

# ADDITIONS TO THE TREATY LAND BASE: A PRIMER FOR LOCAL GOVERNMENT

## UPDATED BACKGROUND BRIEFING NOTE TO LMTAC FIRST PRINCIPLE #12: *Post Treaty Additions to Treaty Settlement Lands\**

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This Briefing Note includes information on:

1. **Context;**
2. **Additions to Treaty Settlement Lands;**
3. **LMTAC First Principle and Interests;**
4. **LMTAC Considerations for Local Government.**

### 1. Context

In the Lower Mainland region, there are 4 First Nations at various stages of the BC Treaty Process (BCTC), and one modern treaty First Nation; totalling 35 reserves and 1 parcel of Treaty Settlement Land (TSL). First Nation reserves, treaty lands, and their location within municipalities vary across the region.

**Katzie** (Stage 4 BCTP – active): 5 existing reserves located within 4 different local government jurisdictions (City of Pitt Meadows, District of Maple Ridge, Township of Langley, and Metro Vancouver Electoral Area A - Barnston Island and Pitt Lake)

**Musqueam** (Stage 4 BCTP – inactive): 3 existing reserves located with 3 LMTAC member municipalities (City of Vancouver, Corporation of Delta and the City of Richmond)

**Squamish** (Stage 3 BCTP – inactive): This community further highlights the complexity of the region - it has 24 existing reserves that span 3 LMTAC member Regional Districts (Metro Vancouver, Squamish-Lillooet and the Sunshine Coast).

**Tsawwassen** (Treaty completed under BCTP): TSL on the shores of the Strait of Georgia, adjacent to the Corporation of Delta.

**Tsleil-Waututh** (Stage 4 BCTP – active): 3 existing reserves located within 2 LMTAC member local government jurisdictions (District of North Vancouver and the Metro Vancouver Electoral Area A)

The above Lower Mainland First Nations, except Tsawwassen, are currently governed by the *Indian Act* and can expand their reserve land base through the Additions to Reserve (ATR) process. However, post-treaty the *Indian Act* and the ATR process will no longer apply to these First Nations and land base expansions will occur through a process called Additions to Treaty Settlement Lands (TSL). The Tsawwassen First Nation is subject to the Additions to TSL process as a signatory to the *Tsawwassen Final Agreement*.

This Briefing Note summarizes the Additions to TSL processes contemplated in treaty negotiations, and identifies several considerations for local government.

## 2. Additions to Treaty Settlement Lands

**Treaty Settlement Lands (TSL):** the area of land that is held in fee-simple and owned collectively by a First Nation pursuant to a treaty. These lands are governed by the treaty First Nation outside of local government jurisdiction; however, TSL remains subject to laws of general application and other Federal and Provincial laws as specified in the treaty.

Treaties may contemplate land settlements that include, in addition to TSL, fee-simple lands that remain under local government jurisdiction. For example, the Tsawwassen Final Agreement uses the term “Tsawwassen Lands” to distinguish lands under Tsawwassen jurisdiction from those “Other Tsawwassen Lands” that will form part of the treaty settlement package that Tsawwassen will own in fee-simple, without governance jurisdiction.

### Additions to TSL Processes

#### i) General Approach (Default) contained within Existing Final Agreements

Using this approach...

- After the *Final Agreement* Effective Date, the First Nation may apply to have lands located within its Territory added to the existing TSL land base. The lands must be owned in fee-simple by the First Nation at the time of application.
- The process allows for the federal and provincial governments to make a decision independent of each other and according to its own conditions.
- Conditions of British Columbia include that if the lands are located within municipal boundaries, municipal consent must be obtained.
- Conditions of Canada include that if the lands are subject to First Nation overlaps, First Nation consent must be obtained.
- A final decision to provide a First Nation with jurisdictional authority over additional lands would require tripartite consent, meaning each Party (Canada, BC and the First Nation) would hold a veto.

#### ii) “Specified Lands” Approach in Tsawwassen Final Agreement (Chapter 4, *Lands*, clauses 36 - 51)

Using this approach...

