Barbara.

Ministry of Aboriginal Affairs

KEY MESSAGES

June 8, 1998

B.C.'s commitment:

- The province has not wavered in our commitment to resolve land claims in B.C.
- We remain committed to resolving land claims through negotiation to ensure we achieve economic and land-use certainty in B.C.
- The majority of First Nation organizations that entered the process are now in substantive negotiations (stage 4). These negotiations could not have moved forward without the province's on-going involvement and approval of framework agreements (stage 3).
- Outside the process, we have clearly made the Nisga'a negotiations a high priority, and our negotiators recently signed an agreement-in-principle to resolve the McLeod Lake specific claim outside the courtroom.
- The province is committed to working with Canada and First Nations to improve the process and fast-track negotiations - this process involves all three parties working in co-operation and partnership.
- We have clearly indicated we will continue working with the other parties to revitalize the treaty process.

If pressed:

- The treaty process requires revitalization in order to allow the treaty tables to continue to move forward and advance through Stage 4 and on to final agreements.
- Treaty tables that are making good progress include the In-Shuck-ch N'Quat'qua (INNQ), Ditidaht/Pachedaht and Kaska Dene tables.

Delgamuukw review process:

- The province remains committed to the tripartite process and is actively working with Canada and First Nations to improve the process and fast-track negotiations.
- The two rounds of meetings in April followed the March 13 commitment by the three principals to undertake a review of the treaty process in light of the Delgamuukw decision.. Items discussed at the meetings included aboriginal and crown title; certainty; capacity building; and, options to fast-track and improve the treaty process.
- From April 27-29, representatives from BC First Nations and senior officials from both BC and Canada met in Vancouver and reached agreement on a package of

recommendations for improving the treaty process. Third parties and local government participated as observers at the session.

- The parties proposed the Agreement for improving and fast-tracking treaty negotiations and agreed to take the proposal back to their respective principals (federal and provincial governments and First Nations' leaders) for consideration and approval.
- After reviewing the Agreement, the First Nations Summit raised some concerns about the recommendations. Subsequently, B.C. had bilateral discussions with the First Nations Summit and federal government, in order to move this process forward.
- This remains a high priority of the provincial government. We encourage First Nations and Canada to support the Agreement.
- If adopted by all parties, the Agreement would move treaty tables through the process more efficiently and expeditiously, and allow us to resolve land claims through negotiation to ensure we achieve economic and land-use certainty in B.C.
- B.C. continues to consult with third parties, and the business community has expressed its support for the province's approach to resolving these issues.

If asked:

- The Agreement is available on request as it has been available to all FN chief negotiators through the FN Summit and was given to the media by the opposition leader.

Delgamuukw review process/bilateral discussions with FN Summit:

- The DM to the Premier's Office and the A/DM of MAA met with the Summit leadership to discuss concerns regarding the Agreement negotiated in April.
- We understand that First Nations are concerned that the proposal for the acceleration of lands, resources and cash negotiations will impose a Yukon-style Umbrella Agreement in BC and force First Nations to give up their legal rights.
- This is not the intention. BC believes that it is in the interests of all parties to find ways to speed up the negotiation process and is seeking agreement on principles at a province-wide level to help facilitate individual negotiations.
- BC views the Agreement negotiated in April as a package, and while we are prepared to clarify the proposal on lands, resources and cash negotiations, any changes may require a re-examination of other elements of the package that deal with aboriginal title, certainty, and capacity-building.
- In terms of next steps, we will report back to our principals on the results of our bilateral meetings with Canada and the Summit, and will seek further direction.

Bilateral discussions with FN Summit, re: consultation:

- The province met with the FN Summit to discuss consultation procedures following the Delgamuukw decision.
- This issue will require further discussions involving both parties.
- The province has clearly indicated its willingness to continue working with Canada and First Nations on the Agreement for improving the treaty process and fast-tracking negotiations.

Delgamuukw review process/bilateral discussions with Canada:

- The province met with the federal government on May 28 to discuss the costs of the proposal to accelerate the treaty process and those arising from the Delgamuukw decision.
- The province is disappointed by the federal response, as Canada appears to be moving away from an earlier commitment to reach agreement on financial issues.
- These issues will require further discussions involving both parties.

Alec Robertson/Treaty Commission:

- The discussions with Canada and First Nations Summit on revitalizing the treaty process are on-going. For this reason, we believed it was more appropriate to consider the full-term appointment of a chief commissioner once the discussions are complete.
- We hope the parties will conclude the Agreement for revitalizing the treaty process by the end of June.
- We met with Alec Robertson and made an offer to him to participate in the revitalization process over the next few weeks.
- Alec Robertson rejected the province's proposal of a short-term appointment.
- His May 20 letter, which he copied to the commissioners, clearly states the "request is unworkable" and that there is "no decision for me to consider regarding my reappointment and I will now return to private life."
- There is no final decision pending on Alec Robertson's future with the Treaty Commission - again, he rejected the province's proposal.
- The *Treaty Commission Act* allows the commissioners to designate an acting chief commissioner in the event of a vacancy. The designated commissioner has all the powers and duties of the chief commissioner, which allows the Commission to continue to function normally.
- The Act requires that within 60 days (following a vacancy) there will be a chief commissioner appointed as a result of unanimous agreement among the parties.
- The province will soon begin discussions with Canada and First Nations on the appointment of a chief commissioner within the 60-days, which is consistent with the timing related to the review process.

Nisga'a negotiations:

- The province is committed to reaching a final agreement with the Nisga'a and Canada.
- The Nisga'a final agreement negotiations are continuing and proceeding well.
- The province's negotiators are not bound by any deadlines to reach an agreement. They will ensure a final agreement is fair, affordable and in the interests of all British Columbians before initialling the agreement.
- The province has conducted extensive consultations with the public and third parties during the Nisga'a process.
- B.C. is committed to ensuring the public is kept informed about the Nisga'a agreement, which will be the first modern treaty in B.C.'s history.
- The Ministry will ensure the public is fully informed, in keeping with the Premier's commitment to further engage the public in the process before a final agreement is sent to the legislature for debate and ratification.

if pressed, re: public info

- The Premier has committed to ensuring that every BC household receives a guide to the Treaty. The government will also make cost-effective use of radio and television to provide the public with information about the Treaty and to let people know where they can get more information.

If asked, re: referendum

- A referendum on the Nisga'a agreement will not work for a number of reasons:

1. treaties are complex and can't be decided with a simple yes or no vote;
2. it negates Canada's role as one of the three parties at the table;
3. referendums are divisive;
4. they come too late in the treaty process since effective consultation with British Columbians begins at the "front end" of negotiations and not the "back end" of the process;
5. a referendum implies that downtown Vancouver with a majority of the population should decide the outcome of treaties that have been negotiated in local or regional communities such as the Nass Valley.

McLeod Lake negotiations:

- On May 1, the negotiators concluded an agreement-in-principle which will: 1) form the basis of a final agreement, and 2) adjourn the litigation pending the final agreement. The negotiations are expected to take one month, during which time the province will consult with third parties.
- We are pleased the negotiations have resumed. The province is seeking a fair and affordable settlement with Canada and the McLeod Lake Indian Band.

- The provincial government believes negotiation and not litigation is the best method of resolving this specific claim.
- An injunction against logging over 22,000 hectares of forest within McLeod Lake's traditional territory has been place since 1988. Settling this historic claim will result in land-use certainty, which benefits third-party interests and taxpayers.

Comparison with Nisga'a:

- The McLeod Lake negotiations involve an adhesion to an existing treaty.
- A comparison of the per-capita land components of the historic Treaty 8 and the modern-day Nisga'a agreement is unfair.
- Treaty 8 was concluded in 1899 and it sets out the amount of land allocated for each band member - 128 acres.

Interior Six Nations Alliance:

- The province remains firmly committed to tripartite negotiations with First Nations and Canada. More than 70 per cent of First Nations in B.C. are represented in the B.C. Treaty Commission process.
- The treaty process is under review by the three parties. We hope to reach agreement on the package of recommendations for revitalizing the process by the end of June.
- The B.C. treaty process is voluntary and open to all First Nations who want to participate in the process. Not all First Nations, including the Interior Six Nations Alliance accept a tripartite process and they want to resolve land claims through negotiations with Canada on a nation-to-nation basis and with the Province on a government-to-government basis. The Interior Six Nations Alliance met on May 8 with federal Minister Stewart to discuss these issues, including the Delgamuukw case.
- It is the province's position that Canada must fulfil its historic obligations and address the concerns of First Nations who do not wish to participate in the tripartite treaty process.
- Members of the Alliance met with Premier Clark May 27 to discuss the court decision and their interests in lands and resources in their traditional territories. The meeting was positive and the Premier agreed to further discussions with senior Ministry staff.

Select Standing Committee:

- The province appreciates the work of the committee and its contribution to a better public understanding of issues involving treaty making in B.C.
- The government said it would listen to British Columbians - and it did.
- The Committee was mandated to: 1) examine the key issues arising out of the Nisga'a AiP as they apply to development of treaties across B.C., and 2) examine how progress can be made towards treaty settlements.

- Beginning in the fall of 1996, the Committee travelled to 27 communities and received nearly 800 written and oral submissions.
- Of the recommendations, 36 have been implemented, 20 are being pursued with the appropriate agencies and 16 will be implemented at the appropriate stage of the treaty process.

NOTE: Responses to questions regarding the minority opinion addendum are attached.

Commercial Recreation Policy:

- We have a standing duty to consult with First Nations and we will respect all of our obligations to engage in meaningful consultation.
- The province will continue to consult with First Nations regarding the potential impacts of any proposed Crown land activities on aboriginal interests.
- The province will consult with First Nations on commercial recreation tenures on an application-by-application basis.
- The First Nations Summit signed an agreement with the Council of Tourism Associations to promote the tourism industry. The province will work closely with First Nations to explore commercial-recreation opportunities that will benefit both aboriginal and non-aboriginal communities.

-30-

Contact:

Peter Smith
Communications Branch
356-8750

Copyright

He is again heard saying

[David McLaughlin]

B.C. Government Offers Land And Cash

(Times-Colonist, Vancouver Sun)

First Nations Outside Treaty Process

(The Vancouver Sun)

Editorial
David Mitchell in The Vancouver Sun, in part:

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DELGAMUUKW

Delgamuukw Not A First Nations Veto

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(Bridge River-Lillooet News)

Understanding Delgamuukw

Copyright

Copyright (The Dawson Creek Mirror)

Negotiate, Not Litigate

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Copyright (Prince Rupert this Week)

Surplus Crown Land Sales Down

Copyright

Copyright (The Interior News)

Brown, Chris V AAF:EX

From: Anderson, Steve X AAF:EX
Posted At: May 8, 1998 11:09 AM
Posted To: Today's News
Conversation: may 8 news
Subject: may 8 news

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TODAY'S NEWS
Ministry of Aboriginal affairs
Ph: 356-8750
Fax: 356-2213
****

DATE: **Friday, May 8, 1998**

PROVINCIAL NEWS/ISSUES

FN SUMMIT'S MATHIAS, PIERRE PLEASED WITH NEW TREAT TALKS:
CKNW RADIO NEWS Thursday, May 7, 1998

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CBC RADIO NEWS Friday, May 8, 1998

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INTERVIEW: JANE STEWART
CBC RADIO NEWS Thursday, May 7, 1998

Page 17 of 95 to/à Page 18 of 95

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REGIONAL NEWS/ISSUES

VANCOUVER ISLAND

no items

NORTHWEST

COURT REJECTS GOVT, MACBLO APPEAL ATTEMPT RE QC LOGGING :
CJFW RADIO NEWS Thursday, May 7, 1998

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FIRST NATIONS SUMMIT

April 24, 1998

The Honourable Jane Stewart
Minister of Indian Affairs
and Northern Development
Ottawa, Ontario K1A 0H4

The Honourable Dale Lovick
Minister of Aboriginal Affairs
Parliament Buildings
Victoria, BC V8V 1X4

Dear Minister Stewart and Minister Lovick:

During the April 14 - 16, 1998 First Nations Summit meeting discussion took place concerning the perceived stalling tactics by the federal and provincial governments in their dealings with First Nations regarding substantive issues, including interim measures agreements.

The First Nations Summit is participating in a tripartite process with the governments of Canada and British Columbia to review the BC treaty process in light of the recent Supreme Court of Canada decision in *Delgamuukw*. It is First Nations' collective view that the federal and provincial governments seem to be using their participation in the joint review process as a pretext for refusing to address substantive issues with individual First Nations in their treaty negotiations. This could be viewed as a breach of the duty to negotiate in good faith.

The First Nations Summit strongly objects to the federal and provincial governments' use of the joint review process of the BC treaty process as a reason to avoid addressing substantive issues, including interim measures, with First Nations in their treaty negotiations.

First Nations in British Columbia have consistently expressed the importance of negotiated interim measures agreements to protect lands and resources within their traditional territories. Further, First Nations strongly recommend that the provincial and federal governments agree to address other substantive issues raised by First Nations in their treaty negotiations without further delay.

We wish to discuss this issue further during our session with your governments' representatives from April 27 - 29, 1998.

