

**WEI WAI KUM/KWIAKAH (WKTS)**  
**AGREEMENT-IN-PRINCIPLE**  
**DETAILED CHAPTER SUMMARIES**

**Chapter 1**

**General Provisions**

**Chapter Summary**

The General Provisions chapter will apply to the entire treaty and its purpose is to set out the legal framework for the treaty. It clarifies the relationship between Treaty rights and Aboriginal rights, how the Wei Wai Kum laws and the Kwiaakah laws will work with federal and provincial laws, and how the Final Agreement can be interpreted and amended.

**Nature of this Agreement**

The Agreement-in-Principle (AIP) is not legally binding.

The AIP will be used as a basis for negotiating the actual treaty called the Final Agreement.

**Nature of the Final Agreement**

The Final Agreement is what we refer to as the treaty and it will be legally binding.

If the Wei Wai Kum and the Kwiaakah accept it by a vote, the Final Agreement will become a treaty within the meaning of section 35 the *Constitution Act, 1982*.

Canada and BC will pass laws to make the treaty a law.

If the people do not vote to accept the treaty, the treaty will not be legally binding on anyone.

**Assurances**

All the parties must be assured that the people signing the treaty have the legal authority to do so and the expressed approval of the people.

**Constitution of Canada**

The treaty will receive constitutional protection, but it will not change the Constitution of Canada, including the distribution of powers between Canada and BC.

The *Canadian Charter of Rights and Freedoms* will apply to the Wei Wai Kum and the Kwiaakah governments and our members will have all of the rights and protections under the Charter.

**Character of Lands**

Treaty Settlement Lands will not be Indian Reserves, and the *Indian Act*, for the most part will not apply.

## **Application of Federal and Provincial Laws**

The many licenses, permits and other authorizations that are required to be issued to the Wei Wai Kum and the Kwiakah under the treaty (for example the commercial recreation tenure, water licenses, fishing licences and so on) will be governed by federal and provincial laws except in areas that the treaty has different rules. In those cases, the treaty and the Wei Wai Kum and the Kwiakah laws will apply.

Federal and BC laws will apply to the Wei Wai Kum and the Kwiakah people and the Wei Wai Kum and the Kwiakah lands. However, if there is any conflict between the treaty and those federal and BC laws, the treaty and the rules agreed to in the treaty will apply to the extent of the conflict.

## **Relationship of Laws**

The Courts already have a number of existing rules in regards to conflict of laws between Canada and BC. This section explains how those rules will or will not apply to the Wei Wai Kum and the Kwiakah laws after the treaty.

In general, Canada maintains law making and priority over matters that the parties agree are of a national interest, such as criminal law and national defense. The Wei Wai Kum and the Kwiakah have law making and priority over matters that are of internal interest to them, such as Treaty Settlement Lands, Culture and Heritage, Children and Education.

Unless otherwise provided for in the treaty, the Wei Wai Kum and the Kwiakah laws will not apply to Canada and BC.

## **Application of the *Indian Act***

Canada will still keep track of which people among the Wei Wai Kum and the Kwiakah qualify as status Indians under the *Indian Act*, for example for determining who is eligible for health and education benefits.

Otherwise, the *Indian Act* will no longer apply to the Wei Wai Kum, or the Wei Wai Kum people, or the Kwiakah, or the Kwiakah people. (See the Tax chapter for details about the phasing out of the tax exemption under the *Indian Act*.)

The Transition Chapter provides details on the process for removing the Wei Wai Kum and the Kwiakah out from under the *Indian Act*.

## **Other Rights, Benefits and Programs**

The Wei Wai Kum and the Kwiakah people will still be eligible for the same rights and benefits as other Canadians would be.

The Wei Wai Kum and the Kwiakah people with status will still be eligible for the same rights and benefits as other status Indians are under the *Indian Act*, including health and education.

If the Wei Wai Kum and the Kwiakah governments have assumed responsibility and funding for managing programs or services, the Wei Wai Kum and the Kwiakah and their peoples cannot receive double benefits from both Canada and their governments.

### **Court Decisions**

If a court determines that a provision of the treaty is invalid, the Parties will make their best efforts to amend the treaty to replace the invalid provision. The rest of the treaty will continue unaffected.

The Parties have agreed not to challenge the validity of any provision of the treaty.

If one of the Parties breaches the treaty, the treaty continues to be valid, and the Parties are still required to meet their obligations under the treaty.

### **Certainty**

#### **Full and Final Settlement**

The treaty is a settlement for the Wei Wai Kum's and the Kwiakah's land claims, except Specific Claims (see below).

#### **Exhaustively Set Out Rights**

The treaty sets out what all of the Aboriginal rights and title of the Wei Wai Kum and the Kwiakah will now be.

#### **Modification and Continuation**

Aboriginal rights will continue as defined by the treaty.

Any Aboriginal title the Wei Wai Kum and the Kwiakah had before the treaty will now consist of the lands set out in the treaty.

#### **Purpose of Modification**

The purpose of modification is to ensure that the Wei Wai Kum's and the Kwiakah's rights are clearly defined and the Wei Wai Kum's and the Kwiakah's ability to exercise their rights are protected by section 35 of the *Constitution Act, 1982* and to clarify the obligations of Canada and BC to the Wei Wai Kum and the Kwiakah.

#### **Rights Not Extinguished**

Aboriginal rights are not extinguished but continue as defined by the treaty.

#### **Release of Past Claims**

The Wei Wai Kum and the Kwiakah agree that after the treaty, it will not sue Canada and BC for any past violations of Aboriginal rights (it can still sue Canada and BC if they do not meet their obligations under the treaty).

## **Indemnities**

The Wei Wai Kum and the Kwiakah agree to try to help protect Canada and BC from any lawsuits that claim damages from Canada and BC for past violations of Aboriginal rights or anything Canada and BC do in accordance with the treaty.

The Wei Wai Kum, the Kwiakah, Canada, and BC all agree to defend the treaty against anyone who tries to legally challenge it.

## **Specific Claims**

The Wei Wai Kum and the Kwiakah can still seek Specific Claims against Canada (Specific Claims are any past wrongs committed by the Government of Canada not in regards to general land claims for rights and title but in regards to a particular action or event, illegally taking back some Reserve land, for example).

## **Other Aboriginal People**

The Wei Wai Kum's and the Kwiakah's treaty is not meant to affect the rights of other First Nations.

If a court rules that another First Nation has an Aboriginal right, and that ruling negatively affects the Wei Wai Kum's and the Kwiakah's rights under the treaty, that section of the treaty will no longer operate, but the rest of the treaty will continue as much as possible.

Similarly, if another First Nation concludes a treaty with Canada or BC, and the provisions of the other treaty negatively affects the Wei Wai Kum and Kwiakah treaty, that section of the Wei Wai Kum and Kwiakah treaty will no longer operate, but the rest of the treaty will continue as much as possible.

If the Wei Wai Kum and the Kwiakah lose land or rights as a result of another First Nations treaty or the ruling of a Court, Canada and BC must provide the Wei Wai Kum and the Kwiakah people with additional or replacement rights, or lands, or other compensation.

If, after negotiating, the Parties are unable to agree on the compensation, the matter will be dealt with by litigation or arbitration under the Dispute Resolution Chapter.

## **Periodic Review**

The Parties all acknowledge they will have to review the treaty in the future to ensure it is working well for all of the Parties.

If any Party wants to review some portion of the treaty, they will give notice to the other Parties.

Unless otherwise agreed, the Parties will review the treaty at least every 15 years.

The Parties are not obligated to change the treaty as a result of a review.

Each of the Parties is responsible for their own costs during a review.

