the Sm'algyn language.

Kindergarten to Grade 12 Education

Kitselas can make laws about any kindergarten, elementary schools, or high schools on Kitselas lands.

Kitselas can make laws in regards to home-schooling.

Post-Secondary Education

Kitselas can make laws about colleges and universities on Kitselas lands if it ever wants to create one on its lands.

Solemnization of Marriages

Kitselas can make laws about marriage ceremonies.

Liquor Control

Kitselas can make laws about liquor, including where it is drunk or sold on Kitselas lands, but provincial laws will prevail if there is a conflict in the laws.

BC will not give any sort of liquor licenses to people or businesses on Kitselas lands unless Kitselas approves.

Liquor must still be obtained through BC's Liquor Distribution Branch.

Administration of Justice

Kitselas can establish penalties, such as fines or jail, for violations of its laws.

The penalties Kitselas imposes cannot exceed those of federal and provincial law for comparable offences.

Kitselas will be responsible itself for enforcing its laws.

Kitselas can establish its own officers to enforce Kitselas laws (like tribal police), but their powers cannot exceed RCMP or police powers, and they cannot carry firearms.

Kitselas can enter agreements with Canada or BC for help enforcing its laws.

Kitselas laws in regards to hunting can be enforced by Conservation Officers.

The Provincial Court of British Columbia will handle charges for violations of Kitselas laws.

Kitselas can enter agreements to have the provincial or federal crown help it prosecute individuals in court.

Kitselas cannot establish its own court, but Kitselas can work with BC to try to establish a court lower than the provincial court to handle some matters related to Kitselas laws.

Kitselas can propose individuals to BC to become Judges or Justices of the Peace.

Anyone that tries to sue or get any sort of court order against Kitselas will have to do so in the Supreme Court of British Columbia.

Kitselas Government Liability

Kitselas's elected leaders, and the people who work for them, will have many of the same protections as other politicians, meaning they cannot be sued for things where they were doing the best they can to fulfill their duties as a leader.

If Kitselas's elected leader does very poor work or is intentionally bad, they can still be sued.

The same is also true for Kitselas's various high level employees who will work for its government, managers for example. As long as they are just trying to do their job the best they can, they cannot be sued. If they do very poor work or are intentionally bad, they can be sued.

Kitselas government can still be sued if they turn a blind-eye to employees who are behaving dangerously (employees who drink and drive for example).

If someone is trying to sue the Kitselas government, the Kitselas government should be treated by the courts like a municipality.

Non-Member Representation

People who are not Kitselas but live on Kitselas lands, non-Aboriginal spouses for example, will be allowed to participate in decision-making processes that will affect them.

Transitional Provisions

The Chief & Council that are in office on the day the treaty becomes effective will continue as the treaty government until Kitselas has time to hold an election.

Law-Making by Kitselas Government

Before passing certain new laws, Kitselas will notify Canada and BC.

Local Government & School District Relationships

During Final Agreement, the parties will sort out details about Kitselas's relationship with the City of Terrace and the Regional Districts in Kitselas's traditional territory.

Questions and Answers

Q: Will our leadership be less accountable to us after treaty?

A: No. After treaty, your Kitselas government will be more accountable to you than ever before. The Kitselas government and the laws it passes will all be required to conform with the Charter of Rights and Freedoms, and Kitselas will be able to make its own Constitution that sets out how elected leaders will be accountable to members.

Q: Will Kitselas have the ability to manage all of this?

A: Kitselas only has to take on the things that it feels that it can handle. If Kitselas leadership would rather continue to let the federal and provincial laws apply, they can.

Q: What limits will there be on Kitselas government's ability to pass laws?

A: The treaty provides a number of limitations itself. For example, most law-making abilities are limited to Kitselas people and Kitselas lands. There are also some subjects, such as child protection, where the parties have agreed that Kitselas's laws will be consistent with provincial standards or better. Kitselas's laws will also have to conform with the Charter of Rights and Freedoms, meaning if they discriminate against certain individuals unfairly, those individuals can challenge Kitselas in court. Finally, Kitselas's laws must also conform with the Kitselas Constitution, which will include a process for passing laws that will ensure community input.

Q: Can Kitselas make laws that apply to non-Aboriginals or other lands?

A: No, generally not. Some laws would apply to anyone on Kitselas lands and some laws would apply to Kitselas members even off of Kitselas Lands, but much of the law-making is limited to Kitselas members on Kitselas Lands. The parties generally negotiate that Kitselas can make laws in regards to matters that are internal to them. Canada protects matters that are of national interest, like the criminal code, international law and national defence, and BC protects matters that it feels can go beyond internal matters, like divorce law.