Yours truly,
FIRST NATIONS SUMMIT TASK GROUP

Grand Chief Edward John

Chief Joe Mathias

Robert Ladie

cc. Alec Robertson, BCTC
Deputy Minister Scott Serson, Canada
Deputy Minister Jack Ebbels, British Columbia
John Watson, RDG BC Region, INAC

Plaza Tower, Suite #208 - 1999 Marine Drive, North Vancouver, B.C. V7P 3J3 Tel: (604) 990-9939 Fax: (604) 990-9949

FIRST NATIONS SUMMIT

FAX MEMORANDUM

DATE: May 25, 1998

TO: JOE MATHIAS, EDWARD JOHN, ROBERT LOUIE

CC. DANNY WATTS, SOPHIE PIERRE, HERB GEORGE, GEORGE WATTS

FROM: MARILYN TENEESE, EXECUTIVE ASSISTANT

RE: BC's CONSULTATION DOCUMENT

NO. OF PAGES (including cover): 7

---

1. **BC'S "CONSULTATION DOCUMENT".** Attached for your review is BC's "Consultation Document" as provided today by the Ministry of Forests.

   This document along with the Summit's document will be sent to all treaty tables as an information package along with a letter of explanation/background from the Summit office.

Plaza Tower, Suite #208 - 1999 Marine Drive, North Vancouver, B.C. V7P 3J3 Tel: (604) 990-9939 Fax: (604) 990-9949
Email: FNS@istar.ca Internet: http://firstnations-summit.bc.ca/

BRITISH COLUMBIA Ministry of Forests Deputy Minister's Office

MEMORANDUM

May 25, 1998

To: Grand Chief Edward John
Chief Joe Mathias
Robert Louie
First Nations Summit
Suite 208 - 1999 Marine Drive
North Vancouver, British Columbia
V7P 3J3
(By Fax: (604)990-9949)

From: John Allan
Deputy Minister
Ministry of Forests

Re: **Post-Delgamuukw Consultation Discussion Paper**

Attached for your consideration is a draft of the province's discussion paper on post-*Delgamuukw* consultation.

I look forward to our Forestry and Environment Working Committee discussions on May 28, 1998. To confirm the time and location, the meeting will be held at 6:00p.m. on the 4th floor boardroom at 595 Pandora Avenue, in Victoria. Dinner will be provided. Could you please confirm the number of persons attending.

John Allan
Deputy Minister
Ministry of Forests

Attachment

pc: Bob Plecas
Deputy Minister
Premier's Office

Cassie Doyle
Deputy Minister
Ministry of Environment, Lands and Parks

.../2

Philip Steenkamp
A/Deputy Minister
Ministry of Aboriginal Affairs

Discussion Paper: Post *Delgamuukw* Consultation

Prepared for the Forestry and Environment Working Committee
May 25, 1998

Note: This paper is for discussion purposes only by the Forestry and Environment Working Committee. Further discussion and final approval is required by the Deputy Ministers Council. This paper has also been drafted for the purpose of negotiations between the provincial government and the First Nations Summit, and is protected under s. 16 of the *Freedom of Information and Protection of Privacy Act*.

Purpose:

This document is intended to aid the development of a common understanding with regard to an appropriate and meaningful post-Delgamuukw consultation model between First Nations and the provincial government.

It is essential that consultation activities are well defined and carried out with efficiency. The provincial government recognizes the need to refine and streamline the existing consultation process and incorporate the new responsibilities identified in *Delgamuukw*.

The consultation model proposed in this paper is based on an anticipated agreement between First Nations and the province that the effect of land and resource decisions on aboriginal interests will range from virtually no impact to potentially major impact. It would therefore follow that to achieve meaningful and effective land and resource decisions would require the application of a continuum of consultation approaches as identified by the Supreme Court of Canada. This continuum would involve a range of consultation mechanisms from minor notification through to extensive participation.

Context:

The province and First Nations Summit recognize that it is in the best interest of aboriginal and non-aboriginal people to reach an agreement on consultation through honourable and respectful negotiations as opposed to litigation. Therefore, the "Statement on Aboriginal and Crown Title"[1] developed by the First Nations Summit, B.C., and Canada during the April 27-29, 1998 negotiation sessions forms the appropriate starting point for developing a meaningful and mutually acceptable consultation process.

[1] It is acknowledged that the entire "package" negotiated April 27-29, 1998 was rejected by the First Nations Summit, and therefore, the "Statement on Aboriginal and Crown Title" was also rejected as part of the "package". Notwithstanding, the province views the Statement as a useful basis for discussions on consultation.

1. The parties recognize that Aboriginal title exists as a right protected under s. 35 of the *Constitution Act, 1982*.

2. Where Aboriginal title exists in British Columbia, it is a legal interest in land and is a burden on Crown title.

3. Aboriginal title must be understood from both the common law and aboriginal perspective.

4. As acknowledged by the Supreme Court of Canada, aboriginal peoples derive their aboriginal title from their historic occupation, use and possession of their tribal lands.

5. The parties agree that it is in their best interest that aboriginal and Crown interests be reconciled through honourable, respectful and good faith negotiations.

The province holds concerns about the uncertainty created by the lack of treaties and unresolved issues of aboriginal title and rights on the provincial economy. From the First Nations perspective, the alienation of lands and resources prior to treaty settlements is equally troubling.

The Forestry and Environment Working Committee (FEWC) provides the appropriate forum for developing a consultation process that reflects the shared objectives of the parties. Additionally, the provincial government recognizes that consultation is part of a larger process of establishing productive relationships with aboriginal people, which also includes other activities such as treaty, interim measures and informal working arrangements at local levels.

Goals:

It is the province's goal to refine and streamline the existing consultation process and incorporate the new responsibilities identified in *Delgamuukw*, while maintaining the ability to conduct day to day business. This goal will be achieved through the application of the following key objectives:

Key Objectives

- To develop and implement a mutually acceptable consultation process which satisfies the respective needs of the government, First Nations and third parties;
- To respect legal and other obligations and responsibilities to First Nations;
- To promote constructive, creative and honourable relationships between First Nations and the province as opposed to litigation;

- To ensure the allocation and management of land and resources continues to contribute to a healthy economy for all communities;
- To create a consultation process that provides incentive for First Nations participation in early stages of operational decision-making processes, and does not unduly prejudice treaty negotiations;
- To develop a consultation process that makes best use of government and First Nations time and resources;
- To provide a structure that guides the development of more specific working arrangements for consultation at a local level (e.g. consultation protocols) where parties agree such arrangements are necessary.

Refined and Streamlined Consultation:

This concept proposed here is designed to minimize unnecessary drains on First Nations and government resources, and to increase the quality of consultation.

For the past number of years, First Nations have often stated that they are not able to keep up with the volume of referrals sent by the provincial government. First Nations and the province both have a similar concern about the volume of referrals. Provincial ministries often (but not always) do not receive any response from First Nations to referrals, or receive blanket opposition to any development within traditional territories.

In order to address this problem, the FEWC should be able to identify "factors" which could be used to evaluate the extent to which a particular decision, disposition, tenure, activity, etc. will effect an aboriginal interest, and therefore, the extent of consultation necessary. It should also be possible to identify those situations where notification alone, or no consultation, is appropriate.

By refining and streamlining the consultation process, the province and First Nations could focus on quality of consultation instead of quantity. This would enable government staff and First Nations to conduct more meaningful consultation on activities that are particularly critical to both parties.

If this concept is adopted, it will be necessary to modify existing ministry specific consultation procedures to deal specifically with the potential of a proposed activity unjustifiably infringing potential aboriginal title. It is important for First Nations and the province to recognize a continuum of appropriate consultation mechanisms, and use consistent guidelines which allow for the selection of applicable methods according to individual circumstances.

Consultation processes should inform resource managers of the potential infringement of aboriginal rights or title as a result of a proposed development, and enable the resource manager to make a decision with as much information as possible regarding potential aboriginal rights or title. This responsibility cannot be delegated to third parties.

Consultation should be carried out in a timely manner, and should fully inform First Nations of the potential impact of a proposed activity on potential aboriginal rights and title, and provide data in a manageable and understandable format. These processes should be clearly defined to First Nations, along with explanations of how information will be used in decision making.

Federal Responsibility

Given Canada's constitutional responsibility for "Indians and Lands reserved for Indians" under s. 91(24) of the *Constitution Act, 1867*, it is incumbent upon the federal government to assume certain financial liabilities associated with consultation and the requirements of First Nations both strictly monetary and demands on personnel, to participate fully in such processes.

The federal government's responsibility translates into funding for building First Nations capacity to meaningfully participate in consultation processes on provincial land and resource management and decision-making processes.

23500-65/FNSM

Chief Negotiator Baird
cc: TOM ISSAC

Via fax-(604) 990-9949
URGENT AND CONFIDENTIAL

June 5, 1998

Grand Chief Ed John
Chief Joe Mathias
Robert Louie
First Nations Summit Task Group
Plaza Tower, Suite #208 - 1999 Marine Drive
North Vancouver, British Columbia
V7P 3J3

NEGOTIATIONS DIVISION
JUN 10 1998
BC SOUTH TEAM

Dear Grand Chief Ed John, Chief Joe Mathias and Robert Louie:

I am in receipt of your letter of June 2, 1998.

First, let me say that British Columbia is committed to the treaty process, and indeed to an accelerated process for resolving issues; particularly land, resources and cash. Also, we recognize the need to meet with you and the federal government, as often and as regularly as required, to find solutions in a post-Delgamuukw world.

Second, we were very disappointed when the First Nations Summit on May 6, 1998 rejected the Agreement arrived at after six days of hard negotiations.

The Agreement, agreed to on April 29, 1998, stated and I quote:

> "As a result of these discussion, the representatives of the parties agreed to recommend to their respective cabinets/ members for approval as a "package" the attached package of documents that address:
>
> a) Aboriginal title;
> b) Acceleration of negotiations with respect to the land, resources and financial settlement component of treaties;
> c) Certainty; and
> d) Capacity building."

cc: Tom, Carol, Gerry
circ: team

The Agreement may require a fuller explanation in clearer language but its substantive terms are the basis for an accelerated process.

It is clear that the Province has recognized aboriginal title exists in British Columbia. We know that one way to establish where it exists is to litigate; but we know a better way is to find an accelerated land, resource and cash solution which leads to treaties.

Third, the Province made a significant and historic offer during the April 27-29, 1998 negotiating session. As you know, the heart of the Agreement was the land, resource and cash component. Therefore, I was quite puzzled when you stated in your May 22, 1998 letter to the Premier and Minister Lovick that : "Your actions further suggest to First Nations that the government of British Columbia is not as committed to streamlining the treaty negotiation process as it claims." We proposed the solution. We were committed to recommend it to Cabinet in the strongest terms. We had the Premier's and Ministers' support. It was the Summit that rejected the Agreement. Clearly we demonstrated our commitment.

Fourth, I must regretfully inform you that based on our discussions with federal officials in Ottawa on May 28, 1998, it appears to us that they have walked away from the agreements inherent to the Agreement. Very little if any new federal money is contemplated. I attach a copy of Minister Lovick's letter, dated today, to Minister Stewart. I also wish to ensure you understand that we do not wish the federal intransigence to meet their primary responsibility for the costs of land, cash, cash equivalents, third party costs and transition measures stand in the way of future trilateral discussions. We are not looking to stall or sideline our discussions pending long drawn out federal/provincial negotiations.

However, as we all know, each part of the land, resource and cash agreement is integral and inter-dependent on the other. This is the very essence of the deal. The Supreme Court decision in Delgamuukw applies to all of Canada and requires a Canada-wide solution. It is blatantly unfair and un-Canadian to expect any single province's citizens to bear the cost of accelerating land and resources without the Government of Canada accepting the primary responsibility for the costs.

These are issues we wished to review with you at our proposed three party meeting on June 4, 1998. The cancellation of this meeting was not helpful in advancing this issue.

Our next steps, therefore, are to report back to our principals, as we indicated to you we would at our earliest opportunity, which is the week of June 8, 1998. Upon receiving further direction, we will immediately be in touch with you.

We recognize the Summit has a meeting on June 23, 1998 and has unilaterally set a June 30, 1998 deadline for resolution of this next round. We will do everything we can to meet your deadlines and we are certain good progress can be made.

Finally, we remain committed to an early resolution of these issues

Sincerely,

R. S. Plecas
Deputy Minister

Attachment

pc: Scott Serson
Deputy Minister
Department of Indian Affairs

Philip Steenkamp
Acting Deputy Minister
Ministry of Aboriginal Affairs

BRITISH COLUMBIA

June 5, 1998
File No. 60250-20/PROV1-98

Honourable Jane Stewart
Minister of Indian Affairs and Northern Development
House of Commons
Room 583, Confederation Building
Ottawa, Ontario
K1A 0A6

Dear Minister:

My Deputy Minister has briefed me on the May 28th meeting held in Ottawa with federal officials on the costs of the proposal to accelerate the treaty process and those arising from the Supreme Court of Canada's *Delgamuukw* decision. The Province is disappointed by the federal response. Canada appears to be moving away from its earlier commitment to reach an agreement on the financial issues.

B.C. remains strongly committed to negotiating treaties. In keeping with commitments made to Canada and the First Nations Summit at the tripartite meetings held April 27-29, 1998, we are prepared to accelerate lands and resources negotiations. It is essential that Canada now live up to its financial responsibilities. An accelerated process will assist in achieving certainty for all British Columbians.

B.C. fully accepts its responsibilities. We are providing lands and resources, and a generous provincial share of cash for treaty-making, and we continue to dedicate significant resources to consultation and interim agreements with First Nations. Canada needs to provide its fair share. It is B.C.'s view that Canada must assume primary financial responsibility for the following:

- impacts of an accelerated treaty process;
- interim measures costs (land, cash, cash equivalents and third party costs), and any community adjusment funds required.

In addition, B.C. also expects Canada to fulfill its obligations regarding the following costs:

- effective consultation with First Nations to permit the continued management and development of provincial Crown lands and resources;
- building of First Nation capacity for negotiations; and
- any compensation required for infringements of Aboriginal title.