## **Amendment Provisions**

Generally, the Wei Wai Kum and the Kwiakah treaty can only be amended with the consent of all three Parties, but there are also provisions for “deemed amendments”.

Any Party can propose an amendment.

The Parties agree that before they consider amending the treaty, they will try to find a solution that does not require amending the treaty.

## **Interpretation**

When drafting the treaty, the Parties and their lawyers rely on various conventions. This section indicates the legal drafting conventions the Parties have used and provides instructions on how to interpret the treaty.

## **Consultation**

Canada and BC are still required to consult with the Wei Wai Kum and the Kwiakah and their obligations and the process is set out in the treaty.

Anything Canada and BC do in accordance with the treaty will not be considered an infringement of the Wei Wai Kum’s and the Kwiakah’s Aboriginal rights.

## **Questions and Answers**

Q: Will our Aboriginal rights be extinguished?

A: No, our Aboriginal rights will continue as defined in the treaty, and they will continue to be protected by s. 35 of the *Constitution Act, 1982*.

Q: Will we still be eligible to receive the same health and education benefits that we do as Indians under the *Indian Act*?

A: Yes. You continue to be eligible for extended health benefits and the same education benefits that you do as Indians.

Q: Will the federal and provincial government still have to consult with us?

A: Yes, the governments will have to consult with you anytime your treaty rights might be affected, and the treaty clarifies exactly what the government must do and when. The Supreme Court of Canada has already ruled that if a treaty missed something, the government still has to consult you.

Q: Will we still be able to sign Impact Benefit Agreements or other beneficial Agreements after the treaty is signed?

A: Yes. Plus, you will be a legal entity on your own and will not need permission from Canada to enter into Agreements.

Q: Are current consultation and accommodation policies a better alternative to treaty?

A: Arguably no. After treaty, the government will still have to consult with the Wei Wai Kum and the Kwiakah, and the treaty provides more land, cash, independence and law making than would ever be provided by an Impact Benefit Agreement.

Q: Why do we negotiate an AIP first? Why can't we skip straight to Final Agreement negotiations?

A: This is the process jointly developed by the First Nations Summit, Canada, and BC, which also led to the development of the BC treaty Commission. Now that all of the parties agree on basic principles, they can all focus resources on completing a Final Agreement.

Q: How long will it take before the Final Agreement is finished?

A: Other First Nations, such as Nisga'a, Tsawwassen, and Maa-Nulth have taken at least a couple of years to conclude the Final Agreement, after they ratified their AIP. So, it will probably be 3 to 5 years after we conclude and AIP, but we are about two years away from concluding an AIP

Q: Will we get a chance to vote on the Final Agreement?

A: Yes. You will first have to approve the AIP, when it is ready. We will be required to have another vote when the Final Agreement is finished on whether to accept the treaty or not.

Q: Is it better if there is uncertainty about our Aboriginal rights and title?

A: Arguably no. The Supreme Court of Canada has already said, in *Beckman v. Little Salmon/Carmacks* that the Crown, Canada and British Columbia, cannot use a modern treaty in such a way that has a negative effect on the special relationship the Crown has with Aboriginal people. To do so would be inconsistent with the primary purpose of s. 35, which is the reconciliation of Crown and Aboriginal interests. So, if Canada or British Columbia tried to take advantage of the fact that your Aboriginal rights and title were defined in the treaty, for example, by developing lands just off of your treaty settlement lands, they could be sued.

## **Chapter 2**

### **Self-Government**

#### **Chapter Summary**

This chapter provides the Wei Wai Kum and the Kwiakah with self-government and allows the Wei Wai Kum and the Kwiakah to create their own laws for a variety of subject matters, including education, child care, and family and social services. This chapter also sets out what will be contained within a Wei Wai Kum or a Kwiakah Constitution, which will define the structure of the Wei Wai Kum or the Kwiakah government, the process for elections, and provide various protections to the Wei Wai

Kum and the Kwiakah members. Federal and provincial laws will continue to apply on the Wei Wai Kum and the Kwiakah Lands, and if the Wei Wai Kum and the Kwiakah does not want to pass a numerous new laws, it can simply continue to use federal and provincial laws.

### **General**

The Wei Wai Kum and the Kwiakah will have the right to self-government and to pass laws as set out in the treaty.

If it would prefer, the Wei Wai Kum and the Kwiakah can adopt federal or provincial laws instead of pass their own laws.

### **Legal Status and Capacity**

The Wei Wai Kum and the Kwiakah will be a legal entity, meaning it can enter into contracts and agreements. They can own land or other things, and they can sue or be sued.

### **Delegation**

The Wei Wai Kum and the Kwiakah can delegate their authorities to a variety of other organizations. They could create their own institutions or corporations to handle specific matters. They can also ask another government to help manage matters, including other First Nation governments if they want to cooperate with another organization to save costs.

### **Structure**

The structure of the Wei Wai Kum and the Kwiakah governments after treaty will be determined by the Wei Wai Kum and the Kwiakah as set out in their own constitutions.

### **Wei Wai Kum and Kwiakah Constitutions**

Wei Wai Kum and Kwiakah will make their own Constitutions as follows. The Wei Wai Kum and Kwiakah Constitutions must:

- Be mostly democratic (Hereditary Chiefs could be included as long as the majority of representatives are elected)
- Setup a process for the Wei Wai Kum and the Kwiakah to pass laws (Canada and BC for example have a process for a bill to become a law)
- Establish a process for someone to challenge the validity of a law
- Setup a process for an election which must occur at least every 5 years
- Establish financial standards to ensure accountability to members
- Provide for the protection of member's rights
- Set out how the Constitutions can be amended

### **Appeal and Review of Administrative Decisions**

The Wei Wai Kum and the Kwiakah can setup their own processes to hear official complaints about the Wei Wai Kum's and the Kwiakah's laws.

If a Wei Wai Kum or a Kwiakah member is not satisfied with a Wei Wai Kum or a Kwiakah review of his or her complaint, the member can try to appeal to the Supreme Court of British Columbia.

### **Registry of Laws**

The Wei Wai Kum and the Kwiakah governments will have to make their laws available to the public, including the Wei Wai Kum members, the Kwiakah members, Canada, and BC.

### **Notification of Provincial Legislation**

BC will notify the Wei Wai Kum and the Kwiakah if it is considering new laws that could affect the Wei Wai Kum's or the Kwiakah's rights or law-making abilities.

If the Wei Wai Kum and the Kwiakah request it in writing, BC will meet with the Wei Wai Kum and the Kwiakah regarding BC's new law.

### **Wei Wai Kum and Kwiakah Governments**

The Wei Wai Kum and the Kwiakah can make laws about the operation of their governments. They can also establish different institutions or corporations along with laws about how those institutions will operate.

### **Citizenship**

The Wei Wai Kum and the Kwiakah can make laws about their own citizenship. However, its laws cannot affect Canadian citizenship or Indian status.

### **Devolution of Cultural Property**

Cultural property could include things like carvings, artwork, jewelry or anything else owned by someone that is of cultural significance to the Wei Wai Kum or the Kwiakah. Ones that formerly belonged to a chief or a clan could be of even more significance.

The Wei Wai Kum and the Kwiakah can make laws in regards to transferring these items, which would include when these items are sold or given in a will.

### **Peace, Order and Public Safety**

The Wei Wai Kum and the Kwiakah will be able to make laws in regards to nuisance, trespass, or any other threats to public safety

### **Emergency Preparedness**

The Wei Wai Kum and the Kwiakah can make laws in regards to emergencies and declare local emergencies on their own lands.



## **Regulation of Business**

The Wei Wai Kum and the Kwiakah can make laws in regards to business activities and business licenses. However, they cannot make laws about the certification of professionals, like doctors and lawyers.

