

**‘Namgis First Nations
Governance Treaty Meeting
Saturday April 2, 2011**

Victoria

Ambrosia Conference and Event Centre, 638 Fisgard Victoria.

Treaty Meeting: Topic – Governance
Facilitator: Sue Staniforth
Meeting Chair: Mike Rodger

Minutes of Meeting

Minutes taken by: Sue Staniforth

9:30 AM Arrivals, Sign in

10:00 AM Welcome / Greetings / Opening Prayer

Chief Bill Cranmer sent his regrets – he was attending a retirement event in Alert Bay. Thoughts go out to Art Dick who is in the Royal Jubilee Hospital for a heart procedure.

Introductions

All

10:30 AM Agenda Review

Sue reviewed the agenda, handed out Governance Question Sheet to all to record questions and concerns, to be collected and sorted at lunch.

Mike: reviewed the last Governance meeting where band business was also discussed, and therefore the Governance topic did not get adequately addressed. Decided to make two meetings to separate the topics: today focuses on Governance and the Treaty, and tomorrow will be about band business. A primer on Governance was handed out, as well as a long document that interpreted the Governance section of the draft Treaty booklet: with the legal wording on one side of the page and simplified explanations on the other. This is being done for the entire agreement in principle, to allow better access and understanding of the documents.

10:45 AM Governance Background and Update:

Mike mapped out on flip chart paper what the historic context for governance looked like, what exists now, and what will change with a Treaty in place.

Historical View

The ‘Namgis had self-government. Laws and governance came out of the Big House, and councils were made up of five houses headed by five chiefs. They all had some responsibility for parts of the ‘Namgis territory. All programs and services were delivered by the chiefs and houses. This system was torn down with colonization: First Nations people were moved onto reserves and told they would be better off.

Present System

INAC: Today the band's governance comes under the Indian Act of the federal government. The Act establishes the Indian Act Band, and the band council is legally accountable to the Minister of Indian Affairs. There are Band elections for chief and council but the real accountability is to the Department of Indian Affairs as they control the purse strings.

The reserves are owned by the federal government and held in trust for the bands. There is federal jurisdiction over Health Care, Education, Public Works, and Justice, but the federal government has arrangements with the provinces to deliver services.

E.g. The Master Tuition Agreement: the 'Namgis has an education agreement but the province determines the curriculum, and the feds and province make the laws and rules, and determines how the policy is delivered. The band is able to negotiate some of the content delivered in the schools but the main control rests with the two levels of government.

This is the same for all areas of governance: Health, Social Services, justice, etc. The Band does not have jurisdiction over these areas.

The entire territory is under provincial jurisdiction right now with the exception of the reserves – however, the 'Namgis don't make the laws for their reserve as the federal government has to approve all the bylaws. After the Treaty, the band needs to look at each aspect of governance to see which areas they want to take over.

Jennifer: Can we have a dedicated Health Committee to work on these issues, like the existing Constitutional Committee? This will be brought forward at tomorrow's Band business meeting. There are many concerns around health care issues for off-reserve members.

Concerns raised by members:

Chris Cook III: Commented that right now the Band Council is at the bottom of the power system. The colonization system is still prevalent through budgetary control. The old system has some good things but it is not designed for the modern world. Some clans were valued over others so there was inequality even then. The Treaty talks about the rights of all people in a collectivity.

Harold: The Treaty may be like getting involved in a bad relationship. It is not a magical cure. Other bands have gone to Treaty and yet now are in court continually fighting for their rights. The government is not held accountable.

Freida: If there are no jobs now in Alert Bay, what will the Treaty change? What are our options and our children's options for the future?

Mike: The burden of those powers is the 'Namgis Rights: the governments have to deal with the First Nations through their rights. The Treaty will be based on

your rights, and the 'Namgis right to self-governance is confirmed in the treaty, giving you power over decisions and funding.

Future System: What Might Governance Look Like with a Treaty?

Mike: Right now the Constitutional Committee is developing a Constitution that looks at the past, present and future for the band. The present system does not ask the people what is best for them. Now we are asking this question to develop the Treaty.

Chris Cook Senior: It feels like we are gambling with our future. Will the Treaty actually get implemented? We need a legal obligation that the policies will get implemented. We can't trust the government. After we sign the Treaty, will they act in good faith?

Harold: Right now a band is taking the government to court because they have not followed through with the Treaty – they have not met the revenue-sharing obligations set out in their treaty. How can we get a proviso in the Treaty to make it legally binding? We need to cover out butts.

Mike: About six years ago the province introduced the Forest and Range agreement to look at Forestry and First Nations issues. There were revenue sharing agreements with the province of BC. There must be agreements that are based on fair fiscal arrangements. In the draft Treaty, there are clauses that state that if anybody is in breach of the Treaty – including the governments - the 'Namgis can take them to the Supreme Court of BC.