.../2

Ministry of Aboriginal Affairs
Office of the Minister
Mailing Address:
Parliament Buildings
Victoria BC V8V 1X4

If we are to revitalise the treaty process post-*Delgamuukw*, and meet the obligations of *Delgamuukw*, our governments must resolve all cost-sharing matters. Success depends on how the federal government chooses to act. I anxiously await your response to these important issues.

Yours sincerely,

Dale Lovick
Minister

FIRST NATIONS SUMMIT

May 22, 1998

The Honourable Glen Clark
Premier of the Province of BC
Parliament Buildings
Victoria, BC
V8V 1X4

The Honourable Dale Lovick
Minister of Aboriginal Affairs
Parliament Buildings
Victoria, BC
V8V 1X4

Dear Premier Clark and Minister Lovick:

This letter is a follow up to our May 21, 1998 meeting with Bob Plecas and in response to recent public comments by Minister Lovick. It is our view that the political climate surrounding land claims and treaty negotiations creates a deep sense of urgency and uncertainty. We say this for a number of reasons.

First, First Nations in the treaty negotiation process have borrowed approximately $75 million with no agreements so far.

Second, the Supreme Court of Canada has clarified the legal principles involving aboriginal title, yet both Canada and British Columbia argue that it is uncertain where, in this province, aboriginal title exists.

Third, British Columbia continues to proceed with developing new policies to dispose of land and resources at an alarming rate without apparent regard to the massive infringement it causes to the legal aboriginal title interests of First Nations.

Fourth, British Columbia has made it clear that all financial costs arising from the consultation and compensation requirements under *Delgamuukw* must be the responsibility of the federal government. It is our understanding that in a recent letter from Scott Serson to Doug McArthur Canada has rejected British Columbia's position on this.

Fifth, with respect to the "Certainty" document agreed to in the April 1998 tripartite meetings British Columbia has advised it will seek to remove the words in paragraph 3 which acknowledge that neither Canada and British Columbia will require extinguishment or cede, release and surrender provisions in modern day treaties. As well, it is clear from a recent British Columbia position paper that cede, release, and surrender provisions are being advanced by the province. The Chiefs and Tribal leaders of the First Nations Summit have made it absolutely clear that any extinguishment or cede, release and surrender language is not acceptable. First Nations, however, will work with Canada and British Columbia to achieve certainty through other mechanisms.

.../2

Plaza Tower, Suite #208 – 1999 Marine Drive, North Vancouver, B.C. V7P 3J3 Tel: (604) 990-9939 Fax: (604) 990-9949
Email: FNS@istar.ca Internet: http://firstnations-summit.bc.ca/

Sixth, despite Minister Lovick's May 7, 1998 agreement to extend the BC Treaty Commission Chief Commissioner's term for two years, Cabinet has vetoed his decision. We do not disagree that the role of the BC Treaty Commission needs to be reexamined. This does not mean, however, that the term of the Chief Commissioner should not be extended. We seriously question the sincerity and logic of your government's decision to remove Chief Commissioner Alec Robertson at this very critical time in the treaty negotiations process.

Seventh, with respect to British Columbia's position paper on accelerated lands, resources and cash negotiations the Summit Chiefs have reviewed it and feel that British Columbia is pushing for a 'Yukon type' of umbrella agreement which they find unacceptable. In our view the issue here is not one solely accelerating negotiations but one of providing your negotiators with mandates to accelerate land and resource negotiations.

The Supreme Court of Canada in *Delgamuukw* clearly indicates First Nations have aboriginal title to their tribal territories and the legal right to a complete range of uses to resources within these territories. In light of your government's recent initiative to accelerate land and resource dispositions to third parties what are First Nations to do? It is our view this latest manoeuvre on the part of British Columbia will create the appearance of instability. Your actions further suggest to First Nations that the government of British Columbia is not as committed to streamlining the treaty negotiation process as it claims.

This is no time to create instability in the process. Further delay only complicates an already fragile process. This is why we urge, on an immediate and priority basis, the negotiation of land and resources agreements with those First Nations who are now negotiating treaties. Many of these First Nations have indicated their desire to proceed.

Mr. Premier and Mr. Lovick, we strongly recommend that you direct your negotiators to continue these negotiations which were started in April and to come to some agreement by the end of June 1998.

We invite both of you to attend our next First Nations Summit meeting scheduled for June 24 - 26, 1998.

Yours truly,
FIRST NATIONS SUMMIT TASK GROUP

Grand Chief Edward John

Chief Joe Mathias

Robert Louie

cc. The Honourable Jane Stewart, Minister of Indian Affairs

Waldemar Braul
Barrister & Solicitor
645 Fort St., Suite 221
Victoria, BC V8W 1G2
Tel: (250) 388-4232
Fax: (250) 382-9428

Fax Cover Sheet

To:	**Minister Lovick**
Company:	Parliament Buildings
Phone:	phone number
Fax:	356 1124
From:	**Waldemar Braul**
Company:	Waldemar Braul Law Corporation
Phone:	(250) 388-4232
Fax:	(250) 382-9428
Date:	June 11, 1998
Pages including cover page:	3

Comments:

Please see attached letter from the Aboriginal Rights Coalition.

NOTE: This telecopy may be confidential and subject to solicitor/client privilege. If the reader is not the intended recipient or agent thereof, you are hereby notified that any dissemination, distribution or copying of this fax is strictly prohibited. If you have received this fax in error, please notify the sender immediately; we will pay the expense of returning this fax to our office by mail.

Aboriginal Rights Coalition
VICTORIA

A Community Coalition for First Nations Justice

VIA FACSIMILE

June 11, 1998

The Honourable Dale Lovick
Minister of Aboriginal Affairs
Parliament Buildings
Victoria, B.C.

Dear Mr. Minister:

Thank you for meeting with me earlier this week to discuss future treaty negotiations.

As I stated in our meeting, the Aboriginal Rights Coalition (ARC) is closely monitoring the discussions currently underway amongst the First Nations Summit and the federal and provincial governments. We understand that the Summit and both governments have proposed various approaches for re-aligning the treaty process. Having participated in aboriginal issues for the past 25 years, ARC cannot overstate the importance of the current discussions for setting the basis for future relations between First Nations and the Crown.

The current discussions would benefit greatly from a clear statement of the province's intention. Such a statement is long-overdue, even allowing for time to study the *Delgamuukw* decision. The provincial government has since the release of *Delgamuukw* been sending, at best, an ambiguous message to the public, the First Nations Summit and the federal government about its resolve to settle land claims.

We urge the provincial government to clarify its position. The government should state in a clear and forthright fashion that it strongly supports treaty negotiations in the *Delgamuukw* era. Compelling constitutional, social justice and economic reasons point to the need for comprehensive tripartite negotiations. The government should acknowledge that the *Delgamuukw* decision is not something to fear, but serves as a basis for moving towards harmonious relations with First Nations. Nor is the *Delgamuukw* decision an aberration; it is the logical extension of many aboriginal victories at the Supreme Court of Canada for the past 15 years. The provincial government should send a clear message

ARC Victoria
1611 Quadra Street, Victoria, BC V8W 2L5
TEL/FAX (250) 386-8372 • E-MAIL arcbc@vvv.com
WORLD WIDE WEB http://vvv.com/~arcbc/

that it is prepared to implement *Delgamuukw* into its legislation and treaty process.

Such a vision is not a radical departure from general public opinion. As reported in the Vancouver Sun on June 6, 1998, a recent poll found overwhelming public support for resolving claims. The public has, rightfully, come to expect decisive action on settling land claims.

The provincial government's mute response to *Delgamuukw* has provided reactionary media personalities with an unfettered opportunity to engage in all manner of fear mongering and wild speculation about *Delgamuukw* and treaty-making. In an effort to counter the emerging negative media reaction, we entered the fray to present another perspective on *Delgamuukw*. We found that major media outlets were unwilling to publish our letters and op-ed pieces. Our experience in other public education efforts (eg. public lectures), however, found a public which mistrusts the reactionary media personalities. While this public support for treaties is gratifying, we recognize that it can be eroded in the face of a persistent campaign of creating nightmarish scenarios about treaty-making.

PAGE 03

It is time for the government to make a clear and public decision about treaty negotiations. It has two options: it can opt to get in line with the progressive views generally shared by the public, or it can be governed by reactionaries. There are many good reasons – including political ones – for publicly stating your intention to opt for the progressive approach.

We look forward to working with you.

Sincerely,

Waldemar Braul

President

FIRST NATIONS SUMMIT

Via Fax and Mail

June 16, 1998

The Honourable Dale Lovick
Minister of Aboriginal Affairs
Parliament Buildings
Victoria, BC V8V 1X4

Dear Minister Lovick:

Thank you for your letter of June 11, 1998 responding to our May 7, 1998 proposal to you and Minister Jane Stewart to continue our joint review of the treaty negotiation process in light of the Supreme Court of Canada's decision in Delgamuukw. This case provides us all with a unique opportunity to fairly and honourably reconcile Aboriginal title and Crown title through good faith negotiations.

You will recall that on March 13, 1998, we agreed to a list of items to be discussed through a facilitated tripartite process. Unfortunately, due to conflicting schedules, from then to April 30, 1998, we were only able to meet for six days. Not all of the March 13 agenda items were dealt with. Of the four items in our April 30th package, the Chiefs in Summit provided support to the following documents:

- *Statement on Aboriginal and Crown Title*
- *Certainty, and*
- *Capacity Building*

On the fourth issue, Accelerating Land and Resource Negotiations, the First Nations Summit (FNS) advanced this as a key and important issue. We saw the continued alienation of lands and resources by the Province as a distinct and serious threat to our people's Aboriginal title and rights.

Canada, BC and the Summit each tabled a proposal on lands and resources. Only BC's proposal was attached to the April 29, 1998 Action Plan. The FNS document was referenced in the covering note. (A copy of the FNS document is attached for your information.)

We advised both Canada and BC's representatives that we had no mandate to discuss BC's proposal calling for a province wide overarching agreement, but that we would submit this to the Summit leadership for their consideration. Due to the uncertainty, complexity and lack of clarity around BC's proposal, the Summit Chiefs directed that negotiations continue.

Your points of clarification and assessment of Canada's role provides strong grounds for all of us to develop a tripartite proposal for accelerating land, resources and cash negotiations. We agree with you that there is unfinished business. The tripartite process should be reconvened

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Plaza Tower, Suite #208 - 1999 Marine Drive, North Vancouver, B.C. V7P 3J3 Tel: (604) 990-9939 Fax: (604) 990-9949
Email: FNS@istar.ca Internet: http://firstnations-summit.bc.ca/

as soon as possible. Canada agrees with us on this matter. BC needs to join us so that the negotiation of treaties may proceed in a more stable and certain environment.

The Summit leadership has directed its Task Group to continue discussions on the above issue as well as the following:

- Good Faith Negotiations,
- Funding for First Nations negotiations
- Compensation,
- Role of British Columbia Treaty Commission
- Limitation periods

In the meantime, we are extremely concerned about the accelerated rate of land and resource alienation by the Province. The infringement of our peoples' Aboriginal title and rights continues. And with it, the compensation for these infringements continues to rise.

On the issue of consultation, we have for reference Bob Plecas' letter of June 5, 1998 describing our May 28, 1998 meeting as being "...focused on the issue of Aboriginal title." With all due respect, we refer you to Chief Justice Lamer's words: "...Aboriginal title suggests that the fiduciary relationship between the Crown and Aboriginal peoples may be satisfied by the involvement of Aboriginal peoples in decisions taken with respect to their lands. There is always a duty of consultation." (Emphasis added.)

The duty to consult exists because Aboriginal people have Aboriginal rights and Aboriginal title. Our paper on consultation outlines how this consultation is to take place.

In the strongest possible terms, therefore, we support the proposal to reconvene the tripartite discussions so that we may conclude agreements on the issues arising from Delgamuukw.

We are advised that a meeting has been scheduled for June 18 and the First Nations Summit is prepared to attend on that date.

Yours truly,
FIRST NATIONS SUMMIT TASK GROUP

Chief Joe Mathias

Grand Chief Edward John

Robert Louie

attachment

cc: Honourable Jane Stewart

Rec'd 980428

PROPOSED CHANGES TO CANADA'S AND BRITISH COLUMBIA'S POLICIES ON LANDS & RESOURCES WITHIN FIRST NATIONS' TRADITIONAL TERRITORIES

All lands and resources currently under the custodial care of the Federal and Provincial governments and within territories of a First Nation participating in the BCTC process shall be negotiated for the purpose of obtaining a treaty within section 25 and 35 of the Constitution Act, 1982, on the following principles:

1. Aboriginal title is a legal interest in the land and resources including waters, foreshore and all marine resources on and within a First Nations' Traditional Territory;

2. Where there is proposed infringement of Aboriginal Title and Rights within First Nations Traditional Territories, the following actions and principles must be incorporated into the decision making process:
   - First Nations' legal interest and rights must form the cornerstone of planning and decision making;
   - Governments must work with their partners, the First Nations, in land and resource decision-making prior to any involvement of third parties. No third party expectations will be accommodated prior to discussion/negotiations and agreement with First Nations regarding land and resource use including waters, foreshore and marine resources decision making.
   - First Nations must participate in and approve all land and resource use including waters, foreshore and marine resources decisions within their traditional territories.
   - First Nations must participate as partners in the decision-making process;

3. The current consultation system must be modified to reflect First Nations legal interest in the lands and resources, water, foreshore and marine resources within their traditional territory. For example, the current referral system must be redesigned to effect First Nation involvement in the decision making process;

4. First Nations will have immediate access to their lands and resources, waters, foreshore and marine resources within their traditional territories

1. prior to treaty settlements and in a manner which reflects their legal interest in lands and resources, waters, lands and marine resources. This may be achieved through land banking, interim measures, early implementation or accelerated negotiations.