## **Buildings and Structures**

The Wei Wai Kum and the Kwiakah can make laws in regards to building standards.

## **Traffic**

The Wei Wai Kum and the Kwiakah can make laws about traffic and parking on its lands.

## **Health**

The Wei Wai Kum and the Kwiakah can make laws in regards to health services that are provided to their members or provided by the Wei Wai Kum and the Kwiakah (if they establish their own health community office for example).

The Wei Wai Kum's and the Kwiakah's laws will only apply to the institutions they create.

## **Aboriginal Healers**

The Wei Wai Kum and the Kwiakah can make laws about Aboriginal healers and traditional medicine.

## **Family and Social Services**

The Wei Wai Kum and the Kwiakah can make laws about family and social services, including housing and income assistance.

If the Wei Wai Kum and the Kwiakah wants, the Wei Wai Kum, the Kwiakah, and BC can enter agreements so the Wei Wai Kum and the Kwiakah can take over providing the service.

## **Child Protection Services**

The Wei Wai Kum and the Kwiakah can make laws about child protection services (such as the use of foster parents or other group homes for children that need a guardian).

If the Wei Wai Kum and the Kwiakah do pass their own laws, they will also have to ensure the safety and well being of children.

The Wei Wai Kum and the Kwiakah will have to work with BC to share information and ensure their systems work well together.

If there is a Wei Wai Kum or Kwiakah child in an emergency, and the Wei Wai Kum and the Kwiakah are not able to help right away, BC can help and transfer things back to the Wei Wai Kum and the Kwiakah when the Wei Wai Kum and the Kwiakah are ready to take over.

## **Child Custody**

The Wei Wai Kum and the Kwiakah can appear in court for any child custody matter (usually divorces that have gone to court), and the Wei Wai Kum and the Kwiakah can help advise the judge about any the Wei Wai Kum and the Kwiakah laws that might be relevant. The Judge will still make the final decision

## **Adoption**

The Wei Wai Kum and the Kwiakah can make laws in regards to the adoption of the Wei Wai Kum and the Kwiakah children or the Wei Wai Kum and the Kwiakah parents who are adopting a child.

The Wei Wai Kum and the Kwiakah laws must still ensure the best interests of the child are the most important consideration.

The Wei Wai Kum and the Kwiakah laws cannot change that the biological parents of a child still must consent to putting the child up for adoption.

If the biological parents of a child would rather not have the Wei Wai Kum or the Kwiakah laws apply to their adoption, they can use BC's laws instead.

BC will consider the cultural identity of the child when placing a Wei Wai Kum or a Kwiakah child with parents.

## **Child Care**

The Wei Wai Kum and the Kwiakah can make laws about childcare, such as daycare or pre-school.

## **Language and Culture Education**

The Wei Wai Kum and the Kwiakah can make laws about the teaching of the Wei Wai Kum culture or the Kwiakah culture or the teaching of the Wei Wai Kum language or the Wei Wai Kum language.

## **Kindergarten to Grade 12 Education**

The Wei Wai Kum and the Kwiakah can make laws about any kindergarten, elementary schools, or high schools on the Wei Wai Kum and the Kwiakah Lands.

The Wei Wai Kum and the Kwiakah can make laws in regards to home schooling.

## **Post-Secondary Education**

The Wei Wai Kum and the Kwiakah can make laws about colleges and universities on the Wei Wai Kum and the Kwiakah lands if they ever want to create one on their lands.

## **Solemnization of Marriages**

The Wei Wai Kum and the Kwiakah can make laws about marriage ceremonies.

## **Liquor Control**

The Wei Wai Kum and the Kwiakah can make laws about liquor, including where it is drunk or sold on the Wei Wai Kum and the Kwiakah Lands, but provincial laws will prevail if there is a conflict in the laws.

BC will not give any sort of liquor licenses to people or businesses on the Wei Wai Kum and the Kwiakah lands unless the Wei Wai Kum and the Kwiakah approves.

Liquor must still be obtained through BC's Liquor Distribution Branch.

## **Administration of Justice**

The Wei Wai Kum and the Kwiakah can establish penalties, such as fines or jail, for violations of their laws.

The penalties the Wei Wai Kum and the Kwiakah imposes cannot exceed those of federal and provincial law for comparable offences.

The Wei Wai Kum and the Kwiakah will be responsible itself for enforcing their laws.

The Wei Wai Kum and the Kwiakah can establish their own officers to enforce the Wei Wai Kum and the Kwiakah laws (like tribal police), but their powers cannot exceed RCMP or police powers, and they cannot carry firearms.

The Wei Wai Kum and the Kwiakah can enter agreements with Canada or BC for help enforcing their laws.

The Wei Wai Kum and the Kwiakah laws in regards to hunting can be enforced by Conservation Officers.

The Provincial Court of British Columbia will handle charges for violations of the Wei Wai Kum and the Kwiakah laws.

The Wei Wai Kum and the Kwiakah can enter agreements to have the provincial or federal Crown help them prosecute individuals in court.

The Wei Wai Kum and the Kwiakah cannot establish their own court, but the Wei Wai Kum and the Kwiakah can work with BC to try to establish a court lower than the provincial court to handle some matters related to the Wei Wai Kum and the Kwiakah laws.

The Wei Wai Kum and the Kwiakah can propose individuals to BC to become Judges or Justices of the Peace.

Anyone that tries to sue or get any sort of court order against the Wei Wai Kum and the Kwiakah will have to do so in the Supreme Court of British Columbia.

## **Wei Wai Kum and Kwiakah Governments' Liability**

The Wei Wai Kum's and the Kwiakah's elected leaders, and the people who work for them, will have many of the same protections as other politicians, meaning they cannot be sued for things where they were doing the best they can to fulfill their duties as a leader.

If the Wei Wai Kum's or the Kwiakah's elected leader do very poor work or are intentionally bad, they can still be sued.

The same is also true for the Wei Wai Kum's and the Kwiakah's various high level employees who will work for their governments, managers for example. As long as they are just trying to do their job the best they can, they cannot be sued. If they do very poor work or are intentionally bad, they can be sued.

The Wei Wai Kum and the Kwiakah governments can still be sued if they turn a blind-eye to employees who are behaving dangerously (employees who drink and drive for example).

If someone is trying to sue the Wei Wai Kum or the Kwiakah governments, the Wei Wai Kum or the Kwiakah governments should be treated by the courts like a municipality.

### **Non-Member Representation**

People who are not the Wei Wai Kum or the Kwiakah but live on the Wei Wai Kum or the Kwiakah lands, non-Aboriginal spouses for example, will be allowed to participate in decision-making processes that will affect them.

### **Transitional Provisions**

The Chief & Council that are in office on the day the treaty becomes effective will continue as the treaty government until the Wei Wai Kum and the Kwiakah have time to hold an election.

### **Law-Making by Wei Wai Kum and Kwiakah Government**

Before passing certain new laws, the Wei Wai Kum and the Kwiakah will notify Canada and BC.

#### **Questions and Answers**

Q: Will our leadership be less accountable to us after treaty?

A: No. After treaty, you're the Wei Wai Kum and the Kwiakah governments will be more accountable to you than ever before. The Wei Wai Kum and the Kwiakah governments and the laws they pass will all be required to conform with the Charter of Rights and Freedoms, and the Wei Wai Kum and the Kwiakah will be able to make their own Constitutions that sets out how elected leaders will be accountable to their members.

Q: Will the Wei Wai Kum and the Kwiakah have the ability to manage all of this?

A: The Wei Wai Kum and the Kwiakah only has to take on the things that they feel that they can handle. If the Wei Wai Kum and the Kwiakah leadership would rather continue to let the federal and provincial laws apply, they can.

