

TE'MEXW TREATY ASSOCIATION TRIPARTITE NEGOTIATIONS
AGREEMENT-IN-PRINCIPLE
ACCESS CHAPTER
MAY 2010

Without Prejudice, For Discussion Purposes Only. Subject to Internal Review. This document represents the work of the Parties to date. It contains no admissions and is subject to change. It may not be tendered or relied upon in any Court or other proceeding. This Chapter is part of a working Agreement-in-Principle document. Any final Chapter in a Te'mexw First Nation Final Agreement should be read and understood in conjunction with the rest of that Final Agreement.

CHAPTER 5 – ACCESS

DEFINITIONS

“Public Access” for the purpose of this Chapter means access by persons other than the citizens of a Te'mexw Member First Nation.

“Te'mexw Public Lands” are Treaty Settlement Lands that have not been designated as Te'mexw Private Lands by a Te'mexw Member First Nation Government.

LAW MAKING

1. Subject to paragraphs 5 and 6, Te'mexw Member First Nation Governments may make laws regulating public access on Treaty Settlement Lands for the:
 - a) prevention of harvesting or extracting of resources owned by Te'mexw Member First Nations;
 - b) levying of reasonable fees for persons exercising the right of public access to defray costs associated with affording such rights of public access; and
 - c) protection of Te'mexw Member First Nation cultural and heritage sites.
2. In the event of a Conflict between a Federal and Provincial law and a Te'mexw Member First Nation law made under paragraph 1, the Te'mexw Member First Nation law prevails to the extent of the Conflict.
3. Subject to paragraphs 5 and 6, Te'mexw Member First Nation Governments may make laws regulating public access on Treaty Settlement Lands for the:
 - a) purposes of public safety;
 - b) prevention of nuisance or damage;

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- c) quiet enjoyment of property; and,
 - d) protection of sensitive habitat.
4. In the event of a Conflict between a federal and provincial law and a Te'mexw Member First Nation law made under paragraph 3, the federal law or provincial law prevails to the extent of the Conflict.

PUBLIC ACCESS ON TREATY SETTLEMENT LANDS

5. A Te'mexw Member First Nation will allow reasonable public access to and onto Te'mexw Public Lands for temporary recreational and non-commercial purposes, including opportunities to hunt and fish outside of urban areas, provided that:
- a) public access on Te'mexw Public Lands does not include harvesting or extracting resources owned by a Te'mexw Member First Nation, except as authorized by the Te'mexw Member First Nation Government;
 - b) such public access does not cause damage to Treaty Settlement Lands or resources or otherwise cause mischief, nuisance, or interfere with uses authorized by the First Nation;
 - c) such public access does not interfere with the ability of the First Nation to authorize uses or dispose of Treaty Settlement Lands; and
 - d) any opportunity to hunt or fish will be in accordance with Federal, Provincial, and Te'mexw Member First Nation Laws that are applicable in accordance with the Final Agreement.
6. The Final Agreement will include provisions with respect to access, where reasonably required, to legal interests within, contiguous or in close proximity to Treaty Settlement Lands, identified in the Final Agreement.
7. Subject to paragraphs 5 and 6, Te'mexw Member First Nations may designate portions of Treaty Settlement Lands as Te'mexw Private Lands.

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8. Te'mexw Member First Nations will take reasonable measures to notify the public of terms and conditions respecting public access to and onto Te'mexw Public Lands.
9. The Parties recognize that the exercise of Te'mexw Member First Nation Government jurisdiction or land management authority may, subject to this Agreement, have the effect of limiting or denying access to parts of Treaty Settlement Lands.
10. Te'mexw Member First Nation liability for Public Access to Treaty Settlement Lands, other than Te'mexw Private Lands, will be comparable to the liability of the Crown for Public Access to unoccupied Crown lands.
11. Nothing in the Final Agreement will affect public rights of navigation on navigable waters.

CROWN ACCESS ON TREATY SETTLEMENT LANDS

12. Employees, contractors, agents and other representatives of the Crown, including the police, peace officers, the Canadian Forces, and Public Utilities, will have access in accordance with Federal Laws or Provincial Laws, on Treaty Settlement Lands in order to enforce laws, carry out duties under the laws of Canada and British Columbia, respond to emergencies, deliver programs and services and for other specified purposes as set out in the Final Agreement.
13. For greater certainty the Parties agree that access as provided in paragraph 12 is not a waiver by any Te'mexw Member First Nation, its government or its citizens of any right or protection afforded by Federal or Provincial Law including the Charter of Rights and Freedoms in respect of search and seizure.
14. Employees, contractors, agents and other representatives of the Crown, in exercising the rights set out in paragraph 12, may continuously use or occupy Treaty Settlement Lands, if required, for two years. If, after two years of continuous occupation, the Crown, its agents, or other representatives still require the continuous use or occupancy of Treaty

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Settlement Lands, the Crown will continue the existing arrangement with the consent of the First Nation or, in the absence of such consent, will either:

- a) acquire an interest in the lands for that purpose by agreement; or
 - b) expropriate an interest in the lands pursuant to the expropriation provisions in the Treaty Settlement Lands Chapter.
15. The Department of National Defence and the Canadian Forces will have access to Treaty Settlement Lands for military manoeuvres with the agreement of the Te'mexw Member First Nation Government. Where the Minister of National Defence and the Te'mexw Member First Nation Government do not reach agreement on conditions for the exercise of that right of access, the Minister of National Defence may refer the dispute to resolution in accordance with the Dispute Resolution Chapter.
16. Nothing in paragraph 15 is intended to limit the authority of the Minister of National Defence under section 257 of the National Defence Act, R.S. 1985, c. N-5.
17. Except as provided for in paragraph 14 for continuous use and occupation in excess of two years, access pursuant to paragraphs 12 and 15 will be at no cost to Canada and British Columbia, unless applicable Federal Laws or Provincial Laws provide for the payment of compensation.
18. Employees, contractors, agents and other representatives of the Crown will give notice prior to exercising its access rights under paragraphs 12 and 15 to the Te'mexw Member First Nation Government when it is reasonable to do so.

TE'MEXW MEMBER FIRST NATION ACCESS ON CROWN LAND

19. Employees, contractors, agents, and other representatives of Te'mexw Member First Nation Governments will have access, at no cost, on Crown land to enforce Te'mexw Member First Nation laws, deliver programs and services, and for other specified purposes as set out in the Final Agreement, in accordance with Federal or Provincial Laws.

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