5. First Nations will have the opportunity to acquire additional treaty settlement lands and resources before or after treaty settlements either through negotiation or direct purchase to be added to their settlement lands and resources, waters, foreshore and marine resources;

6. Aboriginal title shall remain on lands and resources, waters, foreshore and marine resources of all the First Nation's territories;

7. Compensation shall be made available where infringement of aboriginal title occurred;

8. The First Nation shall participate in and benefit from royalties and taxation of the lands and resources, waters, foreshore and marine resources within its territories;

9. In order to reconcile titles (Crown and Aboriginal) land and resources, water, foreshore and marine resources use legislation must give effect to First Nation laws in decision-making;

10. All land and resource, water, foreshore and marine resource use referrals must be forwarded to and dealt with by affected treaty tables;

11. First Nations must be sufficiently funded to build their capacity.

I. Implementation

1. First Nations funding for treaty negotiations must be improved to provide for the additional workloads and research requirements associated with an accelerated treaty process.
2. Shares in government corporations used for the purpose of holding and/or disposing of lands should be jointly held by First Nations and governments until the land question has been resolved.
3. A working group of First Nations, Provincial Government and Federal Government officials should be struck immediately to design a new and effective land and resource use decision making process that reflects First Nations legal interest in lands and resources, waters, foreshore and marine resources within their traditional territories. This will include existing processes such as regional and community planning.
4. First Nations should move expeditiously to identify key and strategic lands within their traditional territories. This would allow First Nations and governments to move immediately to interim protection or acquisition of lands. This early identification must not limit a First Nation's ability to acquire additional lands, waters or marine resources for treaty settlements in future negotiations or after the treaty negotiations. The incremental and or accelerated approach to land negotiations may be deployed here.
5. Treaty Tables should immediately strike working groups capable of addressing land use and resource decision making.
6. First Nations, governments and industry should move immediately to improve and develop economic opportunities related to lands and resources, waters, foreshore and marine resources within their traditional territories. This might include sharing of resources, acquisition of TFL's, provision of commercial licenses or other measures that will improve economic opportunities for First Nations.
7. First Nations will have immediate access to funding, expertise and other resources that ensures their capacity to participate effectively in accelerated negotiations, economic opportunities, land and resource planning and other land or resource related activities.
8. The provincial and federal governments should adjust existing legislation where required to reflect First Nations' legal interest in lands and resources, waters, foreshore and marine resources.

FIRST NATIONS SUMMIT

Via Fax (250 387 6073)

June 26, 1998

The Honourable Dale Lovick
Minister of Aboriginal Affairs
Parliament Buildings
Victoria, BC
V8V 1X4

Dear Minister Lovick:

We are writing further to our meeting of June 18, 1998 with your and federal officials and in response to Mr. Steenkamp's letter of June 23, 1998.

The First Nations Summit has directed the Task Group to proceed to negotiate principles to accelerate land, resources and cash negotiations. We agree to meet in early July 1998 to discuss an agenda and a schedule for these negotiations. We reserve the right to bring to these discussions our respective interests and/or positions on lands, resources and cash matters.

In addition, we have been instructed to continue discussions on the following issues:

- Principles for Good Faith Negotiations
- Funding for First Nations negotiations
- Compensation
- Role of BCTC
- Limitation Periods
- Interim Measures
- Consultation

As well, the First Nations Summit also reconfirmed its support for the tripartite documents on Aboriginal and Crown Title, Certainty and Capacity Building.

In providing us with the mandate to resume tripartite discussions, the Summit leadership directed that ongoing treaty negotiations between First Nations, Canada and BC must continue on an urgent and priority basis. The tripartite discussions should not be held out as a reason to delay or frustrate current treaty negotiations.

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Plaza Tower, Suite #208 - 1999 Marine Drive, North Vancouver, B.C. V7P 3J3 Tel: (604) 990-9939 Fax: (604) 990-9949
Email: FNS@istar.ca Internet: http://firstnations-summit.bc.ca/

We look forward to the resumption of the tripartite discussions at the earliest possible date.

Yours truly,
FIRST NATIONS SUMMIT TASK GROUP

Chief Joe Mathias

Grand Chief Edward John

Jennie Jack

cc: The Honourable Jane Stewart, Minister of Indian Affairs and Northern Development
John Watson, RDG, INAC
Philip Steenkamp, A/Deputy Minister of Aboriginal Affairs

MINISTER'S OFFICE

BF July 28/98

MINISTER OF ABORIGINAL AFFAIRS
REFER TO: Dmolma

FAX REC'D: JUN 2 6 1998
MIN98-01835
DRAFT REPLY ☑ FNA ☐ FYI ☐
REPLY DIRECT ☐ FILE ☐

NOTES

Chief Negotiators Barbara

TOM ISAAC

c-ref Dm98-01834

DEPUTY MINISTER'S OFFICE

DEPUTY MINISTER OF ABORIGINAL AFFAIRS

REFER TO:

Regan

JUN 2 6 1998

DRAFT REPLY FOR PREMIER ☐
DRAFT REPLY FOR MINISTER ☒
DRAFT REPLY FOR DEPUTY ☐
REPLY DIRECT ☐
ATTENTION & FILE ☐ copy Patrick + Christie

NOTES

NEGOTIATIONS DIVISION
JUL 3 1998
BC SOUTH TEAM

ADM'S OFFICE

Jose

NOTES

NEGOTIATIONS DIVISION
JUN 3 0 1998
MINISTRY OF
ABORIGINAL AFFAIRS

BRANCH

NOTES

cc: Tom, Carol, Gerry
circ: team

Brown, Chris V AAF:EX

From: Smith, Peter J AAF:EX
Posted At: June 26, 1998 10:47 AM
Posted To: Today's News
Conversation: June 26 news
Subject: June 26 news

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TODAY'S NEWS
Ministry of Aboriginal affairs
Ph: 356-8750
Fax: 356-2213
****

DATE: FRIDAY, JUNE 26, 1998

NOTE: There was no *Today's News* report for Thursday, June 25, 1998

PROVINCIAL NEWS/ISSUES

SUMMIT ELECTIONS:

Vancouver Sun, Page B07, Friday, June 26, 1998

Copyright

Brown, Chris V AAF:EX

From: Steenkamp, Philip AAF:EX
Sent: June 25, 1998 05:09 PM
To: AAF ALL (All Staff)
Subject: Summit Resolution

Great news. The First Nations Summit has passed a resolution supporting the resumption of tripartite negotiations to accelerate lands, resources and cash negotiations.

The Summit has also elected a new task force:

Grand Chief Edward John
Chief Joe Mathias
Jenny Jack

More details to follow.

Philip Steenkamp
A/Deputy Minister

ACTION PLAN FOR REVITALIZING THE TREATY NEGOTIATION PROCESS IN BRITISH COLUBMIA

WITHOUT PREJUDICE

On April 7 – 9 1998, and April 27 – 29, 1998, representatives of British Columbia, Canada, and the First Nations Summit met to discuss issues affecting treaty negotiations in British Columbia arising from the Supreme Court of Canada. Representatives from each of the 49 existing Treaty Negotiation Tables in British Columbia and representatives from third parties and UBCM were invited to observe the discussions at April 27 – 29, 1998 meeting.

Each of the parties brought to these discussions an underlying belief and commitment that it is in the best interests of aboriginal and non-aboriginal people to reach an honorable agreement regarding treaties through good faith negotiations and to reduce the current uncertainty that exists for both aboriginal and non-aboriginal people with respect to treaties.

It is expressly agreed that this action plan, the attached documents, and all matters agreed to therein are without prejudice to the legal rights of each of the parties.

As a result of these discussions, the representatives of the parties agreed to recommend to their respective cabinets/members for approval as a "package" the attached package of documents that address:

(a) Aboriginal title;
(b) Acceleration of negotiations with respect to the land, resources and financial settlement component of treaties;
(c) Certainty; and
(d) Capacity building

In addition to the above documents, a number of other documents were presented and tabled including documents from the FNS dealing with "Proposed Changes to Canada's and British Columbia's Policies on Lands and Resources within First Nations' Traditional Territory" and draft "Principles for Good Faith Negotiations".

The parties clearly understand that if the recommendations dealing with the acceleration of negotiations with respect to lands, resources and cash (i.e. financial settlements) are approved by the federal and provincial governments and the membership of the FNS, British Columbia and Canada agree to work with the proposal and agree to resolve the financial issues contained within it in order to ensure continuing progress in concluding treaties.

The parties further understand and commit that if the proposals for acceleration of land, resources and financial settlement are approved by each of the parties:

(a) The parties shall immediately commence discussions on the Overarching Agreement with the objective of finalizing this agreement within 6 months;

(b) British Columbia and Canada shall immediately commence discussions on addressing/finalizing all of the cost sharing issues raised in the proposal within 6 months. Additionally the federal and provincial governments and FNS will open discussions immediately on other funding issues;

(c) The work currently underway by the BC Deputy Ministers Committee with respect to consultation shall be directed to continue on a priority basis particularly related to streamlining existing processes regarding consultation and interim measures;

(d) Treaty negotiations with respect to those FN's who have entered into framework agreements should continue while the Overarching Agreement is being negotiated.

(e) The parties shall proceed to accelerate capacity building.

In closing the parties wish to reaffirm their commitment to revitalizing the treaty process in British Columbia and achieving economic prosperity for aboriginal and non-aboriginal people.

STATEMENT ON ABORIGINAL AND CROWN TITLE

In reading this statement the following applies;

- It is a political document intended to facilitate the negotiation of treaties.
- It is without prejudice to legal rights or positions.
- Each party will take the statement back to their principals seeking approval.

The parties agree to the negotiation of treaties respecting the following principles:

1 The parties recognize that Aboriginal title exists as a right protected under S35 of the Constitution Act, 1982.

2 Where Aboriginal title exists in British Columbia, it is a legal interest in land and is a burden on crown title.

3 Aboriginal title must be understood from both the common law and aboriginal perspective.

4 As acknowledged by the Supreme Court of Canada, aboriginal peoples derive their aboriginal title from their historic occupation, use and possession of their tribal lands.

5. The parties agree that it is in their best interest that aboriginal and crown interests be reconciled through honorable, respectful and good faith negotiations.

FIRST NATIONS SUMMIT

FILE COPY

March 5, 1998

The Honourable Glen Clark
Premier of British Columbia
Parliament Building
Victoria, British Columbia
V8V 1X4

Dear Premier Clark:

Thank you for meeting with us on March 4, 1998 to discuss matters related to treaty negotiations in light of the new legal reality established in the Supreme Court of Canada decision in *Delgamuukw*. We were most encouraged by your comments during the meeting. We also appreciate the tone and substance of your recent statements in the media.

In our view, the *Delgamuukw* decision is the most significant land related decision in B.C.'s history. The decision affirms Aboriginal peoples' view that Aboriginal title was never extinguished in BC and still exists today.

We wish to reiterate issues raised during our discussion.

1. The government of British Columbia must give top priority within the BC treaty process to land and resource negotiations at treaty tables.

2. We concur that it is in the interest of the province and First Nations to obtain a timely closure in the negotiations leading to a final Nisga'a treaty. We would emphasize, however, that while First Nations support your government's efforts in bringing closure to the Nisga'a negotiations, we fully expect your government to work as diligently in moving decisively in the treaty negotiation process facilitated by the BC Treaty Commission.

3. We agree with your assessment that progress in treaty negotiations has been less than satisfactory to date and that Agreements in Principle should have been signed with some First Nations. Problems which have created the lack of progress to date include the lack of sufficient mandates of the government negotiators and the highly bureaucratic structure within the process.

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Plaza Tower, Suite #208 - 1999 Marine Drive, North Vancouver, B.C. V7P 3J3 Tel: (604) 990-9939 Fax: (604) 990-9949
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4. We are encouraged that you and your Cabinet see the need for the treaty process to be given a high priority. This could be achieved by the appointment of a senior official in your office to deal with this matter on a full time basis.

We wish to emphasize the need for continued dialogue on these important matters. We were encouraged by our discussion yesterday and hope that we continue meeting on a frequent basis. Should you wish to have discussion on these or other matters, please feel free to contact us through our office.

Yours truly,
FIRST NATIONS SUMMIT TASK GROUP

ORIGINAL SIGNED BY:

Grand Chief Edward John

ORIGINAL SIGNED BY:

Robert Louie

ORIGINAL SIGNED BY:

Chief Joe Mathias

Report to the Principals Representatives from the Working Group on Capacity & Capacity Building

Date of meeting: April 24, 1998

In attendance:
Alec Robertson, Chair (BCTC)
Charlene Belleau (Esketemc), by phone
Barbara Gray-Wiksten (BCMAA)
Jeannie Kanakos (FTNO)
Peter Lusztig (BCTC)
Sophie Pierre (Summit), by phone
Miles Richardson (BCTC)
Kathryn Teneese (Summit)
Anna Mathewson, recorder (BCTC)

The Working Group focused on two issues: the meaning of capacity, and; the capacity-building issues and opportunities that the Principals should consider in the post-Delgamuukw treaty environment. The context of accelerated land and resource negotiations was also considered.

Scope
The Working Group recognized that the Principals should address the capacity of all three parties to negotiations. However, it distinguished between First Nation "capacity" and public government capacity.

Capacity for Canada and BC is an issue of commitment to the treaty-making process, in particular the commitment of resources. Furthermore, governments can, given the availability, recruit the requisite skilled people for treaty and consultation purposes from a large and well-established pool of people.