Q: What limits will there be on the Wei Wai Kum and the Kwiakah governments' ability to pass laws?

A: The treaty provides a number of limitations itself. For example, most law-making abilities are limited to the Wei Wai Kum and the Kwiakah people and the Wei Wai Kum

and the Kwiakah lands. There are also some subjects, such as child protection, where the Parties have agreed that the Wei Wai Kum's and the Kwiakah's laws will be consistent with provincial standards or better. The Wei Wai Kum's and the Kwiakah's laws will also have to conform with the Charter of Rights and Freedoms, meaning if they discriminate against certain individuals unfairly, those individuals can challenge the Wei Wai Kum and the Kwiakah in court. Finally, the Wei Wai Kum's and the Kwiakah's laws must also conform with the Wei Wai Kum or the Kwiakah Constitutions, which will include a process for passing laws that will ensure community input.

Q: Can the Wei Wai Kum and the Kwiakah make laws that apply to non-Aboriginals or other lands?

A: Some laws would apply to anyone on the Wei Wai Kum and the Kwiakah Lands and some laws would apply to the Wei Wai Kum and the Kwiakah members even off of the Wei Wai Kum and the Kwiakah Lands. Most of the law making is limited to the Wei Wai Kum and the Kwiakah Lands.

Q: What will happen if the Wei Wai Kum and the Kwiakah laws are different from federal or provincial laws?

A: The Final Agreement always sets out which laws will have priority in the event of a conflict. Laws in regards to the conflict of laws are a bit complicated. Generally, it is not enough for the laws to be simply different. The laws usually have to be completely incompatible with one another for the Courts to say the laws are in conflict.

### **Chapter 3**

#### **Local Government Relations**

- This Chapter summary will be added at a later date

### **Chapter 4**

#### **Culture and Heritage**

The Culture and Heritage chapter guarantees the Wei Wai Kum's and the Kwiakah's right to practice their culture and speak their languages. It provides the Wei Wai Kum and the Kwiakah law making in regards to cultural objects and sacred sites. This chapter will also return a number of the Wei Wai Kum and the Kwiakah artifacts that are being held by Canada and BC to the Wei Wai Kum and the Kwiakah and give the Wei Wai Kum and the Kwiakah access to other artifacts.

The Wei Wai Kum and the Kwiakah has the right to practice their cultures and speak their languages.

Canada and BC acknowledge the importance of the Wei Wai Kum and the Kwiakah objects that are being held by Canada and BC in their museums.

The Wei Wai Kum and the Kwiakah will be able to make laws in regards to cultural objects, important sites, and any ancient human remains that might be found on the Wei Wai Kum and the Kwiakah Lands.

The Wei Wai Kum and the Kwiakah will provide information to BC about the cultural laws they pass.

If the Wei Wai Kum and the Kwiakah make laws about important sites, BC's laws will no longer apply to those sites.

The Wei Wai Kum and the Kwiakah will still allow public access to important sites as long that does not cause too much damage to those sites.

For Final Agreement, Canada and BC will provide a list of Wei Wai Kum and Kwiakah artifacts that they can return to the Wei Wai Kum and the Kwiakah.

For Final Agreement, Canada and BC will provide a list of Wei Wai Kum and Kwiakah artifacts that the Wei Wai Kum and the Kwiakah can access and borrow from Canada and BC.

If Canada or BC has any human remains that are someone of Wei Wai Kum or Kwiakah ancestry, they will transfer those to the Wei Wai Kum or the Kwiakah.

The Parties can set out sites in an appendix to become new Heritage Sites under provincial law if they would like to.

The Wei Wai Kum and the Kwiakah and BC can give some places traditional Wei Wai Kum and Kwiakah names.

#### **Questions and Answers**

Q: Why doesn't Canada and BC just return everything that might be Wei Wai Kum and Kwiakah?

A: Sometimes Canada and BC cannot be sure that an object is specifically Wei Wai Kum and Kwiakah. They may only be able to determine, for example, that it is a Laich-Kwil-Tach object. To be fair to other Laich-Kwil-Tach First Nations Canada and BC keep those objects and share access to them with all parties with possible historical interests.

Q: Will we be able to change the names of places to give them Wei Wai Kum or Kwiakah names?

A: Yes. The Wei Wai Kum and the Kwiakah and BC will determine some traditional names for certain places.

## Chapter 5

### Lands

#### Chapter Summary

The Lands chapter acknowledges the Wei Wai Kum and the Kwiakah ownership of an addition amount of land that is still under negotiation, which includes existing Reserve land and provincial Crown land. The Wei Wai Kum and the Kwiakah will own these lands in fee simple and be able to develop and manage these lands themselves. As we will see in other chapters, the Wei Wai Kum and the Kwiakah will own the forest resources and subsurface resources on these lands, and they will have a variety of law-making abilities on these lands.

#### General

Once the treaty is in effect, the Wei Wai Kum and the Kwiakah will own land, of which the agreed amount is still under negotiation. When the land selection is decided in the Final Agreement, they will be set out in maps in an appendix.

The Wei Wai Kum and the Kwiakah Lands do not include lands owned by other people, lands under water, such as the land under a lake or a river, or some major roads and railways.

After the AIP is finished and signed, Canada and BC will take steps to protect the Wei Wai Kum and the Kwiakah Lands, including protection of the forests and minerals. They will also prevent those lands from being sold to anyone else.

#### Ownership of Wei Wai Kum and Kwiakah Lands

The Wei Wai Kum and the Kwiakah will own their lands in fee simple, the same as most land owners, which means there will be very few restrictions on those lands.

The Wei Wai Kum and the Kwiakah can transfer or sell their lands, and they do not need permission from Canada or BC to do so.

If the Wei Wai Kum or the Kwiakah transfer or sell their lands, they continue to be the Wei Wai Kum and the Kwiakah Lands (the Wei Wai Kum and the Kwiakah would still have law-making and jurisdiction).

If the Wei Wai Kum or the Kwiakah transfers or sells their lands, they will register them with BC's Land Title Office first (see the next chapter for more information on the Land Title Office).

If the Wei Wai Kum or the Kwiakah transfer or sell their lands to a non-Aboriginal person or company, the limitations in the treaty in regards to expropriation will no longer apply.

If the Wei Wai Kum, the Kwiakah, Canada, and BC agree to remove lands from the Wei Wai Kum or the Kwiakah Lands, they can do so.

Other people cannot claim to have an interest in the Wei Wai Kum and the Kwiakah Lands based on past use, such as squatter rights.

If some of the Wei Wai Kum or the Kwiakah Lands happen to be given back to BC after treaty (when someone dies with no family for example), BC will immediately transfer the land back to the Wei Wai Kum or the Kwiakah.

During Final Agreement negotiations, the Parties will negotiate details in regards to what to do with a bankruptcy involving the Wei Wai Kum or the Kwiakah Lands.

### **Exterior Boundary Surveys**

Canada and BC will figure out how much each of them will have to pay for surveying the boundaries of the Wei Wai Kum and the Kwiakah Lands (the Wei Wai Kum and the Kwiakah will not have to pay).

If the Wei Wai Kum and the Kwiakah obtain other lands after the treaty and there are costs for surveys in regards to those lands, the Wei Wai Kum and the Kwiakah will have to pay for their own surveys.

### **Interests**

The Wei Wai Kum and the Kwiakah Lands will have no other interests on their lands except those set out in the appendix.

Where the Parties have agreed that there will be other interests, like a right of way, on Wei Wai Kum or Kwiakah Lands, the Wei Wai Kum and Kwiakah will issue those people replacement certificates acknowledging that their interest continues with the Wei Wai Kum and the Kwiakah much the same as it did before.