Q: What will happen if Kitselas laws are different from federal or provincial laws?

A: The Final Agreement always sets out which laws will have priority in the event of a conflict. Laws in regards to the conflict of laws are a bit complicated. Generally, it is not

enough for the laws to be simply different. The laws usually have to be completely incompatible with one another for the Courts to say the laws are in conflict.

Chapter 17

Indian Act Transition

Chapter Summary

This chapter sets out how Kitselas will transition from being a band under the *Indian Act* to being self-governing under treaty. This includes transferring various assets and money from Canada to Kitselas and determining what will happen to the band's various by-laws.

If someone dies just before the treaty becomes effective, the *Indian Act* will apply to their estate until their estate is settled.

Canada will try to warn Kitselas members who have registered a will with Aboriginal Affairs and Northern Development Canada (AANDC formerly INAC), to let them know that they may need to re-do their wills so that the will is consistent with the treaty.

If someone does not have the capacity to take care of himself or herself (for example, someone with a significant mental health issue), and AANDC is currently helping to take care of that person, then AANDC will continue to take care of him or her after the treaty for as long as necessary.

If AANDC is administering property for a child who is under age, AANDC can continue to do so under the *Indian Act* for as long as necessary.

Continuation of *Indian Act* and Land Code Bylaws

The band's by-laws will continue for a bit of time after the treaty, but then if Kitselas wants the by-law to continue, it will have to pass a new similar law under the treaty.

Transfer of Band Assets

Canada will transfer various assets to the Kitselas government. This includes things like the band's money, office buildings, and office equipment.

Questions and Answers

Q: Why do people have to re-do their wills?

A: There will be some differences in regards to the law and wills before and after treaty. To be safe, it is best if people re-do their wills and consider the treaty, so they can be sure their wishes are still fulfilled when they die.

Q: Why does the band have to re-do their by-laws?

A: Similarly, it is best that the new Kitselas government look at existing by-laws and

consider how the treaty might affect those by-laws. Some by-laws may not make sense post-treaty, and it is best if Kitselas's government considers that.

Q: Does Canada really own the band's money, buildings, and office equipment right now?

A: Yes. Under the *Indian Act*, a band does not own these things themselves. AANDC owns them for the benefit of the band.

Chapter 18

Capital Transfer and Loan Repayment

Chapter Summary

The Capital Transfer chapter provides a cash payment of 34.7 million dollars to Kitselas. This money will not affect funding for regular programs and services, such as health and education. Kitselas will be able to use this money for economic development or however its membership decides.

Kitselas will receive 34.7 million dollars from Canada.

The parties will determine a schedule of payments for the money (often over about 10 years).

The parties will use a formula to determine how things such as inflation will affect the payments.

The parties will determine how much Kitselas has had to borrow to negotiate the treaty (this is currently approximately 5 million dollars).

When everyone figures out how much Kitselas owes in the end, the parties will work out a payment schedule and deduct those payments from the capital transfer.

During Final Agreement, the parties will negotiate resource revenue sharing.

Questions and Answers

Q: The cost of negotiating the treaty will come out of the amount we receive for the treaty?

A: Yes. In this case, Kitselas will still receive 34.7 million dollars minus the negotiation loan. Kitselas will also probably receive more capital transfer during Final Agreement.

Q: How come it cost 5 million dollars to negotiate the treaty?

A: Five million dollars is actually quite a bit less than other First Nations have spent negotiating a treaty. Kitselas has been able to save money during negotiations by working with Kitselas and the other Tsimshian nations. The negotiations are very complex and inevitably rely on various experts. The negotiations also inevitably require a fair amount of travel because BC is based in Victoria and Canada in Vancouver.

Q: What is resource revenue sharing?

A: It means that Kitselas will get a share of revenues anytime a company harvests resources in Kitselas's traditional territory. For example, if a company harvests logs in the territory, BC will have pay Kitselas a share of the revenues. On Kitselas Lands, Kitselas will own all of those resources itself and not just a share.

Chapter 19

Fiscal Relations

Chapter Summary

After treaty, Kitselas will still receive on-going funding from Canada for Kitselas's government and the programs and services it provides. This chapter will set out the basic funding relationship between Kitselas and Canada, and another agreement that goes with the treaty, called a Fiscal Financing Agreement, will provide specific dollar amounts that Kitselas will receive. The Fiscal Financing Agreement will usually be updated every five years based on any new programs and services Kitselas is providing.