First Nations capacity is generally a longer-term issue. It involves building both structures and skills within less populous First Nation communities. First Nations must increasingly train and rely on their own people to negotiate and implement treaties, and to build new relationships with governments. First Nation capacity issues include human resource development, financial resources, and infrastructure development.

With the above distinction in mind, the Principals need to agree on definitions of capacity so that common language can be used. The definitions in the BCTC System Overload Report may be a starting point for this, and could be expanded upon.

Focus

While recognizing that the capacity of all three parties is relevant, the Working Group agreed that First Nations capacity is a more appropriate, immediate focus for the Principals.

Types of Capacity Needs

The Working Group suggested that First Nations capacity needs range from the immediate to the longer term. Each capacity issue has several key components, including governance, policy, program management, and economic development.

Immediate capacity needs relate to the preparation for the complexities of Stage 4 negotiations. Short-term capacity needs include the capacity to negotiate treaties, and encompass enhanced training and work experience for local First Nations people. Longer term capacity needs include the ability to implement treaties.

Addressing Capacity Needs

Resources are required to address each of these capacity needs. Canada and BC need to discuss their respective responsibilities for funding First Nations capacity building in general. Partnerships will also be useful for addressing some capacity needs.

Much can be learned from other jurisdictions about capacity building. As well, work has begun on a range of capacity-building initiatives within the treaty process. The first phase, dealing with self-assessment, is being coordinated by the BC Treaty Commission and First Nations Summit. In this project, funded by Canada, a joint Capacity Committee has been established. It will oversee the development of tools for First Nations in the treaty process to assess their capacity needs and to devise a human resource development plan to meet these needs.

Self-assessment is phase 1 of a multiphase project. Phase 2 involves an inventory of existing government programs relating to capacity-building, in order to eventually give First Nations a single window through which they can access support for capacity building. Phase 3 is the provision of additional support, including grant funding, for capacity building. Canada could provide this support in keeping with the RCAP Report recommendations.

The above partnership to address capacity building incrementally can be continued and augmented by the Principals. The exercise could also dovetail with the federal Gathering Strength initiative.

FIRST NATIONS SUMMIT

RESOLUTION # 0598.05

SUBJECT: NEGOTIATIONS TO REVITALIZE THE TREATY NEGOTIATION PROCESS

WHEREAS

A. On January 30, 1998 the First Nations Summit Chiefs passed Resolution # 0198.01 (First Nations Summit Strategy Post-Delgamuukw) by consensus directing the First Nations Summit Task Group to negotiate a Province wide Interim Measures Land & Resources Agreement and Province wide principles for Treaty Negotiations.

B. On April 7 - 9, 1998 and April 27 - 29, 1998 representatives of BC, Canada and the First Nations Summit met to discuss issues affecting treaty negotiations in BC arising from the Supreme Court of Canada.

C. As a result of these discussions an **Action Plan for Revitalizing the Treaty Negotiation Process in British Columbia** (the "Package") was developed and it was agreed that the representatives of the Parties would present the Package to their respective cabinet/members.

THEREFORE BE IT RESOLVED

1. That autonomy of each First Nation and each of the negotiation tables is affirmed and will be respected; and that negotiations now underway proceed and Canada/BC honour the *Delgamuukw* SCC decision to negotiate in good faith.

2. That the Chiefs in Summit provide support on the following documents:
   - Statement on Aboriginal and Crown Title
   - Certainty, and
   - Capacity Building

3. The parties each tabled documents that addressed the issues of Accelerating Land & Resources negotiations:
   - Proposed Changes to Canada's and British Columbia's Policies on Lands and Resources Within First Nations' Traditional Territories (First Nations Summit)
   - An Accelerated Approach to Land & Resources for the Treaty Making Process (Canada)
   - BC's proposal for Accelerated Lands, Resources and Cash Negotiations. (BC)

   The Summit Chiefs mandate the Task Group to continue discussions and negotiations on lands and resources including seas and sea resources.

Plaza Tower, Suite #208 - 1999 Marine Drive, North Vancouver, B.C. V7P 3J1 Tel. (604) 990-9939 Fax (604) 990-9949

BRITISH COLUMBIA'S PROPOSAL FOR ACCELERATED LANDS, RESOURCES AND CASH NEGOTIATIONS

Introduction

The current method of negotiating treaties takes too long and is too cumbersome. The First Nations Summit and Canada have called for the acceleration of lands and resources negotiations. BC believes that it is not feasible to separate lands and resources from cash, and would like to advance a proposal to accelerate the lands and resources and cash components of treaties. An accelerated model would have immediate and significant financial implications for the Province of British Columbia, which will need to be adequately addressed by Canada. This proposal is comprised of four parts:

1. Objectives for Accelerated Negotiations
2. Overarching Agreement
3. Table-Specific Negotiations
4. Roles of the Parties

1. Objectives for Accelerated Negotiations

The parties would jointly commit to the following objectives:

- focus on lands/resources and cash only;
- conclude negotiations expeditiously; and
- dedicate adequate and appropriate resources to accelerated negotiations.

2. Overarching Agreement

In order to expedite negotiations and to allow all parties to assess prospects for success, BC, Canada and the First Nations Summit would immediately negotiate a broad, overarching agreement to establish principles for mandates in the following areas:

- interim measures (immediate discussion of criteria);
- parameters for financial settlement;
- parameters for land quantum;
- principles for land selection;
- other resources (to be agreed upon);
- land tenure and administration;
- overlap;
- access;
- land and resource management; and
- certainty.

In addition:

- the parties would discuss and agree on appropriate groupings and boundaries for negotiations;
- the parties will compile a comprehensive lands and resources information set; and
- the federal government will establish and provide new monies for a capacity-building fund for First Nations.

Interim Measures:

Upon completion of the Overarching Agreement, the parties will be in a position to identify lands and resources and other interests which will be subject to agreed upon provisions while negotiations are underway, based on the following understandings:

- the federal government accepts primary responsibility for the costs of land, cash, cash equivalents and third party costs (which would be credited and reconciled between the two governments at the time of treaty pursuant to the Cost-Sharing MOU), and the costs of transition measures, including, if necessary, community adjustment and the impacts on displaced workers; and
- First Nations, Canada and the Province agree to negotiate alternate methods and mechanisms to resolve outstanding issues and problems, rather than through direct action or litigation.

3. Table-Specific Negotiations

Once the Overarching Agreement is finalised, the parties could begin substantive bargaining on an individual or regional basis, as agreed.

To begin and continue negotiations, BC would require that the parties First Nations, Canada and the Province agree to negotiate alternate methods and mechanisms to resolve outstanding issues and problems, rather than through direct action or litigation.

In addition, during negotiations, First Nations would have access to:

- the interim measures process as outlined above; and
- further economic opportunities as determined through the negotiations.

4. Final Agreement on Lands, Resources and Cash

When the final agreement is in place, it is envisioned that there would be:

- resolution of all land use at a broad level;
- assurances of finality with respect to land and resource ownership and management;
- identification of lands where First Nations governance would be paramount;
- identification of lands where the provincial Crown would be paramount;
- finalisation of an economic incentives and opportunities package; and
- agreement on the financial settlement.

5. Roles of the Parties

British Columbia

- To accelerate lands and resources negotiations will require a change in governmental structures in British Columbia;
- BC will reorganise to effectively co-ordinate and manage its participation in the negotiations; and
- BC will streamline the process for internal review and approval of negotiated agreements.

British Columbia Treaty Commission

- The BCTC should be refocused to facilitate, through good faith negotiations, the acceleration of lands, resources and cash negotiations.

Canada

BC requires the following commitments from Canada:

- Canada establishes a fund to build First Nations capacity to negotiate and implement treaties; and

- Canada is solely responsible for funding consultation and compensation required by *Delgamuukw*. These costs are not sharable under the MOU.

Cost-Sharing:

- Canada must confirm its commitment to the Cost-Sharing MOU;

- with respect to interim measures, Canada must accept primary responsibility for associated costs, including land, cash, cash equivalents and third party costs (which would be credited and reconciled between the two governments at the time of treaty pursuant to the Cost-Sharing MOU), and the costs of transition measures, including community adjustment and the impacts on displaced workers; and

- with respect to the accelerated process, Canada must bridge the provincial share of costs that arise prior to the final settlement of treaties.

First Nations

- The accelerated model can accommodate negotiations with either individual First Nations or regional groupings of First Nations, or a mixture of both. BC believes that there are significant benefits in negotiating on a regional basis and that the parties should discuss this issue further.

- First Nations who participate in the accelerated process will settle boundary disputes as a priority item.

- First Nations making acceptable progress at existing negotiating tables or First Nations who choose not to join in the accelerated process may continue negotiations under the current arrangements.

- In cases where First Nations wish to continue existing negotiations during the development of the Overarching Agreement, the federal and provincial governments agree to continue negotiations in good faith.

CERTAINTY -

1. Neither Canada nor BC can unilaterally extinguish Aboriginal rights and title.

2. Neither Canada nor BC requires a First Nation to agree to extinguish or cede, release and surrender as a precondition to entering into treaty negotiations in British Columbia.

3. Canada and BC commit to work with First Nations to find an acceptable mechanism for achieving certainty in treaties that does not involve extinguishment or cede, release and surrender.

TRIPARTITE MEETING
BC/CANADA/FIRST NATIONS SUMMIT

BRITISH COLUMBIA'S POSITIONING

General Positioning

- British Columbia is committed to achieving certainty through a revitalised treaty process.
- Canada has primary responsibility for treaty negotiations, compensation, consultation, capacity building, and other initiatives with respect to aboriginal people.
- The business of the Province must continue unimpeded.

Desired Outcomes

- Canada to recognize its financial responsibility towards First Nations, particularly in the areas of compensation, interim measures, capacity building and consultation.
- First Nations Summit to acknowledge its accountability with respect to any province-wide tripartite process.
- Province to send message to reduce expectations surrounding the impact of *Delgamuukw* on treaty and consultation processes.
- Tripartite process to review the treaty process, in particular issues such as system overload and regional negotiations.
- Tripartite recognition of the ongoing BC/Summit working group to review consultation processes, and Canada's commitment to participate in that working group.
- Tripartite commitment to ensure that the business of the Province continues while these discussions are ongoing.

TRIPARTITE MEETING
BC/CANADA/FIRST NATIONS SUMMIT

BRITISH COLUMBIA'S APPROACH

BC, Canada and the First Nations Summit will be meeting on April 7, 8 and 9 and April 27, 28, and 29 to discuss issues affecting treaty negotiations(including those identified in the BCTC's *System Overload Report* and those arising from the *Delgamuukw* decision). A long list of issues was developed in previous meetings of the Principals (attached as Appendix A). All three parties realize that it will not be possible to canvass all these issues at the first meeting. An environmental scan suggests that the First Nations Summit and Canada will choose to focus on the following issues:

First Nations Summit

Certainty
Interim Measures (Co-management; Consultation; Resource Revenue Sharing)
Acceleration of Lands and Resources Negotiations
Negotiation Funding
Good Faith Negotiations

Canada

Certainty
Consultation
Early Deliverables (Protection Measures; Co-management; Resource Revenue Sharing)
Acceleration of Lands and Resources Negotiations

British Columbia

BC has identified three primary objectives for these meetings, and has used these to establish a list of priority issues for discussion. The objectives are:

- Revitalize the treaty process as the primary vehicle for achieving certainty;
- Establish primary federal responsibility for compensation, consultation and capacity building; and
- Ensure continued economic activity, maintain business confidence and avoid confrontation and unfavourable litigation.

While BC cannot control the agenda of these discussions, it should argue strongly for a focus on those issues which will advance the objectives identified above. Ideally the issues listed below would be discussed in sequence, with markers clearly laid out and a willingness to consider new approaches advantageously employed.

Certainty

In recent months Summit leaders have questioned the concept of, and approach to certainty, while Canada has talked of "generational" certainty.

Recommendation: BC needs to challenge notions of incremental or generational certainty and seek tripartite commitment that certainty, unqualified, is a primary goal of treaty making.

Treaty Process

The genesis for these meetings, pre-*Delgamuukw*, was to identify the problems facing the treaty process and discuss possible solutions.

BC should make this topic -- fixing the treaty process -- a primary focus of discussion. The BCTC's responsibilities must be emphasized and BC should insist on a serious consideration of certain recommendations of the *System Overload* report. Key issues for BC include: the definition of a First Nation (*Delgamuukw* and RCAP suggest some criteria); the readiness of First Nations (i.e. their ability to develop mandates and capacity to negotiate and implement a treaty); the criteria for expediting certain negotiations; and the introduction of a province-wide table and regional tables for the discussion of some issues.

Recommendation: BC should propose a two-stream model for treaty negotiations: 1. expedite negotiations, building on templates where possible, with those First Nations which are ready; 2. focus on building capacity with other First Nations (the Summit and the BCTC should assume a leadership role here, and Canada should provide the necessary funds).

Federal Responsibilities

Recommendation: BC should clearly articulate the argument that Canada is responsible for any compensation which arises with respect to aboriginal title, and must also provide resources for any consultation processes with First Nations on aboriginal rights and title issues. (Insisting on federal responsibility may imply that the federal government has a role in decision-making on resource dispositions and lead to an erosion of jurisdictional authority, as well as inevitable delays for the province. To counter this threat, BC may consider seeking

Canada's endorsement of a jointly-funded consultation regime managed British Columbia, along the lines other harmonized processes such as environmental assessment.)

Land and Resources

One of the major concerns for First Nations is that land is being alienated and resources extracted at a rate and in a manner that will compromise treaty outcomes. BC needs to address these concerns in order to save the treaty process and keep the peace. However, it needs to do so without compromising key economic interests.