### **Certificates of Possession**

The Wei Wai Kum and the Kwiakah will issue replacement certificates for people who own Certificates of Possession. Other interests will also be replaced with equivalent or better legal interests.

### **Submerged Lands**

The Wei Wai Kum and the Kwiakah Lands do not include submerged lands, such as lakes and rivers.

Submerged lands that are already a part of a Wei Wai Kum or Kwiakah Indian Reserve will be part of the Wei Wai Kum and the Kwiakah Lands.

BC will not try to sell or allow any long-term leases of submerged lands within the Wei Wai Kum and the Kwiakah Lands without consent from the Wei Wai Kum and the Kwiakah.

Having ownership of submerged lands from a former Reserve does not include exclusive ownership of fish or fish habitat.

### **Accretions to First Nation Lands**

If the Wei Wai Kum and the Kwiakah Lands happen to grow in size because a nearby body of water, like a lake or a river, gets smaller, the Wei Wai Kum and the Kwiakah will own that land too.



## **Indemnity and Confirmation**

The Wei Wai Kum and the Kwiakah are not responsible if there is a mistake in the treaty and somebody accidentally loses his or her land and successfully sues over the mistake (BC would have to pay).

## **Site Remediation on Wei Wai Kum and Kwiakah Lands**

BC does not have to inspect all of the Wei Wai Kum and the Kwiakah Lands for contamination prior to the treaty.

Instead, the Parties will identify which parcels of the Wei Wai Kum and the Kwiakah Lands might be in need of environmental cleanup, called remediation, and when the Wei Wai Kum and the Kwiakah later decides to develop those lands, they will notify BC, and BC will see if the lands do in fact need remediation. If they do, BC will clean up those lands and pay for the costs.

BC does not have to pay costs for any contamination that occurs after the treaty comes into effect.

## **Additions to Wei Wai Kum and Kwiakah Lands**

If the Wei Wai Kum or the Kwiakah buy other lands within their territories that they own in fee simple, and Canada and BC agree, they can add those lands to the Wei Wai Kum and the Kwiakah Lands (gaining law-making over them).

After treaty:

- If the lands the Wei Wai Kum or the Kwiakah wants to add are within the City of Campbell River, the City must consent too.
- If the lands the Wei Wai Kum and the Kwiakah want to add are claimed by another First Nation, the other First Nation must consent.
- Canada and BC do not have to pay for any costs associated with adding the lands.

If BC still owns the subsurface rights to the lands the Wei Wai Kum and the Kwiakah are adding, BC will transfer those subsurface rights to the Wei Wai Kum and the Kwiakah.

If there were other interests on these new lands, such as a right of way, which are held by other people, those people will continue to hold those interests.

## **Expropriation**

The Wei Wai Kum and the Kwiakah and BC will negotiate details in regards to expropriation by BC during Final Agreement.

Canada acknowledges that it will try to avoid expropriating the Wei Wai Kum and the Kwiakah Lands, that they can only expropriate in accordance with federal laws that allow it, and that they will only expropriate the most limited interest for the most limited time.

Nothing in the treaty is meant to affect the ability of Canada to respond to an emergency in accordance with federal laws.

## **Law-Making**

The Wei Wai Kum and the Kwiakah can make laws in regards to land management, land use planning, and development on the Wei Wai Kum and the Kwiakah Lands.

The Wei Wai Kum and the Kwiakah can allocate or create other interests in their lands, including allocating fee simple ownership to their people if they want to.

The Wei Wai Kum and the Kwiakah can create their own land registry system for their own lands if they want to.

The Wei Wai Kum and the Kwiakah can create their own laws in regard to expropriation by the Wei Wai Kum and the Kwiakah on their own lands.

The Wei Wai Kum and the Kwiakah laws in regards to their lands prevail over federal and provincial law.

## **Agricultural Land Reserve**

During Final Agreement negotiations, the Parties will negotiate details in regards to farmlands within the Wei Wai Kum and the Kwiakah Lands.

## **Subsurface Resources**

The Wei Wai Kum and the Kwiakah will own all the subsurface resources under their lands, which includes things like minerals, gravels, metals, & oil if any.

The Parties agree that some people who already have claims to subsurface resources on lands that will eventually become the Wei Wai Kum and the Kwiakah Lands can continue to have their claims from the Wei Wai Kum and the Kwiakah instead of BC, and those will be set out in an appendix. The Wei Wai Kum and the Kwiakah will be the ultimate owners.

The Wei Wai Kum and the Kwiakah can allow other companies to help them find subsurface resources and to take advantage of using them. If other companies do assist, the Wei Wai Kum and the Kwiakah can charge them fees or taxes or agree on a percentage of revenues to share.

## **Tenured Subsurface Resources**

For those people who are allowed to keep their claims, the BC system will continue to apply to them.

Any revenues that BC receives in regards to these claims will be forwarded to the Wei Wai Kum and the Kwiakah.

If any of these owners later lose or give up their claim, those subsurface rights will automatically belong to the Wei Wai Kum and the Kwiakah.

## **Questions and Answers**

Q: What's the difference between the Wei Wai Kum and the Kwiakah Lands and our traditional territories?

A: The Wei Wai Kum and the Kwiakah Lands are the lands that the Wei Wai Kum and

the Kwiakah will own themselves. The Wei Wai Kum and the Kwiakah will be able to manage these lands and will have a variety of new law making authorities on these lands as set out in the self-government chapter. The traditional territories are the broader boundary that includes all of the land that the Wei Wai Kum and the Kwiakah have ever used. The Wei Wai Kum and the Kwiakah will not own the traditional territories but will continue to have rights to hunt and fish throughout them.

Q: What is fee simple ownership?

A: This is the standard ownership that most people have for lands that they own. It has the fewest restrictions on selling it or transferring it. It is considered the highest level of interest someone can have in land other than a government. As we will see throughout the treaty, the Wei Wai Kum and the Kwiakah will have many characteristics similar to the government too, including law making.

Q: What is Aboriginal title and the difference between Aboriginal rights?

A: Aboriginal title is a special kind of Aboriginal right that grants a kind of ownership to the land itself as opposed to more general Aboriginal rights, which are only a right to conduct certain site-specific activities, not a right to the land. This chapter essentially provides the lands that you will get in place of Aboriginal title.

Q: What is better fee simple or Aboriginal title?

A: Both have different advantages. Fee simple is what realtors, bankers, lawyers, and most importantly buyers are most familiar and most comfortable with. The Courts have said that Aboriginal title, like Reserve land, could only be sold or transferred with permission from Canada. Aboriginal title includes things that fee simple does not, like subsurface rights and self-government, but the treaty is giving those too along with fee simple, so treaty provides the best of both.

Q: Will our Aboriginal rights and title in our territory be reduced?

A: Your rights and title will be set out in the treaty. You will continue to have Treaty or Aboriginal rights throughout your traditional territory just as you do now. At this point, it is difficult to say what your actual Aboriginal title lands are. This all depends on the legal tests around "Strength of Claim". Aboriginal title is more like full ownership. You will only have full ownership of the lands we negotiate in the treaty.

Q: Could we get more land if we sued in Court?

A: Yes, we can. But to consider that, we need to resolve the shared territory issues with our neighbors and we need to have a very comprehensive and compelling strength of claim research package to support us. The Courts say that Aboriginal title exists generally, but they encourage First Nations, Canada and BC to negotiate.

Q: Why aren't the Wei Wai Kum and the Kwiakah getting submerged lands, like lakes and rivers?

A: BC refused to negotiate submerged lands unless they are already part of an existing

Indian Reserve.

Q: Will we need permission from Canada to develop our lands?