Angil: She attended a meeting in Vancouver where a Governance Tool Kit had been developed for First Nations: stating what Governance will look like beyond Treaty.

****Action Item: Can we get a copy of the Governance Tool Kit?**

Question: If we don't go to Treaty, what case or rights do we have in court? Requested that the band look at different models such as aboriginal rights and title.

Mike: As of now the evidence for land claims is hard to prove in court. Our lawyers have advised us that a declaration of title - a 'Namgis claim that covers the whole territory - would be difficult if not impossible to prove.

Harold: Asked about the "Me Too" Clause: a part of Treaty that states if another First Nations sets a precedent for control over a resource or aspect of management – such as fisheries, or forests in their Treaty, this should extend to all bands.

For example the Nis'ga has this for tax exemption, so if another band won a tax right that no other First Nation had, the Nis'ga would get it as well. Right now

there is no “Me Too” clause in the Treaty in principle, as it is felt that getting application of each specific case to each band would be too challenging.

Mike responded to a question about the commercial harvesting agreement – it is a renewable agreement, and there are many agreements like that and they sit outside the treaty, for example: around collaborative management of parks. We don’t know what parks will look like in 100 years, so they are flexible and renewable over time. They stand outside the treaty document. This also provides an opportunity for the ‘Namgis to approach the “Me Too” clause.

Freida: There are no jobs however – we do all this capacity building but there is no place for our people to work after wards – they go away to get the job.

Gerry (Longo): We need all the information we can get on what a Treaty will mean for us so we can make an informed decision at the end.

Angil: Over 13 years ago we started on this process when a treaty of intent was signed. It is important to look at all the options and information to know where we’ll end up.

Mike: In the draft governance document there is information about the right to self government – this is a big benefit of the treaty for you, to ask what and how you want things to happen.

The treaty says that ‘Namgis has the right to self government and the right to make its own laws. The Treaty would also give you tax powers. Right now the province makes money off economic activity in the territory but the Treaty will change this, as the ‘Namgis would have more of that jurisdiction. The balance of power will shift to the ‘Namgis .

The ‘Namgis constitution will set out the system of self government: how you will manage and represent yourselves. The historic system of government will be part of this. The Canadian Constitution will protect your inherent rights as ‘Namgis as well. Under Treaty, the Indian Act disappears and is replaced by the ‘Namgis Constitution and the Treaty . Power will be taken back from the feds and the province, but there will be links to these governments through collaborative management agreements and other relationships . For example: enforcing laws on ‘Namgis land:

The current law-making model has all three levels of government applying on ‘Namgis land. The Treaty sets out whose laws will trumps the other two for each situation. Today, Canada and BC make the rules and we fight back with our rights.

Freida: How are all the Band members kept track of? For example, the kids that are in foster care or that have been adopted out?

Verna: There is a membership clerk in the Band office that can help guide people in the process of being recognized as a band member. Under Treaty the ‘Namgis will determine who is a ‘Namgis citizen, not the Department of Indian Affairs.

11:30 AM **Map Review:** *Economic Development, Harvest Areas, Shared Territory, Land Selection Maps*

Maps posted around the room for review and questions.

12:15 PM **LUNCH**

Question sheets collected up, questions were compiled and written up on flip chart. Sue handed out a *Band Administration Question Sheet* for members to record questions for tomorrow's meeting.

1:10 PM **Question and Answer Session**

1) How will a Treaty support off-reserve band members?

Mike: The biggest challenge is funding for programs and services like health care – delivering those services to off-reserve members. Right now, 80% of the post secondary funding we get is used by the off-reserve community. Programs and services will need to be topped up. The plan calls for improving revenues coming to the 'Namgis nation.

2) Can a Treaty and Constitution be changed once it is in place?

Mike: Once you complete your Constitution you don't want it to be easy to change. You don't want it to be able to be changed by one councilor who has an idea – it needs to be a very strong document, requiring the ratification of the people for any change. The government can't change the constitution.

3) Can we still get other monies if we have a treaty?

Mike: Yes – you still have the same access to programs and services as any Canadian citizen and as any other Indian Act band in Canada. So, you can apply for all the programs and grants that are available.

4) How long after a Treaty is in place do I have to transfer to another Band if I don't want to lose my tax exemption?

Mike: 12 years.

5) Why do we need lawyers to speak to us about treaty alternatives? Could we not have some of the bands or organizations speak to us about their experiences instead? Lawyers are very expensive as well – and will we be able to understand what they say?

Mike: I think having a lawyer at our next meeting will be important as they will be able to give us the legal "real deal". I have asked Bob Freedman to come, he has had lots of experience dealing with treaty and land claims, he won the Mikisew case, and he is very qualified to speak to this.

Robert: Can we get some of our 'Namgis lawyers involved as well?