Recommendation: BC should demonstrate a willingness to explore new approaches in some areas while maintaining current positions in others. In brief, it is recommended that BC:

- suggest that a **review of the constitutional status of treaty settlement lands** is underway;

- outline in general terms **new mechanisms to protect certain strategic lands** prior to the conclusion of treaties;

- suggest that the Province may consider ordering **no staking reserves** over areas which all parties agree will likely form part of a treaty settlement.

- **lower expectations regarding co-management** (BC wishes to avoid negotiating stand-alone co-management regimes: the role of First Nations in resource management can be addressed through consultation processes and will be negotiated in the treaty);

- note **reservations about resource revenue-sharing** but, indicate a willingness to discuss this topic (some form of revenue sharing with First Nations may help contain pressure for co-management and will encourage First Nations to support continued resource development in their respective traditional territories) ; and

- express a strong interest in **facilitating and promoting joint ventures** with business.

Any costs associated with these land-related initiatives will have to be shared with Canada. Any land-related initiative must be accompanied by a commitment that the First Nation in question will allow the Province to proceed with the disposition or management of other lands.

Consultation

The *Delgamuukw* decision has indicated that where aboriginal title exists, there is a duty to consult with First Nations. Depending on the kind of activity contemplated, this could range from mere consultation to requiring consent. This has increased uncertainty. The Province needs to answer the growing fear that the provincial economy will be stalled as a result of First Nations' responses to *Delgamuukw.*

BC's handling of this issue is critical. If BC does not acknowledge the need to make some changes, the likelihood of injunctions and civil disobedience will increase. On the other hand, if it does not take a clear stand on the issue of aboriginal title and unequivocally confirm its responsibility to make land and resource decisions on Crown lands, it will lose the confidence of the business community with deleterious economic consequences.

Recommendation: BC should lay down some markers regarding aboriginal title and provincial jurisdiction, but also indicate that that it is sensitive to the *Delgamuukw* decision and is willing to continue to discussions with the Summit and Canada to review the approach to consultation. Again, Canada's financial responsibilities should be emphasized.

Certainty in Treaties

- One of the stated major objectives of the Crown in undertaking treaty negotiations with First Nations is to achieve "certainty" and "predictability" with respect to the rights of the Crown and First Nations in lands, resources and governance matters covered by the treaty.

- Uncertainty arises for the Crown because First Nations continue to possess aboriginal rights and, in some cases, aboriginal title, which arose prior to time of European contact, or the assertion of British sovereignty, respectively, and have become common law rights that are recognized and affirmed under s. 35 of the *Constitution Act, 1982*.

- Aboriginal Rights and title at common law are in many cases ill-defined, but the effect of the Constitutional affirmation of such rights is that the Crown must assess the potential impact of Crown-authorized activities on any such rights even where the existence or scope of such rights is unknown – a process involving extensive consultation obligations. Where the aboriginal right in question amounts to aboriginal title, the Crown's obligations become more onerous, and the Crown's ability to convey clear title becomes uncertain.

- Certainty was achieved in past treaties (as well as the modern Northern land claim agreements) by either a full or partial "cede, release and surrender" of aboriginal rights and title in exchange for treaty rights. A "surrender" of rights and title to the Crown results in lands and resources no longer being burdened by those interests, leaving the Crown free to allocate them as it sees fit, subject to the treaty rights to which the parties to the treaty have agreed.

- The Supreme Court of Canada has reaffirmed in *Delgamuukw* v. *The Queen* that a "surrender" of aboriginal title serves to remove from land the burden of the aboriginal interest and the Federal jurisdiction that accompanies it.

- First Nations have taken a strong political stand against "surrender" and are seeking treaty solutions which avoid a surrender of common law rights or title. Unfortunately, the ability to find alternatives to "surrender" such as waiver or on-going consent to infringement is limited by both the inherent nature of aboriginal rights (particularly title) and by the constitutional protection that has been afforded to those rights.

- In the Nisga'a negotiations, the Province has tabled an alternative certainty approach which avoids the offensive terminology of "surrender" but which would secure a release of any common law aboriginal rights and title not reflected (set out) in the treaty. As aboriginal title does not appear in the treaty, it would be released in its entirety under such an approach.

- In the course of these negotiations, the Province and the Nisga'a are exploring whether Federal settlement legislation could, with Nisga'a consent, effect a statutory modification or transformation of Nisga'a common law aboriginal rights and title into the rights set out in the treaty, in both content and geographic application. Uncertainties surrounding this approach may still necessitate requiring the release as a "default" or "fail safe" mechanism, should a Court determine that a "modification" approach is not effective to terminate uncertain common law aboriginal rights and title.

- The fundamentals of this evolving approach are appended in the form of a "certainty summary".

NISGA'A TREATY NEGOTIATIONS

CERTAINTY SUMMARY

1. PREAMBLE

- The Treaty, and the "Section 35 rights" set out in it, are intended to reaffirm the Nisga'a Nation as an aboriginal people of Canada.

- The Parties intend, by the Treaty, to [convert/modify/transform/etc.] the existing aboriginal rights and title of the Nisga'a Nation into the title and rights set out in the Treaty.

2. DEFINITIONS (FOR CERTAINTY PROVISIONS ONLY)

- "Section 35 rights" means those rights, titles and interests, anywhere in Canada, of the Nisga'a Nation, that are rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*.

- "Nisga'a Nation" includes the collectivity, its individual members at any time, and all beneficiaries under the Treaty.

3. EXHAUSTIVE LIST (AIP PARA 25)

- The Treaty will exhaustively set forth all the Section 35 rights of the Nisga'a Nation, including the manner of their exercise, and all the limitations to those rights to which the Parties have agreed.

4. RIGHTS AND TITLE [CONVERTED/MODIFIED/TRANSFORMED/ETC.] INTO TREATY RIGHTS

- The aboriginal rights and title of the Nisga'a Nation, wherever these may have existed in Canada prior to the effective date of the Treaty, are [converted/modified/transformed/etc.] into the Section 35 rights set out in the Treaty.

- The above provision is effective "notwithstanding" any common law rule respecting aboriginal rights; federal legislation will be required to remove any common law rules.

- In the event of a conflict or inconsistency between any common law rule respecting aboriginal rights and the provisions of the Treaty, the provisions of the Treaty will replace the common law rule.

5. FULL AND FINAL SETTLEMENT

- The Treaty will be the full and final settlement between the Parties in respect of the aboriginal rights and title, anywhere in Canada, of the Nisga'a Nation.

6. MUTUAL RELIANCE

- All Parties to the Treaty will be entitled to rely on the validity and enforceability of all provisions of the Treaty.

- Federal and provincial legislation will extend this reliance to other parties.

7. RELEASE OF RIGHTS NOT IN TREATY

- The Nisga'a Nation will release to Canada all the Section 35 rights (if any) of the Nisga'a' Nation which are not set out in the Treaty.

8. RELEASE OF PAST CLAIMS

- The Nisga'a Nation will release Canada and British Columbia from any claims that it may have had prior to the Treaty regarding any interference or infringement of the Nisga'a Nation's Section 35 rights, and any claims under Canada's "specific claims" policy.

9. NON-ASSERTION OF RIGHTS NOT IN TREATY

- The Nisga'a Nation will not assert, claim or seek to exercise any Section 35 rights except for those Section 35 rights set out in the Treaty.

- The Nisga'a Nation will acknowledge that the validity of all tenures, interests, rights, etc. granted or issued by the Crown prior to the effective date is not affected by any aboriginal rights and title of the Nisga'a Nation.

10. FUTURE CONSULTATIONS

- The Nisga'a Nation will agree that the Crown has no consultation obligations respecting the Section 35 rights of the Nisga'a Nation other than those obligations set out in the Treaty.

11. INDEMNITIES FROM NISGA'A NATION

- The Nisga'a Nation will indemnify and save harmless British Columbia and Canada from any and all claims related to the aboriginal rights and title of the Nisga'a as they existed prior to the effective date, and from all claims related to any Section 35 rights released under paragraph 7 above.

- Federal and provincial legislation will provide that other parties can rely on the indemnities set out in this provision.

12. INDEMNITY FROM CANADA

- Canada will indemnify and save harmless British Columbia for all claims related to the Section 35 rights of the Nisga'a Nation released under paragraph 7 above.

- Provincial legislation will provide that other parties can rely on the indemnity set out in this provision.

13. NON-CHALLENGE OF TREATY

- All Parties will agree to not challenge the validity or enforceability of any provision of the Treaty.

14. MUTUAL DEFENSE OF TREATY

- All Parties will agree to defend any challenge to the validity or enforceability of any provision of the Treaty.

15. BREACH

- A breach of the Treaty by any Party will not relieve any other Party from its obligations under the Treaty.

16. BEST EFFORTS TO REMEDY INVALIDITY OR UNENFORCEABILITY

- All Parties will agree that if any provision of the Treaty is found by a court to be invalid or unenforceable, the provision will be severed, and the remainder of the Treaty will be interpreted to give effect to the intent of the Parties.

- In addition, all Parties will agree to make "best efforts" to remedy or replace the invalid or unenforceable provision.

17. REPRESENTATION AND WARRANTY BY NISGA'A NATION

- The Nisga'a Nation will represent and warrant to British Columbia and Canada that it has entered into the Treaty on behalf of all persons who may have Section 35 rights based on their identity as Nisga'a.

18. INTERPRETIVE PROVISIONS

- The Treaty will be the whole agreement between the Parties, and there will be no representation, warranty, collateral agreement or condition affecting the Agreement.

- The Section 35 rights set out in the Treaty will be interpreted solely on the basis of the rights set out in the treaty, without any distinction based on whether the right is a [converted/modified/transformed/etc.] aboriginal right or a new treaty right.

- There will be no presumption that doubtful or ambiguous expressions or terms are to be interpreted in favour of any particular Party or Parties.

- The Parties will agree that a fundamental principle underlying the Treaty is their mutual agreement that aboriginal rights and title are capable of being [converted/modified/transformed/etc.], and that the Treaty and settlement legislation are effective in [converting/modifying/transforming/etc.] the aboriginal rights and title of the Nisga'a Nation into the Section 35 rights set out in the Treaty.

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- Since the establishment of the treaty process in 1993, the Province has consistently raised concerns about manageability and the pace of negotiations.
- In 1991, the BC Claims Task Force Report envisioned approximately 30 First Nation groups participating in the treaty negotiations process, but by late 1993 when the Treaty Commission first started accepting statements of intent from First Nations, it appeared that up to 60 First Nations could be in the process. The Province expressed concerns about its capacity to negotiate and implement treaties with such an increased number of First Nations.
- The Summit was not willing to address the manageability issue at that time and strongly objected to the Province's concerns. BC insisted that its participation in the negotiation funding program was contingent upon the Principals finding ways to address the treaty process issues.
- In 1996, with the number of First Nations in the treaty process approaching 50 and the vast majority of them in the advanced stages of negotiations, the Treaty Commission invited the Principals to address the manageability issue. In 1997, the Treaty Commission presented the Principals with its Report on System Overload, which highlighted the issues of mandates, manageability, pace and First Nation capacity, First Nation indebtedness and the ability of the federal and provincial governments to respond to the number of First Nations in the process. The Commission's recommendations focused on assessing the capacity of First Nations to negotiate and implement treaties and self-government agreements and improving the efficiency of the negotiations process.
- The Principals have still not engaged substantively on the system overload issues, but have agreed that this be addressed as part of the facilitated process on *Delgamuukw*.
- The key provincial objective in discussions with Canada and the Summit is to make the process more effective and efficient. BC wants to revitalize the treaty process through these discussions and secure the commitment of all parties to key changes.
- The treaty process does not need to be completed changed, but streamlined into two streams of activity. Under the first stream, the focus would be on completing treaties and achieving related deliverables. Examples of workable treaty agreements, taken from previous agreements and emerging agreements at lead tables, could be used to streamline the process and lead to an early resolution of common issues. Incentives for First Nations groups in the first stream could include land set asides, interim protection measures and accelerated land and cash negotiations (See Land Related Initiatives). Negotiation funding levels would remain the same and the Treaty Commission would continue to allocate funding. Given the expected accelerated time frames involved, concerns about loan indebtedness would be reduced.
- Under the second stream, the focus would be on capacity building. This would involve a pause in active treaty negotiations during which First Nations could enhance their treaty making skills in order to facilitate streamlined negotiations in the future. Work could occur on issues related to treaties, which could later be used at treaty tables (e.g. resource management studies, traditional use studies, training). Incentives for First Nations to enter the second stream could include some of the Land Related

Initiatives including strategic land set asides, economic development and facilitated joint ventures with third parties (with some government, largely federal, assistance).

- The Province's position would be that funding for capacity building would be entirely a federal responsibility. The Treaty Commission could allocate this funding for consistency. It would be beneficial for the funding to go out in the form of contributions, with existing loans going into suspension (to minimize the risk of default and reduce First Nation indebtedness as a result of length of the time First Nations may spend in this stream of the process). (See Negotiation Funding)
- The Province needs to ensure the Summit commits to addressing treaty process issues in a meaningful way. The Summit and its First Nations have to be involved in determining which First Nation groups are appropriate for treaty-making post-*Delgamuukw* and in finding workable solutions to overlap issues among First Nations.
- The Treaty Commission has to reaffirm its role (both as set out in the Treaty Commission Agreement and in the Treaty Commission legislation) as the keeper of the process. The Commission should be involved in assessing whether claimant First Nations are appropriate groupings for treaties (although this may raise issues of having to prove title etc.) and re-confirming their readiness to negotiate. If First Nations are not ready to engage in active treaty negotiations and need to spend time building capacity, the Treaty Commission should make this assessment. The Commission's recommendations on system overload should be used as guidelines.