Kitselas, Canada, and BC all acknowledge they have a role to play in supporting the Kitselas government and the services it provides to its community.

Canada and Kitselas will negotiate the details of their funding relationship during Final Agreement.

Questions and Answers

Q: Why are specific dollar amounts in a separate agreement?

A: The treaty is meant to last forever and cannot be easily amended. It is better for Kitselas and Canada to maintain flexibility and allow the funding to be adjusted every few years. This will allow the funding amount to reflect changes in inflation, the Kitselas population, or to various costs, and it will allow Kitselas to take on new programs and services and obtain funding for those.

Q: Will our health or education benefits be affected by the treaty?

A: No, Canada will still keep track of who qualifies for status, and they will continue to administer your extended health and your funding for education. Those will not be affected. Someday, if Kitselas decides as a whole that it would like to enhance these programs through treaty, they could.

Chapter 20

Taxation

Chapter Summary

This chapter sets out what will change in regards to taxation for Kitselas after treaty. The tax exemption enjoyed under the *Indian Act* will eventually be phased out for Kitselas members. Kitselas will be able generate its own revenues from taxation, enhancing their programs and services and becoming more independent from Canada. Kitselas, Canada, and BC will have to work together to ensure their different tax systems are not having unfair results.

If it wants to, Kitselas can tax its members on Kitselas Lands to generate revenues for the Kitselas government.

Kitselas can work with Canada or BC to setup taxes of non-Members on Kitselas Lands.

Kitselas will work with Canada and BC to coordinate their efforts in regards to taxation, for example, to make sure the different systems are not having unfair results.

During Final Agreement, Kitselas and BC will work out details in regards to property taxes for people who own their homes on Kitselas Lands.

Kitselas can establish penalties for anyone that breaks a Kitselas tax law.

The Kitselas government will not have to pay taxes for the lands it owns unless it develops the lands. If it develops lands for the community, like office buildings, community buildings, housing for members, or public utilities, it will not have to pay taxes for those developments. If it develops lands to take advantage of natural resources, such forests or fisheries, it will not have to pay taxes.

If Kitselas sells some of its land and makes money on the sale, the money it makes will not be taxable.

All the different assets that AANDC will transfer Kitselas, like the band's money and band office, will not be taxable.

During Final Agreement, the parties will negotiate the details in regards to phasing out the tax exemption under the *Indian Act*.

During Final Agreement, the parties will negotiate a Tax Treatment Agreement, which will provide details about taxation and Kitselas's business operations (Other treaty First Nations have negotiated so that businesses owned by them are not affected by taxation).

Questions and Answers

Q: Many of Kitselas's members are low-income families or elders on pensions. How can we expect them to pay taxes?

A: Even though the tax exemption will no longer apply after treaty, low-income families

and pensioners are more likely to benefit from taxation and will not suffer from it. Income tax is designed to have higher tax rates for people with high income. Low income families will have to pay little to nothing for income taxes unless they start to earn more money. In regards to property taxes, Kitselas can use Social Housing models and Home Owner Grants to ensure low-income families and pensioners do not have to pay for property taxes that they cannot afford. Low-income families will also be eligible for sales tax credits. Because tax revenues will go back to the Kitselas government, the government will have more money to put into the programs and services that help those same people, like social assistance or old age security.

Q: How will businesses be affected?

A: Most businesses will not be affected by the changes. Those businesses and corporations owned by Kitselas will continue to be exempt from taxation through the Tax Treatment Agreement. Corporations owned by anybody other than Kitselas already have to pay taxes and will continue to do so.

Q: Can I see some numbers related to this?

A: The Kitselas Treaty office has a variety of materials available in regards to taxation, including some sample numbers. Please feel free to contact the Treaty office for more information.

Chapter 21

Culture and Heritage

The Culture and Heritage chapter guarantees Kitselas's right to practice its culture and speak its Sm'algyx language. It provides Kitselas law-making in regards to cultural objects and sacred sites. This chapter will also return a number of Kitselas artifacts that are being held by Canada and BC to Kitselas and give Kitselas access to other artifacts.

Kitselas has the right to practice its culture and speak its language.

Canada and BC acknowledge the importance of Kitselas objects that are being held by Canada and BC in its museums.

Kitselas will be able to make laws in regards to cultural objects, important sites, and any ancient human remains that might be found on Kitselas Lands.

