

TE'MEXW TREATY ASSOCIATION TRIPARTITE NEGOTIATIONS
Transitional Provisions Chapter

Without Prejudice, For Discussion Purposes Only, Subject to Internal and Caucus Review
This document represents the work of the Parties to date. It contains no admissions and is subject to change. It will not be
tendered or relied upon in any Court proceeding.

April 2, 2008

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TRANSITIONAL PROVISIONS

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DEFINITIONS

“Agreement” means this Agreement-in-Principle;

“Effective Date” means the date upon which the Final Agreement takes effect;

“Final Agreement” means the final agreements between each Te'mexw Member First Nation, Canada, and British Columbia;

“Indian” has the same meaning as assigned by section 2 of the *Indian Act*;

“Indian Act” means the *Indian Act*, R.S.C 1985, c. I-5;

“Minister” means, in relation to any matter, the Minister or Ministers of the Crown having the responsibility, from time to time, for the exercise of powers in relation to the matter in question and includes a person with authority to act on behalf of the relevant Minister in respect of the matter in question;

“Parties” means each of the Te'mexw Member First Nations, Canada, and British Columbia and

“Party” means any one of them;

“Te'mexw Member First Nation” means any of the five collectivities of a Te'mexw Member First Nation People;

“Te'mexw Member First Nation Indian Band” means any of Beecher Bay Indian Band, Malahat First Nation, Nanoose First Nation, Songhees First Nation, and T'Sou-ke First Nation each of which is a Band and **“Te'mexw Member First Nation Indian Bands”** means every Te'mexw Member First Nation Indian Band;

“Te'mexw Member First Nation People” means those individuals who are eligible to be enrolled under the Final Agreement in accordance with the Eligibility and Enrolment Chapter.

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ESTATES

1. The Final Agreement will provide that the *Indian Act* applies, with any modifications that the circumstances require, to the estate of an individual who:
 - a) died testate or intestate before the Effective Date; and
 - b) at the time of death, was a registered Indian of a Te'mexw Member First Nation Indian Band.
2. Before the Effective Date, Canada will take reasonable steps to notify in writing all registered Indians of the Te'mexw Member First Nation Indian Bands who have deposited wills with the Minister that their wills may not be valid after the Effective Date, and that their wills should be reviewed to ensure validity under the laws applicable after the Effective Date.
3. The Final Agreement will provide that section 51 of the *Indian Act* applies, with any modifications that the circumstances require, to the property and estate of an individual:
 - a) who was a "mentally incompetent Indian" as defined in the *Indian Act* immediately before the Effective Date;
 - b) whose property and estate was under the authority of the Minister under section 51 of the *Indian Act* immediately before the Effective Date; and
 - c) who was a registered Indian of a Te'mexw Member First Nation Indian Band immediately before the Effective Date,until they are no longer a "mentally incompetent Indian."
4. The Final Agreement will provide that sections 52, 52.2, 52.3, 52.4 and 52.5 of the *Indian Act* apply, with any modifications that the circumstances require, to the administration of any property to which an individual:
 - a) who was a registered Indian of a Te'mexw Member First Nation Indian Band immediately before the Effective Date; and
 - b) who is an infant child of an Indian,

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is entitled, if the Minister was administering that property under the *Indian Act* immediately before the Effective Date, until the duties of the Minister in respect of the administration have been discharged.

CONTINUATION OF *INDIAN ACT* BY-LAWS

5. The Final Agreement will provide that the by-laws and Land Codes, where applicable, of the Te'mexw Member First Nation Indian Bands that were in effect immediately before the Effective Date, have effect for 12 months after the Effective Date on the Treaty Settlement Lands of the applicable Te'mexw Member First Nation whose Te'mexw Member First Nation Government replaces the band council that made the by-law or Land Code.
6. The relationship between a by-law and Land Code, if applicable, referred to in paragraph 5, and Federal and Provincial Laws, will be governed by the provisions of the Final Agreement governing the relationship between Te'mexw Member First Nation Laws and Federal and Provincial Laws in respect of the subject matter of the by-law or Land Code.
7. The Te'mexw Member First Nation Government replacing the band council that made a by-law or Land Code, if applicable, referred to in paragraph 5 may repeal, but not amend, that by-law or Land Code.
8. Nothing in the Final Agreement precludes a person from challenging the validity of a by-law or Land Code, if applicable, referred to in paragraph 5.

STATUS OF BANDS AND TRANSFER OF BAND ASSETS

9. Subject to the Final Agreement, on the Effective Date, all of the rights, titles, interests, assets, obligations, and liabilities of:
 - a) the Beecher Bay Indian Band vest in the _____;
 - b) the Malahat First Nation vest in the _____;
 - c) the Nanoose First Nation vest in the _____;
 - d) the Songhees First Nation vest in the _____; and
 - e) the T'Sou-ke First Nation vest in the _____,

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and the Te'mexw Member First Nation Indian Bands cease to exist.

TRANSITION TO ELECTED GOVERNMENT

10. The Chief Councillor and Councillors for the Te'mexw Member First Nation Band Council under the *Indian Act* on the day immediately before the Effective Date are the elected members of the Te'mexw Member First Nation Government from the Effective Date until the office holders elected in the first elections take office.
11. The first elections for the officers of Te'mexw Member First Nation Government will be held at a date specified in the Final Agreement.