A: No. The Wei Wai Kum and the Kwiakah will be able to develop their lands however they would like to, and they will not need permission from Canada, BC, or the City of Campbell River. The developments will still have to conform to environmental laws, but aside from that, the Wei Wai Kum and the Kwiakah will have a variety of development options on their lands.

Q: I own a Certificate of Possession (CP). Will the treaty affect that?

A: The interest you have in your CP lands will not change, the interest will be guaranteed. However, the term "Certificate of Possession" may change, as that is terminology usually linked with the Indian Act. You will have a replacement interest that will be equal or greater than the CP interests you currently hold.

Q: Will we own our own homes after the treaty?

A: If you are renting your home or if your home is being paid for by Social Assistance, that will not change. If you have an interest that is equivalent to exclusive possession, then that will be converted into full ownership.

In other words, your legal rights will be equal to or better than what you have now. That will be up to you and your governments. The treaty allows for that as a possibility.

## Chapter 6

### Land Title

#### Summary

In BC, the provincial government has a Land Title Office that maintains all of the official records and documents in regards to who owns land, including the size and shape of parcels of land but also who has various other interests on those lands, such as mortgages or right of ways. Currently in the Land Title Office, Reserve lands are registered with Canada as the owner, but after treaty, the Wei Wai Kum and the Kwiakah will be able to register lands in its own name, making them easier to sell and get mortgages. The Land Title chapter provides specific details about what will be done in regards to BC's system and the Wei Wai Kum and the Kwiakah Lands.

The Federal land registry will no longer apply to the Wei Wai Kum and the Kwiakah as they did under the Reserve system. Federal land registry laws will only apply to any federal Crown lands or interests that are within the Wei Wai Kum and the Kwiakah Lands.

BC's land title system, called a Torrens system, will not apply to the Wei Wai Kum and the Kwiakah Lands unless the Wei Wai Kum and the Kwiakah chooses to register parcels with BC's Land Title Office.

If the Wei Wai Kum and the Kwiakah does apply for some of its lands to be registered in the BC system, then provincial law in regards to land title will apply to those lands.

Only the Wei Wai Kum First Nation and the Kwiakah First Nation, not an individual member, can initially apply to register the Wei Wai Kum and the Kwiakah Lands with BC's system.

The Wei Wai Kum and the Kwiakah will not have to pay fees for initial registration of their lands.

If the Wei Wai Kum and the Kwiakah apply to register their lands, they must also provide the various documents required for their applications.

If the Wei Wai Kum and the Kwiakah provides all the proper documents, BC will accept the lands for registration in their system for free.

The Wei Wai Kum and the Kwiakah can cancel the registration later if they like, but only the Wei Wai Kum and the Kwiakah, not an individual.

### **Questions and Answers**

Q: What does this chapter mean? What does it do?

A: This chapter is all about all the different legal documents and records in regards to land, and for the most part, this chapter at the beginning keeps things as they are. If the Wei Wai Kum and the Kwiakah want to register their lands later, they can. The Wei Wai Kum and the Kwiakah will probably want to register lands that they plan on selling or developing their lands.

Q: Can you give me an example of what this means for me?

A: If you possess land on a Reserve already, then you will continue to possess it as you currently do after treaty, except that ownership is vested with Wei Wai Kum or Kwiakah and not in the Crown. If, however, the Wei Wai Kum and the Kwiakah later decide to give fee simple ownership of lands to its people, the Wei Wai Kum and the Kwiakah need to prepare all the necessary documents and then can apply to BC's system on your behalf. BC will accept it as long as the Wei Wai Kum and the Kwiakah provides the proper documents, and then BC would register you as the owner for free. This will be up to the Wei Wai Kum and the Kwiakah if they want to register their land with BC or not.

## **Chapter 7**

### **Access**

#### **Chapter Summary**

After treaty, various employees and representatives of the government and utility companies will still need access to the Wei Wai Kum and the Kwiakah Lands to ensure various programs and services continue, such as electricity, hot water, or law

enforcement. This chapter sets out how these people can access the Wei Wai Kum and the Kwiakah Lands to carry out their work. It also sets out details as to when the general public can enter the Wei Wai Kum and the Kwiakah Lands.

The Wei Wai Kum and the Kwiakah will designate some of their lands as private lands (generally those lands where their individual members live), and those lands will be set out in an appendix.

Any lands not designated as private lands by the Wei Wai Kum and the Kwiakah will be public lands.

If the Wei Wai Kum and the Kwiakah intend to change some of their lands from public to private, they will give notice to Canada and BC.

What the Wei Wai Kum and the Kwiakah do with their lands cannot prevent the general public from accessing other public locations, such as lakes or parks.

Other members of the public can still access the Wei Wai Kum and Kwiakah Public Lands for temporary or recreational purposes, but other members of the public cannot take resources from the Wei Wai Kum and the Kwiakah Lands or cause damage or be a nuisance.

What the Wei Wai Kum and the Kwiakah do with their lands cannot prevent other landowners from accessing the lands they own.

If what the Wei Wai Kum and the Kwiakah do with their lands blocks a current way used by people, the Wei Wai Kum and the Kwiakah will make sure those people have another reasonable way through the Wei Wai Kum and the Kwiakah Lands, as applicable.

### **Law-Making**

The Wei Wai Kum and the Kwiakah can make laws to protect lands and resources, things such as fire prevention, nuisance, protection of sensitive habitat, and emergency response.

### **Access to Wei Wai Kum and Kwiakah Lands**

People who work for the government or utility companies or their various representatives can access the Wei Wai Kum and the Kwiakah Lands to carry out their work.

Anyone enforcing laws or acting in an official legal capacity can access the Wei Wai Kum and the Kwiakah Lands as part of their duties.

### **Wei Wai Kum and Kwiakah Access to Crown Lands**

People who work for the Wei Wai Kum and the Kwiakah governments can enter Crown lands to do their work if they need to.

### **Questions and Answers**

Q: Why does the treaty need this chapter?

A: A treaty is a constitutionally protected document, meaning it is generally considered part of the highest laws in Canada. Without something like this in the treaty, employees of the government could get charged with trespassing for going on the Wei Wai Kum and the Kwiakah Lands. It is also better to be clear about such matters. For example, even now, many police officers are unsure about their enforcement abilities on Indian Reserves. This chapter makes it clear that an officer can access treaty lands to help enforce laws.

## **Chapter 8**

### **Roads and Rights of Way**

#### **Summary**

After treaty, the Wei Wai Kum and the Kwiakah will own some of the local roads on their lands, and BC will maintain responsibility for many of the major roads that pass through or near the Wei Wai Kum and the Kwiakah Lands. The Wei Wai Kum and the Kwiakah Lands will also need to have various right of ways passing through it for things such as railways and transmission lines. This chapter provides details in regards to how those roads and right of ways will exist with the Wei Wai Kum's and the Kwiakah's laws and the Wei Wai Kum and the Kwiakah Lands.

#### **Wei Wai Kum and Kwiakah Roads and Crown Corridors**

The Wei Wai Kum and the Kwiakah will own some of the roads on the Wei Wai Kum and the Kwiakah Lands itself.

BC will continue to own some roads and right of ways and those will not be a part of the Wei Wai Kum and the Kwiakah Lands. These will be set out in an appendix.

#### **Crown Corridors No Longer Required**

If BC no longer needs any of these Crown roads or right of ways, it will give them to the Wei Wai Kum and the Kwiakah, including subsurface resources if the Crown owns those too.

BC will consult with the Wei Wai Kum and the Kwiakah in regards to major road construction on or near the Wei Wai Kum and the Kwiakah Lands.

