

Tsawwassen Treaty Negotiation  
Intergovernmental Technical Working Group  
May 12, 2004  
Corporation of Delta, Annacis Room  
*Final Draft – June 8, 2004*

**Participants:**

Tsawwassen First Nation: Tanya Corbet, Michelle Baker  
Corporation of Delta: Mayor Jackson, John Dumont  
GVRD: Johnny Carline, Ken Cameron, Marino Piombini  
LMTAC: Councillor Harold Steves (Richmond), Kirstie Pirie, Regan Schlecker  
Canada: Margo Novak, Tanyss Munro  
British Columbia: Ellen Frisch, Mark Atherton  
Sussex Consultants: Tom Reid

**Observers:**

Councillor Vicki Huntington (Corporation of Delta)  
Cheryl Hall, Joan Green, Corporation of Delta  
Isabelle Budke, Treaty Commission  
Debbie Miller, Katzie First Nation  
Maureen Gulyas, Delta Optimist (arrived 11:15)

The meeting commenced at 9:10.

**9:10 Tom Reid of Sussex Consultants** provided a power point presentation in support of the Background Report dated May 12, 2004. It highlighted the similarities and differences between the various land-use planning mechanisms in the Lower Mainland utilizing GVRD, UBC, UEL, Bowen Islands, Corporation of Delta and the Tsawwassen First Nation Land Code as examples. There are a range of local planning processes involving a range of different relationships with the GVRD and the Liveable Region Strategy. Also highlighted was the importance for long-term planning in a regional context beginning with planning efforts through an OCP at the local government level. The majority of consultation between local governments occurs informally. An example of telephone calls between planners was cited.

**9:45 Ken Cameron of GVRD** provided a power point presentation on GVRD relationships with member governments on regional planning and service delivery. Regional Context Statements created by member governments must be consistent with the Livable Region Strategic Plan (LRSP) and be renewed every 5 years. It is GVRD policy that regional services are provided through local municipalities. Residents in a portion of an unincorporated area who desire to receive certain services from GVRD must vote and agree to pay for the service. Only those residing in the area to receive the service (and therefore pay for it) are required to ratify the arrangement. The LRSP was developed prior to the Growth Strategies Act and is currently undergoing review. The LRSP requires acceptance of the GVRD Board, municipalities and the Greater Vancouver Transportation Authority. The LRSP required ratification from all member

governments in 1996 and is therefore very difficult to change. GVRD reviews all applications for service with compliance with the greater LRSP.

The Regional Growth Strategies Regulation provides for a dispute resolution process between local and regional governments when disputes arise from the regional growth strategy. The Minister will resolve the dispute through arbitration as a last resort but this has never been used.

The Greater Vancouver Sewage and Drainage District has a sewage area boundary. Any proposals for sewage connection outside the boundary, requires an extension of the sewage boundary area, which requires approval from the GVSDD. When new sewer trunk lines are constructed, the land/right of way is acquired by the local government which in turn pays for the construction of the trunk line. It is then turned over to the GVSDD which usually owns the lines. In Delta's case, Delta owns the sewer lines. As local governments are responsible for acquisition of the right of way and construction of the sewer trunk (in this example), GVRD may not always be able to provide a service to an unincorporated area when requested. Discussion followed. A recent example of a Richmond rezoning application which required extension of the sewer into a new area was discussed. GVRD distributed a copy of the 1996 Livable Region Strategic Plan.

**10:15 John Dumont of the Corporation of Delta** provided a power point presentation on local government planning processes and explained Delta's zoning and bylaw amendment process. Delta's Official Community Plan was drafted 20 years ago. While changes and updates occur on a regular basis, Delta is undertaking a comprehensive review including consultation as outlined in the Local Government Act. Information on this process is available on Delta's website. Delta indicated that work with neighbouring local governments on land-use planning matters occurs on an informal basis, planner to planner. Management of the Scott Road Corridor is an example of regular exchanges between Planning Departments of Delta and Surrey.

**10:40 Tanya Corbet of Tsawwassen First Nation** discussed the purpose and status of the Tsawwassen Land Code and its implementation. Tsawwassen First Nation ratified the Land Code in November, 2003 and it took effect February 11, 2004. The first land code committee meeting has been scheduled for June to help in the implementation of the land code. Therefore, much of the Code has not been implemented or tested. In summary: Previously land management was with the Department of Indian Affairs and now it rests with Tsawwassen First Nation.

Copies of the three power point presentations were photocopied and distributed to attendees.

Break 10:45 to 11:00

**11:00 Michelle Baker of Tsawwassen First Nation** provided further overview of the Tsawwassen Land Code document (mailed to all participants April 29, 2004). Parts 1 through 4 were reviewed with the IGRTWG. The Land Code is like a skeleton,

providing for authorities and processes that must be further developed. It contains similar authorities to those of local government provided for in the Local Government Act. Tsawwassen First Nation must develop a land use plan within a year. The Land Code Committee will prepare a first draft and present it to the community for feedback. By June all the information from DIAND will be at TFN. Presently TFN is using the First Nation Land Registration System from DIAND. Tom Reid pointed out that much of Tsawwassen's land code provides similar authorities as those provided to local governments, only different terminology is utilized e.g. bylaw and law.