- The treaty identifies specific land parcels (the Specified Lands) that the First Nation can add to its TSL land base, should the First Nation acquire them in fee-simple post-treaty.
- The First Nation must:
  - discuss the addition with any resident or interest holder of the Specified Lands, and the municipality in which the Specified Lands are located;
  - address servicing and associated tax revenues with municipality in which the Specified Lands are located;
  - consider any road designations;
  - consider land use compatibility with municipal, regional or transport plans applicable to the Specified Lands; and
  - provide reasonable notice to municipal and regional governments of its intention to add the specified lands to TSL.
- In the Tsawwassen Final Agreement, local government consent is not required.

## 3. LMTAC First Principle and Interests

**First Principle #12 –Post Treaty Additions to Treaty Settlement Lands**

*Lands to be added after the treaty is signed must remain subject to local government jurisdiction and taxation unless otherwise agreed to by local governments through a community consultation process.*

**LMTAC Interests**

LMTAC First Principle #12 articulates that a local government must consent to any change in jurisdiction over fee-simple lands located within its boundaries. The Additions to TSL processes outlined above do provide First Nations under treaty with the ability to expand their land base and remove the lands from local government jurisdiction.

In the event a First Nation applies to expand its land base through Additions to TSL, the affected local government may give consideration to the following interests with the applicant First Nation and the governments of Canada and British Columbia:

- jurisdictional arrangements, including:
    - local and regional land use planning;
    - operational considerations;
    - leases, licences, and tenures;
  - service arrangements and access to utility rights-of-way;
  - public access for recreational uses;
  - public transportation corridors;
  - dispute resolution;
  - public notice: and
  - other issues of mutual interest.
- Criteria for assessing Additions to TSL should be considered within the unique context of each First Nation and neighbouring local government. First Nation communities may include TSL parcels located within different local government jurisdictions and criteria such as contiguity with existing TSL may not be within the interest of all impacted local governments.
  - Local governments are interested in budgetary stability and must be fully compensated for any loss of tax base or infrastructure investments (**LMTAC First Principle #36**).

**4. LMTAC Considerations for Local Government**

The General Approach to additions to TSL allows local government and treaty First Nations to enter into an agreement to address local government interests and concerns prior to consenting to the addition to TSL, and should be pursued to the greatest extent possible in Lower Mainland treaty negotiations. LMTAC remains *extremely* concerned that the Specified Lands approach offers little guarantee that local government interests and concerns will be effectively addressed.

When addressing an Addition to TSL, local governments may wish to consider the following:

**Community Input and Engagement:**

- **Local government approval** - The issue of local government approval as a pre-requisite for post-treaty Additions to TSL must be clarified and re-enforced. Local government councils represent the greater interests of the communities they serve.
- **Transparent public processes**- In advance of initiating an Addition to TSL, the affected local government, the applicant First Nation, Canada and British Columbia should agree on a transparent public process to approve the application.

- **Balance** – The processes for Additions to TSL must give due consideration to local government interests and those of the general community.

**Size, Jurisdiction and Proposed Land Use:**

- **Land use planning** - Local government land-use bylaws, regulations, zoning and related enforcement would no longer be applicable once the land becomes TSL. Local governments encourage complimentary land use planning amongst neighbouring jurisdictions to the greatest extent possible.
- **Influence on property values** - The act of designating “Specified Lands” for post-treaty acquisition and transfer to a First Nation may encumber the properties and create uncertainty for the property owners. Designating lands may skew the market and property sales under such circumstances may no longer be transacted on a “willing seller/willing buyer” basis.

**Financial Impact:**

- **Budgetary stability** – Lands converted to TSL may translate to a loss of property taxes or grants-in lieu for local government, as well as net incremental cost to a region in the longer term. Loss of a portion of the overall tax base results in an increased tax burden for the remaining communities in order to meet the financial costs of regional services. In addition to the loss of tax base for local governments to provide services, consideration must also be given to the loss of school board, hospital and regional district taxes.
- **Development cost charges** – Development of lands may place increased pressure on local and regional infrastructure and services; for example, transit services. Development cost charges should be considered for additions to TSL, ensuring the on-TSL development contributes financially to infrastructure, servicing, and other community improvements on the same basis as off-TSL development.

**Capital Infrastructure Requirements:**

- **Servicing**- Technical and fiscal constraints may limit a local government’s ability to service Additions to TSL. Capital costs for new and upgraded infrastructure may challenge local government capacity. Fiscal constraints for new servicing may arise due to previously created long-term capital infrastructure plans. Service agreements should be in place simultaneously with the approval of Additions to TSL. Service agreements are encouraged to include both ‘hard’ and ‘soft’ services.