Kitselas will provide information to BC about the cultural laws it passes.

If Kitselas makes laws about important sites, BC's laws will no longer apply to those sites.

Kitselas will still allow public access to important sites as long that does not cause too much damage to those sites.

For Final Agreement, Canada and BC will provide a list of Kitselas artifacts that it can return to Kitselas.

For Final Agreement, Canada and BC will provide a list of Kitselas and Tsimshian artifacts that Kitselas can access and borrow from Canada and BC.

If Canada or BC have any human remains that is someone of Kitselas ancestry, they will transfer those to Kitselas.

The parties can set out sites in an appendix to become new Heritage Sites under provincial law if they would like to.

Kitselas and BC can give some places traditional Kitselas names.

Questions and Answers

Q: Why doesn't Canada and BC just return everything that might be Kitselas?

A: Sometimes Canada and BC cannot be sure that an object is specifically Kitselas. They may only be able to determine, for example, that it is a Tsimshian object. To be fair to other Tsimshian First Nations, Canada and BC keep those objects and share access to them with all Tsimshian.

Q: Will we be able to change the names of places to give them Sm'algyn names?

A: Yes. Kitselas and BC will determine some traditional names for certain places.

Chapter 22

Dispute Resolution

Summary

The Dispute Resolution chapter sets out a process for resolving any future disputes that may arise between Kitselas, Canada, and BC. The parties rely on the Dispute Resolution chapter throughout the treaty, anytime they think the parties may have to negotiate something else after the treaty is in effect. The process sets out various stages all designed to ensure the parties use the easiest method they can first before resorting to more serious methods. Some of the process is set out in an appendix.

The parties acknowledge their goal is to cooperate and work together to minimize disagreements.

Any time the treaty uses the words "will negotiate and attempt to reach agreement" this chapter will apply.

The parties agree to resolve disputes through stages.

In Stage One, the parties will participate in negotiations together. They will discuss the issue and try to work it out among themselves.

In Stage Two, the parties will use someone to facilitate negotiations. This may include a mediator or other person who can help facilitate more open discussions.

In Stage Three, the parties will use an arbitrator. This will be someone neutral who gets to make a final decision much like a judge. The arbitrator will listen to each of the parties and get the information he or she needs to make a decision. When he or she makes a decision, it will be final except in circumstances where the arbitrator made some kind of error in law. This stage will only be used where the parties have agreed to use it in the treaty.

Stage Four is when the parties take the matter to court. The judge gets the final say. The parties agree to go to the Supreme Court of British Columbia. A party can normally only appeal to a higher court if there is a question of law.

Questions and Answers

Q: Why does a treaty need this chapter?

A: It helps to give the parties some predictability in terms of the process that will be followed for disputes. The process includes things like deadlines and requirements for written notices. This way, the parties will have to be up front with one another and will know what is expected of one another.

Chapter 23

Eligibility & Enrolment

Chapter Summary

The Eligibility and Enrolment Chapter indicates who will be able to be a Kitselas member under the treaty. It sets out what someone has to do to apply to become a member and what the process will be if someone wants to challenge the results of their application.

Eligibility for the treaty is not meant to affect Canadian citizenship or someone's eligibility to be a status Indian.

Eligibility Criteria

Anyone with Kitselas ancestry is eligible, meaning he or she can show that his or her parent, grand-parent, or great-grandparent et cetera, was Kitselas.

Anyone who is a member of the Kitselas Indian Band is eligible (this is meant to capture people who might currently be members but are not of Kitselas ancestry).

Anyone who is a descendent or adopted child of a Kitselas member is eligible.

It will not matter if someone was adopted instead of a biological child, and it will not matter if that person was adopted in accordance with Kitselas custom or legally through BC.

Anyone who is married to a Kitselas member is eligible, whether he or she is aboriginal or not.

Applications for Enrolment

People who are eligible still have to apply for themselves and their children.

It is the responsibility of the person applying, not the Band, to prove that he or she is eligible.

Other Land Claims Agreements

People cannot be in two treaties at the same time, Nisga'a or Kitsumkalum and Kitselas for example.

This section sets out the process for someone to choose which treaty they will belong too if they are eligible to belong to both (someone who is half-Nisga'a and half-Kitselas for example).

Membership in a Band Other than Kitselas

People cannot belong to an Indian Band and Kitselas treaty at the same time.

This section sets out the process for someone to switch to Kitselas from another Band if they happen to be eligible for both (someone who is half-Gitksan and half-Kitselas for example).