Key Messages CONFIDENTIAL DRAFT

- A dramatic revision of the treaty process is not necessary.
- Some key adjustments are required to ensure its functionality to achieve the objective of revitalizing the treaty process.
- Each of the Principals has an important role in revising and refocusing the process.
- We want to streamline the treaty process through this review.
- As we have said before, throwing more money into the process is not a solution in and of itself. What we need is a more efficient and effective process.
- The Province is interested in a revitalized negotiation process that can achieve real deliverables.
- British Columbia is legitimately concerned about First Nation capacity and the growing debt load among First Nations.
- We do not want to develop a whole new system. This would be a costly and time consuming exercise.
- The Province would rather spend its limited resources on negotiating treaties, once key modifications to the treaty process have been agreed to.

CONSTITUTIONAL STATUS OF TREATY SETTLEMENT LANDS

Background

- The Province has long held the position that treaty settlements lands will not be designated section 91(24) lands under the Constitution.
- First Nations have opposed this position.
- Canada is supportive of the provincial position. The federal government may, however, be basing its support on the possibility that a removal of the section 91(24) constitutional status on treaty settlement lands will absolve Canada of financial or fiduciary responsibilities with respect to those lands.
- Originally, the provincial position was intended to resolve a number of concerns and issues which surround the management of Indian reserve lands in the Province. Specifically, removal of the section 91(24) designation would ensure that provincial laws and standards with respect to land and resource management would apply on settlement lands and that the taxation exemption applicable to Indians living on reserve could be removed.
- Since this position was originally put forward, the Province has identified other means of addressing its interests with respect to removal of the 91(24) designation on treaty settlement lands. For instance, the parties to a treaty could agree that certain provincial land and resource management laws or standards will apply on settlement lands. This agreement could be incorporated into treaty provisions.
- In addition, the provincial and federal governments have made it clear that the taxation exemption will be phased out once the treaty is completed. This position is independent of any position with respect to the constitutional status of settlement lands.
- Prior to the decision in *Delgamuukw*, provincial officials had been analyzing the provincial position on the constitutional status of treaty settlement lands in an effort to determine whether a change may be warranted.
- *Delgamuukw* offers the Province a strategic opportunity to further review its current mandate with respect to the constitutional status of treaty settlement lands.
- A change to this mandate would be received extremely positively by First Nations.

Key Messages

- *Delgamuukw* has raised some legal issues with respect to the Province's position on the constitutional status of settlement lands.
- We are currently reviewing our position in light of *Delgamuukw* to determine whether or not a change is warranted.

LAND-RELATED INITIATIVES

Background

- Currently the Province considers interim protection measures only when the parties have reached agreement on the land which is likely to become settlement land. This requires that the parties reach agreement on the land and cash component of the treaty. There are only two circumstances in the Province where the parties have reached this stage in the negotiations: Nisga'a and Sechelt.
- First Nations have criticized this position as inflexible and unresponsive to the needs of the negotiations.
- Circumstances have arisen in British Columbia which suggest that a change in the provincial approach to land-related interim measures may be warranted.
- WLC Developments has a mandate to generate revenues through the sale of Crown lands. First Nations in some areas of the Province have criticized this mandate, claiming that it runs counter to the provincial commitment that land be available for treaty settlements. In many cases, the lands which WLC Developments proposes to sell are parcels which individual First Nations consider strategic or likely candidates for land selection.
- In some circumstances, parties to the negotiations may agree that a particular parcel, for cultural or geographic reasons, will most certainly become part of a settlement package. The Province's current approach to interim protection measures, however, does not allow the Province to protect that parcel until the parties have agreed to all of the settlement land to be included in a land and cash package.
- **Land set asides** have been proposed as a possible method of addressing the concerns of First Nations who are not far along in the negotiating process and who may not be at a land selection stage for some years. A land set aside is simply an agreement by the Province to not sell specified parcels of lands for a period of years. The Province may, however, continue to use that land and benefit from that land until it becomes part of a treaty settlement or, in the event that it is not required for treaty settlement, is disposed of.
- **Interim protection measures** may be expanded to be used for specific strategic parcels where all the parties agree that the parcel in question will no doubt be part of a treaty settlement. An interim protection measure freezes the parcel in time, stopping any new development or activity on that land. Existing activities may continue.
- **No staking reserves** can be ordered by the Minister of Employment and Investment. These reserves do not permit staking for mining claims within a specified geographic area.
- Any land-related initiative must be accompanied by a commitment that the First Nation in question will allow the Province to proceed with the disposition or management of other lands.
- *Delgamuukw* does not legally require any changes to the provincial position on protection measures or other land-related initiatives.

Key Messages CONFIDENTIAL DRAFT

- We are familiar with First Nations concerns surrounding the provincial position with respect to interim protection measures.
- We recognize that in some circumstances, a land-related initiative may ensure that treaty negotiations proceed smoothly.
- In some other situations, land-related initiatives may address a particular First Nation's interests to the extent that other land and resource disposition may occur without that First Nation's objections.
- The Province is currently considering three such initiatives:
  - ◊ land set asides: whereby the Province would agree to not dispose of specific parcels of land. This would provide some comfort to those First Nations who are not far along in the process but who have concerns surrounding the availability of Crown lands for treaty settlements.
  - ◊ interim protection measures over strategic parcels: whereby the Province could agree to protect specified parcels, absent agreement on the full package of land and cash. This would address the concerns of First Nations who are further along in the process and who have identified specific parcels of land which all parties agree will form part of the treaty settlement. This protection would nonetheless occur before the whole package of land and cash has been agreed to by the parties.
  - ◊ no staking reserves: The Province may consider ordering no staking reserves over areas which all parties agree will likely form part of a treaty settlement.
- Any costs associated with these land-related initiatives will have to be shared with Canada.
- We are confident that these land-related initiatives address many of the concerns expressed to us by First Nations, whether they are First Nations who are quite far along in the process, or First Nations for whom the treaty is a long distance away.

- The provincial position to this point has been that First Nations will be able to benefit from the resources contained on treaty settlement land. Revenues from resources extracted off treaty settlement land are unlikely to be shared with First Nations. The reasons include:
  - ◊ Resource revenues are an unstable source of funding for First Nations. A more stable source is through fiscal transfer arrangements, which can be negotiated through the treaty package.
  - ◊ Resource revenue sharing is costly and time-consuming from an administrative perspective.
  - ◊ There is considerable risk inherent in depending on resource revenues to provide a significant portion of a government's revenue base due to the variability in demand and supply of resources and market prices.
  - ◊ Administrative mechanisms for a revenue sharing arrangement will add to or duplicate those established for the fiscal transfer arrangement.
  - ◊ Canada has the primary responsibility to fund First Nation government operations.
  - ◊ Given the uneven geographic distribution and volatility and unpredictability of some resources, sharing resource revenues with First Nations carries the potential to introduce significant inequities in the treaty process.
- The mandate on resource revenues could only change if these interests and concerns could be met through some other avenue.
- This approach to resource revenue sharing in treaties does not preclude the Province, third parties and First Nations from entering into workable, pragmatic arrangements outside of treaties to address First Nations' desire to benefit from resource developments within their traditional territory.
- The Province could consider resource revenue sharing in treaties, but only after considering how to meet provincial interests and concerns. Included in these considerations would be how the inclusion of resource revenues in treaties would be cost-shared with Canada. Under the current MOU, there are two possible approaches: treating resource revenues as a one-time contribution and receiving the net present value at the time of treaty, or treating resource revenues as ongoing contributions and receiving credit towards self-government government obligations. While the cost-sharing of self-government has not yet been negotiated with Canada, it appears that this approach may be more financially advantageous for BC.
- If provincial resource revenues are to be included in treaties, BC will require trade-offs from First Nations, including relief from demands for co-management of Crown lands.
- Finally, if the Province changes its approach on resource revenue sharing, consideration could be given to how this may be treated in the context of interim measures, including setting up trusts to deposit resource revenues from specific parcels while negotiations proceed.

- Key Messages

- BC's position on the sharing of resource revenues in treaties is known. Any changes to that position would have to be considered in light of the package of recommendations under development in this process.

CONSULTATION

Background:

- In recent years, provincial consultations with First Nations have been guided by the "Crown Lands Activities and Aboriginal Rights Policy Framework". Each ministry has tailored the policy framework to the ministry's specific operational needs. The result has been various inconsistent consultation models across government.
- Prior to Delgamuukw, in order to address First Nations frustrations with the existing consultation processes, the province agreed under the BC/First Nations Summit Policy Tables to establish a technical working group on referrals. The working group has developed a list of interests (some shared, some separate); however, it is evident that the Summits expectation of this process is a re-engineering of consultation procedures, while the province's expectation is to make adjustments to the existing consultation procedures.
- The December 11, 1997 Supreme Court of Canada (SCC) decision on Delgamuukw introduced the concept of aboriginal title in British Columbia. The key legal points are:
    - aboriginal title was not proven through the SCC decision, and further, aboriginal title has not been proven anywhere is British Columbia;
    - the burden of proof of aboriginal title is upon First Nations;
    - there is a duty on government to consult with First Nations regarding infringement;
    - the duty to consult will vary with specific circumstances, and which must be done in good faith;
    - infringement of aboriginal title may necessitate compensation; and
    - only Canada can accept a surrender of aboriginal title, or extinguish aboriginal title.
- Generally, First Nations view the Delgamuukw decision as proving that they have aboriginal title throughout their traditional territories. As a result of these high expectations, First Nations are demanding that they be given decision-making authority over land and resource decisions. First Nations are also demanding fundamental changes to the province's consultation procedures and interim protection measures on Crown lands prior to the development of new procedures and changes to the treaty process.
- The Deputy Ministers Steering Committee on Delgamuukw identified a need to provide front line staff with at least some interim direction for consultations with First Nations. The Steering Committee has agreed that any consideration of aboriginal titles should be integrated into existing aboriginal rights consultation process (i.e., no desire to develop a new and separate process for title).
- Initial adjustments will be guided by the following operational principles:
    - individual claims of aboriginal title will not be assumed;
    - First Nations have the onus to establish aboriginal title

  - the provincial government maintains its responsibility to make land and resource decisions on all Crown lands;
  - the province will seek to maximize federal contributions to the costs of consultation and compensation; and
  - any infringement of aboriginal title must be justifiable.
- Based on the above principles, it is important that staff do not, explicitly or implicitly, verify aboriginal title through consultations or when making operational decisions.
- Attached are the draft operational principles which have been approved in principle by the Deputy Ministers Steering Committee on Delgamuukw.

Key Messages

- While the court clearly identified the concept of aboriginal title in British Columbia, the court did not grant aboriginal title.
- Individual claims of aboriginal title will not be assumed to be proven (Note - federal government has been very clear on this point as well).
- The burden of proof of aboriginal title is on First Nations.
- This is not to suggest that we will ignore the concept of title until proven. Clearly the court indicated that we have a duty to consult, and in some cases, we may require First Nations consent.
- Nothing in the courts decision takes away from our jurisdiction to manage the Crowns land and resources.
- If we infringe on aboriginal title, the infringement must be justifiable.
- The province strongly holds the position that the federal government must assist with First Nations capacity to participate in consultations. It should be stressed that the province is not saying we have no responsibility on this front, but we are saying that the federal government must start living up to its responsibilities.
- It is also our view that the federal government is responsible for compensation when title is infringed.

- The working group under our Policy Forums has made good progress and we suggest that they now turn their attention to developing a more effective consultation framework.
- We are prepared to mandate our staff to work on a more effective and efficient consultation process.
- And lets be honest and up front about the principles that the province will bring to that work:
    - title is not assumed;
    - First Nations have the onus to establish title;
    - the province maintains its responsibility to make decisions in regard to Crown land and resources;
    - any infringement of title must be justifiable; and
    - the federal government must participate in these discussions.

Delgamuukw Operational Principles
- Draft -

1. Background:

The December 11, 1997 Supreme Court of Canada (SCC) decision on Delgamuukw introduced the concept of aboriginal title in British Columbia. Generally, First Nations view the Delgamuukw decision as proving that they have aboriginal title throughout their traditional territories. The following fundamental principles are proposed in the provincial Delgamuukw strategy (Cabinet Submission):

- Individual claims of aboriginal title will not be assumed.
- First Nations have the onus to establish aboriginal title.
- The provincial government maintains its responsibility to make land and resource decisions on Crown lands.
- With respect to Canada, the Province should seek to maximize federal contributions to both the costs of consultation and compensation.
- Any infringement of aboriginal title must be justifiable.

2. Purpose

The SCC clearly identifies a legal obligation on the provincial Crown to consult with First Nations in regard to aboriginal title; however, the Deputy Ministers Steering Committee on Delgamuukw agree that front line staff should not be verifying title when consulting with First Nations.

In this context, the Deputy Minister's Steering Committee wants to provide resource managers with interim operational principles to guide how staff should:

- carry out the provincial Crown's obligation to consult with First Nations;
- evaluate information gathered on potential aboriginal interest; and
- make operational decisions in light of information in regard to potential aboriginal title.

The Deputy Ministers Steering Committee has indicated that these operational principles in regard to aboriginal title should be integrated into existing aboriginal rights consultation processes. There is no desire to create a separate consultation process specifically in regard to aboriginal title.

The following operational principles are proposed to set the framework for consultation guidelines to be developed for line ministries and other appropriate provincial agencies. It is expected that each affected line ministry, or provincial agency, will tailor the consultation guidelines to their specific operations.