#### **Realignment of Crown Corridors**

If BC ever needs to realign a Crown corridor, for example if it needs to move the path of a provincial road onto Wei Wai Kum or Kwiakah Lands, BC will get the land for the new road, but the Wei Wai Kum or the Kwiakah, as applicable, can have the land where the old road used to be.

If the Wei Wai Kum or the Kwiakah do not want the land from where the old road used to be, BC will give financial compensation instead.

## **Entry on Wei Wai Kum and Kwiakah Lands Outside Crown Corridors**

Employees of BC or utility companies can enter on the Wei Wai Kum and the Kwiakah Lands to maintain the right of ways, like removing tree branches from transmission lines.

Trees that are removed still belong to the Wei Wai Kum and the Kwiakah.

Employees that do this will minimize the amount of work and damage that they do.

## **Public Utilities**

Companies, like BC Hydro or cable companies, can do the repairs and upgrades they need to when customers request services.

The Wei Wai Kum and the Kwiakah agree that they cannot regulate or impair these companies as they do their work to provide services for customers (BC Hydro will still have to pay usual rents and fees to the Wei Wai Kum and the Kwiakah in accordance with current standards).

### **Questions and Answers**

Q: Why should the Wei Wai Kum and the Kwiakah let BC still own various roads through the Wei Wai Kum and the Kwiakah Lands?

A: Whoever owns a road is also responsible for maintaining it and making sure it is safe enough for use. If the owner of a road fails to maintain it, they could be sued (for example if a car owner damages his or her car in a pot-hole). Maintaining the road can be costly and time consuming. For some major roads, it will often be better to let BC take care of them.

## **Chapter 9**

### **Fisheries**

#### **Chapter Summary**

Currently there is no Fish Chapter, as Canada still does not have a mandate to negotiate fish.

### **Questions and Answers**

Q: Why are fisheries negotiations being delayed?

A: Canada has not been able to explain why it is not negotiating fish, now that the Cohen Commission has tabled its report. The Wei Wai Kum and the Kwiakah will negotiate a suitable allocation for salmon or there will be no treaty.

Q: Will there be anything in regards to commercial fisheries as part of the treaty?

A: As part of signing treaties, Canada and BC have provided millions of dollars in funding



to treaty First Nations to develop commercial fisheries. The Wei Wai Kum and the Kwiakah will negotiate this as well during Final Agreement negotiations.

## **Chapter 10**

### **Wildlife**

#### **Chapter Summary**

The Wildlife chapter covers the Wei Wai Kum's and the Kwiakah's right to hunt various animals, not including migratory birds, which are covered in a separate chapter. This chapter includes animals such as bear, elk, deer and others. Under the treaty, the Wei Wai Kum and the Kwiakah will continue to have the right to hunt these animals throughout the year and throughout their traditional territories and beyond.

#### **General**

The Wei Wai Kum and the Kwiakah will continue to have the right to hunt throughout their traditional territories.

A Wei Wai Kum or a Kwiakah member cannot sell or give his or her right to hunt to someone else.

The Wei Wai Kum and the Kwiakah right to hunt are limited only by public health, public safety, or conservation measures (hunters could not operate a firearm in an unsafe way, for example, or hunt an endangered species).

The Wei Wai Kum and the Kwiakah right to hunt are for the whole community to enjoy, not just certain individuals.

BC will continue to manage which species need to be protected, including the ability to protect their habitat.

The treaty is not meant to change property rights in regards to wild animals (generally nobody owns an animal until it is successfully caught).

#### **Harvest Areas**

The Wei Wai Kum and the Kwiakah will be able to hunt in their own traditional territory, and they will not need anyone's permission to do so.

#### **BC Reasonable Opportunity Language**

BC can make decisions with its Crown lands as long as it does not affect the Wei Wai Kum's or the Kwiakah's opportunity to hunt.

If BC does not impact the Wei Wai Kum's or the Kwiakah's ability to hunt, then the Wei Wai Kum and the Kwiakah will not hunt in such a way that interferes with BC's use of those lands.

## **Incidental Use**

If the Wei Wai Kum and the Kwiakah hunters need to do something to exercise their right to hunt, those activities are also allowed (for example, setting up a temporary shelter or camping).

## **Harvesting on Federal Crown Lands**

To hunt on federal Crown lands, the Wei Wai Kum and the Kwiakah will have to enter an agreement with the department owning those lands.

## **Harvesting on Fee Simple Lands**

The Wei Wai Kum and the Kwiakah people may hunt on privately owned lands as long as he or she does it in accordance with federal and provincial law.

To hunt on lands owned by other First Nations, the Wei Wai Kum and the Kwiakah need the permission of that First Nation.

## **Licences and Fees**

The Wei Wai Kum and the Kwiakah will not be required to pay fees for licenses.

The Wei Wai Kum and the Kwiakah will still need to get licenses to operate firearms/guns.

## **Harvesting Outside the Harvest Area**

The Wei Wai Kum and the Kwiakah members can still hunt outside their Harvest Area but they must do so in accordance with federal and provincial law.

## **Documentation**

The Wei Wai Kum and the Kwiakah members will still need some sort of documentation that shows their name and identity, like a treaty card.

## **Conservation Measures of a Wildlife Species**

If it becomes necessary to conserve a species of animal, BC can establish rules to protect those animals.

BC will consult with the Wei Wai Kum and the Kwiakah before implementing rules to protect an animal.

BC will consider a variety of factors when making this kind of decision.

BC will try to minimize the impact of their conservation measures on the Wei Wai Kum's and the Kwiakah's right to hunt.

BC will provide notice to the Wei Wai Kum and the Kwiakah when establishing a protective measure and will discuss it with the Wei Wai Kum and the Kwiakah.

If the Wei Wai Kum, Kwiakah and BC cannot agree about the kind of protection necessary, either one of them can refer it for dispute resolution, including using a neutral arbitrator.

## **Law-Making**

The Wei Wai Kum and the Kwiakah can make laws in regards to its hunting rights, and those laws will prevail over federal and provincial laws.

The Wei Wai Kum and the Kwiakah will have to make laws to ensure their members abide by any conservation measures that BC puts in place and to require members to produce their documentation when hunting or transporting what they caught.

## **Wildlife Advisory Management Process**

We are negotiating a specific Wei Wai Kum Kwiakah/Crown wildlife management process. Also, The Wei Wai Kum and the Kwiakah will have the right to participate in public planning processes that may affect their ability to hunt. There are also specific provisions dealing with Roosevelt Elk and the continue use of the existing Kwakiutl District Hunt Committee.

## **Trade and Barter and Sale**

The Wei Wai Kum and the Kwiakah will be able to trade and barter what they have hunted with themselves or other Aborigines in Canada.

The Wei Wai Kum and the Kwiakah can sell what they catch as long as they do so in accordance with federal and provincial law.

## **Trapping**

Trap lines that exist on the Wei Wai Kum and the Kwiakah Lands will continue to be owned by the same people.

Trap line owners will be allowed to access the Wei Wai Kum and the Kwiakah Lands to use their trap lines.

If a trap line owner gives up or loses his or her trap line, BC will not grant it to someone else again without the consent of the Wei Wai Kum and the Kwiakah.

If a trap line owner agrees to give it to the Wei Wai Kum and the Kwiakah, BC will do so.

## **Guiding and Angling**

Anyone who has a Guide Outfitter license or angling guide license will be allowed to keep it.

These guides will be allowed to access the Wei Wai Kum and the Kwiakah Lands to carry out their business.

BC will not grant further guide licenses on the Wei Wai Kum and the Kwiakah Lands without consent from the Wei Wai Kum and the Kwiakah.

## **Transport and Export**

The Wei Wai Kum and the Kwiakah members can transport anything they catch under their right to hunt.