The Enrolment Committee

Kitselas will create an Enrolment Committee, and applicants will have to apply to them.

This committee will be initially responsible for deciding who is and who is not eligible for the Kitselas treaty based on the applications they receive.

This committee will notify applicants of their decision.

Enrolment Appeal Board

There will be an Enrolment Appeal Board made of Kitselas representatives and representation from Aboriginal Affairs and Northern Development Canada.

If someone is unhappy with the result from their application to the Enrolment Committee, he or she can appeal to Enrolment Appeal Board.

The decision of the Enrolment Appeal Board will be final, and the person cannot appeal to a court without a good reason (those reasons are set out in this chapter).

Costs

Canada and BC will pay for the costs of the initial enrolment.

Enrolment After the Initial Enrolment Period

After all of the initial work is done, enrolment is entirely up to Kitselas.

Questions and Answers

Q: I am a Bill C-31 Indian or Bill C-3 Indian, will I still be eligible for treaty?

A: Yes. In fact the treaty extends membership much further than the *Indian Act* so that your children and grand-children will be eligible for treaty benefits even if they marry

non-Aboriginal spouses. That would not be the case under the *Indian Act*.

Q: I am married to a Kitselas member, but I am not Kitselas myself, will I be eligible?

A: Yes, you will be eligible.

Q: Will we lose our Indian status?

A: No. Canada will still keep track of who has Indian Status. Under treaty, you will eventually lose your tax exemption, but you will still be eligible for health and education benefits as a status Indian.

Q: If I do not have status but am eligible under the treaty, will I gain status?

A: No. As a Kitselas member under treaty you will have all of the rights under the treaty, which will including hunting, fishing, and voting in elections, but the treaty does not change eligibility for Indian status.

Chapter 24

Implementation

Chapter Summary

The Implementation Chapter sets out what Kitselas, Canada, and BC will do to prepare for Kitselas becoming a self-governing First Nation under treaty. The parties all acknowledge there will be a lot of work to be done and that it will take time and resources to help Kitselas take on its new responsibilities.

As part of treaty, the parties will develop an Implementation Plan setting out everything the parties will need to do during the first 10 years of Kitselas's treaty.

Canada and BC will still be involved during implementation.

The plan will set out who will be responsible for various obligations.

The parties will review the Implementation Plan after 10 years and consider what else needs to be done.

Questions and Answers

Q: Does the Implementation Plan cover the period leading up to the treaty effective date?

A: No, this particular plan is meant to cover after the treaty is in effect. The parties will all be doing a lot of work leading up to the effective date as well.

Chapter 25

Approval of the Agreement-in-Principle

Chapter Summary

This chapter describes the process for determining community acceptance of the AIP.

Kitselas needs some sort of community approval process (Kitselas has decided to have an official vote under the *Indian Act* system).

Canada and BC will have to go through their internal approval processes.

Questions and Answers

Q: What happens if only a small number of voters turn out?

A: The results of the vote will still count for the purposes of AIP.

Q: What percentage of voters must vote yes?

A: 50% +1 voters must vote yes.

Q: Who will handle the vote?

A: An electoral officer with past experience will be hired to oversee the voting process and make sure it is fair.

Q: When will the vote be?

A: Currently, the parties are hoping to hold the vote in February 2013.

Chapter 26

Ratification of the Final Agreement

Chapter Summary

The Ratification of the Final Agreement chapter describes the process for determining whether the community accepts the treaty.

The Final Agreement will be legally binding.

Kitselas must allow anyone who is eligible under the treaty to vote (not just current band members; see the Eligibility and Enrolment Chapter).

The Final Agreement must be done by secret ballot.

The majority of eligible voters must vote yes to the Final Agreement (meaning essentially that anyone who does not vote will count as a no).

Kitselas must also vote to accept their Constitution.

Canada and BC will need approval from their respective Ministers.

Questions and Answers

Q: Will the vote for the Final Agreement be different from the vote for the AIP?

A: Yes. Only band members will be voting for the AIP, but anyone eligible under the treaty will be able to vote for the Final Agreement. This will include a few more people that are not currently in the band. Also, anyone who does not vote for the AIP does not count as a yes or a no. Anyone who does not vote for the Final Agreement will count as a no vote. For example, if the majority of voters do not even show up for the Final Agreement vote, it cannot succeed.

Q: Why do people who do not show up to vote for the Final Agreement count as a no?

A: Because the treaty is so permanent, the parties all want to be sure that the majority of Kitselas people really did want it.