3. Operational Principles

Existence of aboriginal title

- The Supreme Court of Canada (SCC) decision does not grant title. While it is clear that the concept of aboriginal title exists in British Columbia, at present, aboriginal title has not been established anywhere in British Columbia by any First Nation. For this reason, individual claims of aboriginal title will not be assumed to be proven.
- Aboriginal title should be considered to be geographically confined based on evidence.
- If aboriginal title is asserted, or even established, the Crown maintains a jurisdictional role in the area of question (i.e., if there is a strong possibility of title, or if title is established through some other process, the question becomes "What level of First Nation involvement is required in the assessment of the proposed development?").
- Aboriginal title is less likely where land has been:
  - previously alienated to third parties (length of alienation and type of alienation important);
  - previously developed (type of development important e.g., unreclaimable development vs. development of renewable resources).
- The failure by a First Nation to maintain a substantial connection with a specific piece of land may result in "loss" of aboriginal title. In particular, Aboriginal title should be considered to be "lost" on private fee simple lands.

Infringement of aboriginal title

- While individual claims of aboriginal title are assumed not to be proven, operational staff should assess the ***potential*** for infringement.
- Infringement of aboriginal title must be justifiable. The SCC outlined the following two-step test to justify infringement of aboriginal title:
  1. *Does the Crown have a valid legislative objective?*
     The infringement of aboriginal title must be in furtherance of a compelling and substantial legislative objective. The SCC specifically stated that the development of agriculture, forestry, mining, hydroelectric power, the general economic development of the province, protection of environment or endangered species the building of infrastructure, and the settlement of foreign populations are the kinds of objectives that meet this test. Other court decisions have identified conservation, public safety, and regional economic fairness as valid legislative objectives.
  2. *Did the Crown meet its fiduciary obligation?*
     The SCC stated that fiduciary relationship between the Crown and aboriginal peoples may be satisfied by the involvement of aboriginal peoples in the decisions taken with respect to the land. The SCC also states that there is always a duty to consult. The nature and scope of the duty to consult will vary with the circumstances. The consultation must be in good faith and with the intention of substantially addressing the First Nations concerns. Consultation involvement of First Nations can range from mere consultation to consent.

- In the context of the above-noted test, operational decisions can be made only after considering the following factors:
  - Extent of infringement: There is a range of the types of justifiable infringements to aboriginal title (e.g., development with no chance of reclaiming land to its natural state vs. development of renewable resources). Types and levels of justifiable infringement also depend on the aboriginal connection to the land (e.g., infringement on a village site is likely less defensible than infringement arising on portions of hunting grounds).
  - Nature and scope of proposed development.
  - Accommodation of aboriginal interests.

- **Aboriginal title should not be verified when making operational decisions.**
- It is expected that First Nations consent will be required in a small minority of operational decisions (i.e., where there is a very high chance of title and major infringement is likely).

Extinguishment and surrender of aboriginal title

- Only the federal government can extinguish aboriginal title.
- A surrender of title can only be made by First Nations to Canada, not to the province.

Federal responsibility

- The provincial position holds that the federal government has responsibility for First Nations participation in consultation and paying compensation for any infringements to aboriginal title. It will be important, however, to narrow federal encroachments into provincial jurisdiction over Crown lands and resources. In addition, the ability of the province to make timely operational decisions should not be compromised.

NEGOTIATION FUNDING

- Funding for treaty negotiations is allocated by the Treaty Commission. It takes the form of 80% loans and 20% contributions. Loans are provided exclusively by Canada. Under the federal/provincial Cost-Sharing MOU, Canada and BC share the contribution costs on a 60:40 basis. BC's total share of the negotiation funding program is 8%. Under a separate MOU provision, BC must pay 50% of the cost of defaulted loans.
- In 1993, during the development of the funding program, BC raised concerns about the number of First Nations that could be in the process and the resulting level of funding that would be required. BC required that the manageability of the treat process be addressed by the Principals before agreeing to the funding program.
- In January, 1994, after discussions among the Principals, BC agreed to proceed with the existing funding program with a cap on BC's funding for 4 years, which expired on March 31, 1998. The amount was originally $6,200,000. In 1995/96, the overall negotiation funding budget was increased, and the cap was adjusted to $7,610,720.
- In November, 1997, the Treaty Commission's budget request for 1998/99 was $35,720,000. The Principals' approved budget for this period is $28,000,000. The federal and provincial Ministers both responded to the Treaty Commission's request by saying that increases were not available and that a commitment to a more effective and efficient process was necessary before additional funds would be considered. All Principals agreed to roll forward $3,000,000 from last year's budget, making the total negotiation funding budget for 1998/99 $31,000,000.
- The key provincial objective is to focus on making the treaty process more effective and efficient.
- Funding amounts and the allocation guidelines used by the Treaty Commission have to be tied to outputs.
- The Summit has asked for an increased budget and the elimination of loans, arguing that only contributions should be allocated. BC has resisted this in the past, and should continue to stress that process issues should be dealt with first.
- On the loan issue, Canada currently provides all of the loan funding, but BC has agreed to pay for half of the loans in default, should that occur. An elimination of loans would mean an increase in provincial costs as contributions are now shared 60:40 between Canada and BC.
- Canada's position has been that loans are a requirement and its policy is to deduct the total cost of loans (plus interest from Agreement-in-Principle to Final Agreement) from the eventual cash portion of a First Nation's treaty settlement. The Summit is concerned that the pace of negotiations and Canada's re-payment policy will mean that loans debts will greatly reduce, or even surpass, the cash in treaty settlements.
- BC shares this concern, particularly with smaller First Nations moving slowly through the treaty process. However, BC has insisted on addressing the process issues at the root of the problem, rather than focusing on the negotiation funding solutions.

- Key Messages

- BC's primary interest is in ensuring the Principals find workable solutions to the treaty process issue.
- Once this has been resolved, negotiation funding issues can be appropriately addressed.
- BC has consistently asked the Principals to engage on the issue of manageability, rather than looking at the negotiation funding issue in isolation.
- The Treaty Commission's Report on System Overload raises key questions in this regard which need to be examined.
- Where First Nations are actively negotiating and have the capacity to negotiate and implement treaties, funding allocations should be a priority.
- Where First Nations are less active, allocations could be suspended or some alternate arrangements be made to avoid First Nations incurring excessive debt loads where they will not be concluding treaties in the near future.

DELGAMUUKW LIST OF ISSUES

1. Certainty

2. Land and resource management issues
   - consultation requirements
   - early deliverables
   - accelerated discussions
   - governments' role

3. Scope of Aboriginal Title
   - joint title
   - overlaps
   - reserve lands
   - status of lands

4. Infringement
   - justification
   - compensation

5. Aboriginal title and self-government

6. Procedural Issues
   - role of BCTC
   - funding for negotiations
   - government resources
   - dispute resolution
   - system overload

TRIPARTITE MEETING
BC/CANADA/FIRST NATIONS SUMMIT

LOGISTICAL ARRANGEMENTS

TUESDAY APRIL 7, 1998
NB: BC Caucus meets at 8:30 am in the Provincial Caucus Room on the 26th floor.

Meeting Time: 9:00 am to 5:00 pm
Meeting Room: 26th floor boardroom, 650 West Georgia
Vancouver, BC
Federal Treaty Negotiation Office
Tel: (604) 775-7114 Fax: (604) 775-7149

* note: For meeting room access, report to the Reception Area on the 27th floor.
* note: Lunch will be provided.

WEDNESDAY APRIL 8, 1998

Meeting Time: 9:00 am to 5:00 pm
Meeting Room: 26th floor boardroom, 650 West Georgia
Vancouver, BC
Federal Treaty Negotiation Office
Tel: (604) 775-7114 Fax: (604) 775-7149

* note: For meeting room access, report to the Reception Area on the 27th floor.
* note: Lunch will be provided.

THURSDAY APRIL 9, 1998

Meeting Time: 9:00 am to 5:00 pm
Meeting Room: 26th floor boardroom, 650 West Georgia
Vancouver, BC
Federal Treaty Negotiation Office
Tel: (604) 775-7114 Fax: (604) 775-7149

* note: For meeting room access, report to the Reception Area on the 27th floor.
* note: Lunch will be provided.

ISSUES AFFECTING TREATY NEGOTIATIONS POST-DELGAMUUKW

APRIL 7-9, 1998, MEETING
PROPOSED AGENDA

55101
APR 03 1998
DEPUTY ATTORNEY GENERAL

Location: **Federal Treaty Negotiation Office**
#2700 - 650 West Georgia Street, Vancouver, BC, V6B 4N8

Time: **9:00 a.m. to 5:00 p.m., lunch provided**

1.0 OPENING PRAYER

2.0 INTRODUCTIONS

3.0 AGENDA APPROVAL

4.0 MEETING LOGISTICS - confirm meeting logistics such as meeting locations, meeting times, caucus rooms, meals, etc.

5.0 OBJECTIVE OF THE NEGOTIATIONS DISCUSSION - brief of discussion confirming

- the objectives of this set of discussions/negotiations from the perspective of each of the parties
- the mandate of each of the parties relative to the discussions/negotiations

6.0 STRUCTURE OF MEETINGS - use this as a brief discussion regarding how the meetings will be structured, including who attends, role of BCTC, role of observers, how agenda are set, preparation of minutes, etc.

7.0 GROUND RULES - brief discussion of the ground rules, if any, required with respect to these discussions

8.0 COMMUNICATION - a brief discussion regarding communication issues associated with this set of discussions/negotiations and, in particular, communication with

- constituents?
- media?
- third parties?

9.0 CONSTRUCTIVE/PRODUCTIVE ENGAGEMENT - brief discussion regarding what constitutes constructive and productive engagement and, more specifically, how parties may be able to approach a discussion of issues in a manner that is non-positional and focuses on problem-solving

10.0 GENERAL OVERVIEW OF THE ISSUES - brief discussion to confirm the list of issues agreed to at the March 3, 1998 Principals' meeting

- confirm that the list is complete
- brief statement by each party providing their understanding of each issue [optional]
- confirm priority/sequence that issues are to be discussed in and, more specifically, those issues to be discussed at this first meeting

11.0 DISCUSSION OF ISSUES - methodical, structured, facilitated discussion of those specific issues that the parties agree should be discussed and dealt with at the April 7-9, 1998, meeting

12.0 FOLLOW-UP AND SHORT-TERM ACTION ITEMS - a brief discussion to confirm specific tasks to be attended to prior to the next meeting

13.0 FUTURE MEETING DATES - confirm the date of the next meeting and set tentatively dates for May and June should the parties decide that discussions beyond the end of April are both necessary and desirable.

14.0 OTHER

MEMORANDUM

TO: PARTICIPANTS IN THE DISCUSSIONS BETWEEN THE ASSEMBLY OF FIRST NATIONS, BRITISH COLUMBIA, CANADA, AND THE FIRST NATIONS SUMMIT REGARDING ISSUES AFFECTING TREATY NEGOTIATIONS ARISING FROM THE DELGAMUUKW DECISION OF THE SUPREME COURT OF CANADA

FROM: DANIEL JOHNSTON, Facilitator

DATE: APRIL 3, 1998

RE: APRIL 7-9, 1998, MEETING - PROPOSED AGENDA

Please find attached for your consideration a proposed agenda with respect to the April 7-9, 1998, meeting with respect to the above noted matter. I have the following comments/observations in this regard:

1. I prepared the proposed agenda on the basis of my initial discussions with each of the parties which I have now completed. Please note that the first item of business following an opening prayer and introductions is approval of the proposed agenda. Having said this, I would appreciate that any party who has any specific concerns with respect to the agenda as proposed, or believes that there is any additional items that should be included on the agenda, to contact me at their earliest convenience and, in any event, in advance of April 7th;

2. Arrangements have been made for the meeting to take place at the Federal Treaty Negotiation Office which is located at #2700 - 650 West Georgia Street, Vancouver. The meeting will commence at 9:00 a.m. on April 7th and arrangements have been made for lunch to be provided on that day. I anticipate a brief discussion under agenda item 4.0 with respect to meeting times for subsequent meetings, meeting locations, meals, etc.;

3. Agenda items 5.0 to 8.0 generally relate to "process" issues. With a view to facilitating discussion, I will have prepared some discussion notes with respect to each of these topics that can serve as a starting point for discussion - these discussion notes will be based upon my initial meetings with each of the parties. I will also have a brief handout to accompany the discussion with respect to agenda item 9.0.

While I believe that these process issues are important to address at the outset of a set of negotiations such as the ones the parties are embarking on, I am hopeful that we can move through these items quickly with a view to spending as much of the meeting time as possible discussing the substantive issues identified by the parties.

If any of you have any questions regarding any of the above or the attached, please contact me at your convenience. The best way to contact me over the next few days is to phone my cellular phone (250) 714-8655 and, if I do not answer, please leave a message on my voice mail and I will return your call as soon as possible.

DBJ/vjc

APPENDIX A

LIST OF ISSUES

LANDS AND RESOURCES

1. Certainty
   - how to achieve certainty
   - extinguishment
   - transfer, surrender

2a. Interim Measures
   - consultation
   - First Nation role in decision-making in land and resource use
   - early deliverables
   - Canada's role
   - BC's role

2b. Acceleration of Lands and Resource Negotiations

3. Compensation

4. Status of Settlement Lands
   - constitutional
   - title
   - jurisdiction
   - registry

5. Aboriginal/Crown Title
   - 1846
   - overlaps
   - "First Nation"
   - who are the parties?
   - joint title

6. Recognition of First Nation jurisdiction/governance

PROCESS

1. Role of BCTC

2. Funding - First Nation for negotiations

3. Human and financial resources - BC/Canada
4. Dispute resolution
5. Efficiencies
6. Outstanding prosecutions
7. Principles for good faith negotiations
8. System overload
9. Province-wide/regional negotiations