**A Scan of References to Additions to Treaty Settlement Lands and Local Government Tax Loss\***

**Appendix to:  
Additions to Treaty Settlement Land & Treaty Negotiations - LMTAC Background Briefing Note to First Principle #12**

Issue	Document	Prepared for/by	Date	Page/Section	Text Quotation
Additions to Treaty Settlement Lands	Considerations: A Guide to Lower Mainland Area Local Government Interests in Treaty Negotiations	Lower Mainland Treaty Advisory Committee (LMTAC)	Nov. 2005	Page 10; First Principle #12	Lands to be added after the treaty is signed must remain subject to local government jurisdiction and taxation unless otherwise agreed to by Local Governments through a community consultation process.
Additions to Treaty Settlement Lands	GVRD Principles for Treaty Negotiations	GVRD	Oct. 1999 (updated July 2002)	Page 2; Principle #9	Lands and assets held and designated by the GVRD including, but not limited to, leased lands, rights-of-way, and Crown reserves must be excluded from any treaty settlement.
Additions to Treaty Settlement Lands	GVRD Principles for Treaty Negotiations	GVRD	Oct. 1999 (updated July 2002)	Page 2; Principle #10	The interests in non-Crown land owned in fee simple, including lands owned by the GVRD, other governments, or private individuals and corporations, be protected in future treaties.
Additions to Treaty Settlement Lands	Resolution endorsed by the Union of BC Municipalities membership at the 2004 annual convention	Union of BC Municipalities (UBCM)	Sept. 2004	---	<p>Regional District Interests in Additions to Treaty Settlement Lands</p> <p>WHEREAS four Agreements in Principle (AIP) negotiated with First Nations in 2003 by the provincial and federal governments have been ratified by all three parties;</p> <p>AND WHEREAS only one of these AIPs required the parties to take into account the interests of the regional district in cases where a proposal is made to add land that is within the Regional District but outside a municipality to First Nations treaty settlement lands post-treaty.</p> <p>THEREFORE BE IT RESOLVED that all treaties and Agreements in Principle negotiated with First Nations by the provincial and federal governments require that regional districts be consulted and accommodated before lands are added to First Nations treaty settlement land post-treaty.</p>
Additions to Treaty Settlement Lands	Tsawwassen First Nation Final Agreement	Canada, BC, Tsawwassen First Nation	2006	Page 46	<p>43. Before the addition of any parcel of Specified Lands to Tsawwassen Lands, Tsawwassen First Nation will:</p> <ul style="list-style-type: none"> <li>a. hold discussions with any resident of, or interest holder in, the parcel of Specified Lands and the Corporation of Delta;</li> <li>b. address the provision of any service provided by any municipality to a parcel of Specified Lands and any tax revenue matter related to such service;</li> </ul>

					<ul style="list-style-type: none"> <li>c. consider the compatibility of any land use plan of the Tsawwassen First Nation with any municipal or regional land use or transportation plan applying to that parcel of Specified Lands; and</li> <li>d. provide reasonable notice to Canada, British Columbia, the Greater Vancouver Regional District and the Corporation of Delta in respect of the addition of the parcel of Specified Lands and the Tsawwassen First Nation will confirm in the notice that it has dealt with matters set out in subclauses 43.a through 43.c.</li> </ul>
Local Government Tax Loss	Considerations: A Guide to Lower Mainland Area Local Government Interests in Treaty Negotiations	Lower Mainland Treaty Advisory Committee (LMTAC)	Nov. 2005	Page 15; First Principle #36	No demand must be placed on local government tax revenues or revenue sources resulting from treaty settlements, particularly on the ability of local government to derive tax revenue from sources such as property taxes, service fees, utility charges and grants-in-lieu from Crown lands. Any revenue loss to Local Governments arising from treaty settlements must be fully compensated.
Local Government Tax Loss	GVRD Principles for Treaty Negotiations	GVRD	Oct. 1999 (updated July 2002)	Page 2; Principle #14	All costs associated with treaty settlements must be the responsibility of the Provincial and Federal governments in terms of lands and assets that are being negotiated.