Mike: They can come of course – but I don't know if their expertise lies in this area.

6) We need better communications about what is happening with council and the Treaty. We need minutes of the meetings, and updates as to where things are at.

Mike: We have spent almost \$350,000 last year on communications. We have staff in place, we put out a newsletter and a Facebook page – what else can we do to help with this? Sue is taking minutes – these will go out to you in whatever form you need them.

Christina: The web site needs to be updated regularly. It is not useful right now for us, and the Facebook page is mainly used for very negative comments.

Chris Cook III: It needs to be made more our responsibility to find out this information and share it with our families. We need to make it our responsibility to learn. Maybe we should make each family responsible for taking this information back to their members, and learning this materials. We should be having Family Meetings and discussing these things.

****Action Item:** Council and band members to explore hosting Family Meetings to share governance and treaty information and discuss meeting minutes and shared documents.

7) What about jobs and capacity building for our members?

Verna: There is training available for band members, members have been to courses in carpentry, home care, some of the staff has been sent for management training.

Harold: We need a business plan. Why doesn't the Band have one? There needs to be plans set out to develop jobs and figure out our needs.

Verna: I will talk about this more tomorrow, but we have a strategic plan now and are developing more – when the Forests and Range revenue sharing begins to happen, we need a plan to share that money where it is needed. The job part is harder: we have run the Schoen Lake campground now for a few years, and there is always a 5 month position posted to run that campground, but no one wants it from the band – so a non- 'Namgis woman does the job.

Mike: We are looking at providing more job opportunities now and in the future, e.g. we have the six sites on Johnstone Strait that we can lease out to kayak companies. We have also talked to Western Forest Products and are trying to get an agreement with them to get improved levels of employment for band

members. WFP would love to have people who live on the north island working for them, but right now we don't have enough skilled people to fill their jobs.

Gerry: We held a heavy-duty equipment course, there are two band members working in this now, but the problem is that they have to go off-island to get apprenticed, and then don't come back, as there are few jobs here.

Crystal: A capacity building needs assessment was done for the 'Namgis Nation both on and off-reserve. It listed the skills we have as well as the age range of members – we need to share this, without naming names of course, just the numbers or percentages, as it is good information for future planning.

****Action Item:** Some of these statistics can be put in the newsletter.

8) How will the Chiefs and Leaders operate under a Treaty?

Mike: This will be according to your Constitution. They will be democratically accountable to you.

9) How will non-First Nations businesses on reserve operate under a Treaty?

Mike: Right now when a company wants to do something in the 'Namgis territory, they approach the provincial government. We get a notice from the government asking if our rights will be affected by their operations. We always say yes. Then we look at the company and what they want to use the land for. If it's not consistent with our values and uses for the land we say no. If it is something that is of interest, we see if we want to partner with the company: e.g. a hydro project.

Sometimes we don't want to take on the business risk so we won't partner with the company, but we do negotiate a royalty from their profits.

****Action Item:** Request: Can we have job opportunities listed on the band web site? And a listing of existing business partnerships, and ones that are in the works?

2:00 PM Update on Constitutional Committee

Crystal: The last constitutional meeting in Alert Bay was productive – we went through the preamble line by line with the lawyer. We have looked at some other First Nations constitutions and they have guided us in some of our wording. It is still in the early stages of development – it is a huge undertaking, and it has taken lots of work and discussions to get where we are now. We need to check through every word and some we flag to re-visit at another time.

We are working to set up additional information meetings, we want Honey to come and give us a presentation on traditional governance systems, and Harry to come and speak to us about lands. We want to try to marry some of the old ways to the new system. We also want to bring in other treaty constitutions to see their development process.

All the people around the table are not pro-treaty as well, but we all know the constitution is integral to whatever happens. We are waiting to get the revised pre-amble back from the lawyer. We have an open door policy for the meetings and people are welcome to observe, but we needed to cap the committee to 16 people to make it manageable.

Robert: We will be bringing the constitution to the membership to review it with everyone and ask what you want to see in it.

Barb: The preamble is important – it lays the foundation for what we are as 'Namgis. It is the statement about our identity, it speaks about what it means to be 'Namgis. The constitution will exist out side the Treaty. Right now it is restricted by the limitations set out in the Indian Act.

Chris Cook Senior: Alert Bay is an amalgamation of may tribes and families – we have a unique challenge in capturing who we are. We are all connected from different families.

Chris Cook III: We need to be mindful of the members that aren't historically 'Namgis but are 'Namgis now – we all need to be included, equal representation. The old "Five Houses" system is out of date, looking at it only this way has held us back.

Crystal: The historical element is in there but it is evolving – we have to be flexible to meet the needs of our community now.

2:30 PM Summary / Closing

Participants asked to drop off questions for tomorrow's meeting in the box by the door: collected by Sue and reviewed by Sue and Verna.