### **1. How does the land-use plan relate to the Fletcher Report?**

The Fletcher Report was prepared through a treaty related measure to research how the current Crown land which will become Treaty Settlement Land might be utilized with the present ALR designation. The Land Committee is separate from the treaty negotiation team and once it meets in June, it will determine what is required to complete the first draft land use plan.

Deb Miller from Katzie First Nation pointed out that Katzie First Nation's infrastructure funding continues to flow through the Department of Indian Affairs and knowing future development through a land use plan is a key tool to getting funding through DIAND.

### **2. What is the relationship of the Land Code to the Treaty Negotiation?**

The Land Code was negotiated between Tsawwassen First Nation and the Federal Government. It applies to federal Indian Reserve (Section 91(24) of the *Constitution Act 1982*) land. It is being implemented independently of the treaty negotiation process. The relationship between the Land Code and treaty land provisions is a matter for negotiation and that discussion is still to take place at the treaty table.

### **3. What will happen to the Land Code after a Treaty becomes effective?**

The Land Code only applies to Indian Reserves (land held in trust by Canada as Indian Reserve (Section 91(24) of the *Constitution Act 1982*). After a treaty is effective, there will no longer be an Indian Reserve (the land will no longer be 91(24) *Constitution Act 1982*). After a treaty Tsawwassen First Nation will hold its land in fee-simple (Section 92 *Constitution Act 1982* land.) The Parties are negotiating a separate Land and Land Management component in treaty negotiations.

### **Tsawwassen Land Use Planning (Part 3):**

Discussion regarding the land use planning process and the consultation required by the Land Code ensued including who is a 'member' for land code consultation purposes and how property rights of Spouses (11.1.h) were an issue. Tsawwassen explained that a "member" means a person whose name appears on the Tsawwassen First Nation membership list. Spouses who are not members are involved as community members but not politically.

Delta stated the opinion that similar to local government land use planning processes, the Tsawwassen meetings should be open to non-members residing in the community.

**Additions to Land:**

GVRD and Delta sought clarification on the application of the “Additional Lands” clause (5.2) which provides that the Land Code will apply on lands acquired by Tsawwassen First Nation “by treaty, accretion, purchase or other process”.

Canada and BC stated that the Land Code applies only to the present Indian Reserve identified as Section 91.24 land under the Indian Act. The subject of “Additions to Treaty Settlement Land” (TSL) is a matter for negotiation through the Land Chapter at the treaty negotiation table. Adding land to Treaty Settlement Land means that the First Nation will have governance jurisdiction. There are presently land parcels in the AIP for which governance has not been offered (Beach Grove and Fraser River). These parcels are not contiguous with Tsawwassen’s existing Indian Reserve nor the proposed Crown lands adjacent. BC envisages that there would be criteria associated with evaluating lands proposed to be added to TSL. These are all matters for final agreement negotiations.

Delta queried why the Tsawwassen approach was different from other AIPs. Canada noted that the approach had been to seek certainty for Tsawwassen and governments in the region by defining the area of future land purchase and therefore what lands potentially might be added to TSL. The alternative if no agreement can be reached on an approach, is to return to the model utilized in other AIPs. Generally, the model provides that a First Nation may purchase land in fee simple anywhere in the traditional territory and subject to negotiated terms and conditions may apply to have that land added to their TSL. (This means the First Nation will have governance authorities on the land). This approach also provides that the municipal government in which the property is located must provide their consent. Delta noted their requirement for municipal veto. Delta stated their position regarding no loss of municipal tax base within their boundaries. (See action items). Delta also expressed concerns regarding the potential for TFN to have jurisdiction on lands not contiguous to the reserve. BC explained that contiguity is a factor for consideration.

**Continuation of Lease Agreements on Tsawwassen Lands:**

Delta reiterated the importance of maintaining the terms of the lease agreements between Stahaken lessees and Delta. Delta has long-term planning associated with the leases (which continue until 2084). Canada noted that the replacement tenure documents to lessees would continue their interests as they existed prior to treaty.

**Non-Member Representation:**

Delta noted that residents on Tsawwassen Lands may vote in Delta elections and queried now the voting rights of the people will be protected post-treaty. BC stated that a key component of BC’s treaty approach is that non-members residing on treaty settlement lands, and those with legal interests on treaty settlement lands, have a mechanism to

influence their local government. This is a matter for final agreement negotiation within the context of the Governance negotiations.

**Action Items:**

1. Tsawwassen First Nation will enquire with Chief and Council and Canada will seek further information regarding clause 5.2, the application of the Land Code to lands acquired by Tsawwassen pre-treaty.
2. BC to provide information on BC interests regarding the representation of non-members living on or with a legal interest on Tsawwassen Treaty Settlement Land.
3. Canada to provide an interpretation of clause 15.5 of the Tsawwassen Land Code, regarding “Lands which may not be expropriated”. Does this include municipal property and infrastructure?
4. Participants with further questions regarding the Land Code should forward them in writing to BC (Ellen Frisch) by May 26 for distribution to Tsawwassen and IGRTWG. (None received as of June 7, 2004)

Given the focused agendas of the IGRTWG Workshops, follow-up to the action items will be circulated to participants by email where possible.

Delta distributed a report to the Chief Administrative Officer from the Engineering Department dated May 5, 2004 regarding municipal services capacity in South Delta.

Participants were advised that the next meeting will be June 23, 2004 from 9:00 to 1:00 at GVRD. The topic is regional governance matters as identified in the March 23, 2004 Concept Paper.