The Wei Wai Kum and the Kwiakah members can export anything they catch in accordance with federal and provincial law.

### **Questions and Answers**

Q: How will my Aboriginal right to hunt be affected by a treaty?

A: Your Aboriginal right to hunt will continue in the same way but with more clarity in regards to the right. It will still be constitutionally protected.

Q: Can we hunt on provincial Crown lands, like parks?

A: Yes as long as your hunting is consistent with the provincial Crown's use of the land. For example, you cannot hunt in a way that would be unsafe for people.

Q: Can we hunt on federal Crown lands?

A: Only with an agreement with the federal department. Unlike the provincial government, the federal government does not normally own vacant Crown land. Federal land consists mostly of things like nursing stations, post offices, or RCMP housing. Very few of these lands are suitable for hunting on.

Q: Can we hunt on the Indian Reserves of other bands?

A: Like now, you will need permission from that First Nation. The courts and the government normally say that Indian Reserves are like Aboriginal title for a First Nation, meaning that nobody else can hunt there without permission.

Q: Will anyone else be able to hunt on the Wei Wai Kum and the Kwiakah Lands?

A: No, not without the Wei Wai Kum's or the Kwiakah's permission.

Q: What can we do about members who abuse their right to hunt for their own benefit?

A: The Wei Wai Kum and the Kwiakah will be able to make its own laws in regards to the Wei Wai Kum's and the Kwiakah's hunting rights. The Wei Wai Kum and the Kwiakah could make laws to ensure the whole community benefits from hunting.

Q: What will happen to our Roosevelt Elk Allocation and the existing Kwakiutl District Council Hunt Committee (KDCHC)?

A: We will continue with the same process under the KDCHC

## **Chapter 11**

### **Migratory Birds**

#### **Chapter Summary**

This chapter ensures that the Wei Wai Kum and the Kwiakah will continue to have the right to hunt migratory birds. Their right will not be extinguished and will continue to have constitutional protection. The Wei Wai Kum and the Kwiakah members will be

able to hunt migratory birds throughout the year and throughout their traditional territory. This chapter is very similar to the previous chapter except that it covers migratory birds, such as ducks, instead of animals. It does not include birds that do not migrate, such as most grouse or domestic birds, like chickens.

**Note** – Please see the previous chapter on Wildlife for more details. The majority of the same rights and obligations in that chapter apply to migratory birds as well. Only exceptions to the previous chapter are explained in detail below.

### **General**

The Wei Wai Kum and the Kwiakah members will continue to have the right to hunt migratory birds throughout the year.

### **Conservation Measures**

Canada will consult with the Wei Wai Kum and the Kwiakah when implementing protections. Also, when protections are put in place, because it is very difficult to estimate migratory bird populations, those protections are not likely to be based on a formula or a quantity like they might be for animals.

### **Consultation on International Negotiations on Migratory Birds**

Canada will consult with the Wei Wai Kum and the Kwiakah in regards to any International Treaties it negotiates that might affect the Wei Wai Kum's and the Kwiakah's ability to hunt migratory birds.

### **Questions and Answers**

Q: Why is there a separate chapter about Migratory Birds if everything is so similar?

A: Migratory Birds are part of federal jurisdiction whereas most other wildlife is part of provincial jurisdiction. This is because most migratory birds fly across provincial boundaries or even international boundaries.

## **Chapter 12**

### **Gathering**

#### **Chapter Summary**

This chapter ensures that the Wei Wai Kum's and the Kwiakah's right to gather plants and various other items continues, including medicinal plants, berries, mushrooms, cedar boughs, and others. The Wei Wai Kum's and the Kwiakah's right to gather will not be extinguished and will be constitutionally protected under the treaty.

**Note** – Again, this chapter, like the Wildlife Chapter and Migratory Birds Chapter, establishes a right that the Wei Wai Kum and the Kwiakah will continue to have throughout their traditional territories. This right is subject to many of the same benefits and the same few limitations as other treaty rights. Please see the Wildlife Chapter for details, and only differences from the Wildlife Chapter will be provided below.

### **Gathering Rights**

The Wei Wai Kum and the Kwiakah will have the right to gather plants and this will only be limited by conservation concerns or health and safety concerns.

The Parties will negotiate during Final Agreement the details in regards to harvesting logs for domestic use, such as for building household items or for firewood.

### **Gathering Information**

Prior to the treaty, the Wei Wai Kum and the Kwiakah will provide information to BC in regards to what sort of plants they gather.

The Wei Wai Kum and the Kwiakah and BC can enter into an agreement to share information about the kinds of plants that are gathered.

If there is not an agreement in place to share information, BC can request information from the Wei Wai Kum and the Kwiakah about the plants they are gathering.

### **Questions and Answers**

Q: Does this chapter cover wild berries or mushrooms?

A: Yes, berry bushes are technically a plant, and so any reference to plants includes berries. The AIP also defines plants to include fungi, which includes mushrooms.

Q: Can we sell berries or mushrooms?

A: Just like things are now, you can sell berries or mushrooms in accordance with federal and provincial laws, and currently there are no laws that prevent the sale of wild berries. If BC ever does decide to regulate the sale of wild berries, the Wei Wai Kum and the Kwiakah would still have the right to gather for yourself and to trade among other Aboriginal people, but you would have to abide by the new law if you wanted to sell to non-Aboriginal people.

## **Chapter 13**

### **Parks, Protected Areas, and Public Planning**

#### **Chapter Summary**

In BC, various lands are protected either to preserve and enjoy as a park or to protect various sensitive habitat. Some of those lands are located within the Wei Wai Kum's and the Kwiakah's Area or traditional territories. This chapter sets out how those laws

will apply in the Wei Wai Kum's and the Kwiakah's Area. It also sets out how the Wei Wai Kum and the Kwiakah will be able to designate and protect its own lands and how the Wei Wai Kum and the Kwiakah will be allowed to participate in planning processes conducted by BC and local governments to plan for future use of lands, such as city expansion for example.

### **Public Planning Processes**

The Wei Wai Kum and the Kwiakah will be able to participate in any public planning processes that BC establishes.

The Wei Wai Kum and the Kwiakah can make proposals and bring matters forward in planning processes that they think are important.

If they do not accept a proposal from the Wei Wai Kum or the Kwiakah, BC will meet with the Wei Wai Kum or the Kwiakah and provide written reasons.

### **New Relationship**

Nothing in the treaty will prevent the Wei Wai Kum and the Kwiakah from participating in future programs and services or processes that BC develops in regards to improving its relationship with First Nations in BC.

### **Parks and Protected Areas**

The Wei Wai Kum and the Kwiakah can propose to create new parks or other protected areas in their traditional territories.

BC will not create new parks or protected areas on the Wei Wai Kum and the Kwiakah Lands without the Wei Wai Kum and the Kwiakah's permission.

The Wei Wai Kum and the Kwiakah may still exercise their rights to hunt and fish in parks and protected areas unless the Final Agreement provides otherwise (for example, unless there was a protective measure in place for an endangered species, see the Wildlife chapter).

The Wei Wai Kum and the Kwiakah can still gather plants in parks and protected areas.

BC will consult with the Wei Wai Kum and the Kwiakah if a new park or protected area in their traditional territories is going to affect the Wei Wai Kum's or the Kwiakah's various rights, including hunting and fishing.

### **National Park and National Marine Conservation Area Establishment**

Canada will consult with the Wei Wai Kum and the Kwiakah prior to establishing a National Park in the Wei Wai Kum and the Kwiakah Area.

### **Questions and Answers**

Q: What is the difference between a park and protected area?

A: 'Protected areas' refers to some of the different conservancies that are created to

help protect different habitat for animals or protect special kinds of trees or plants. Legally, they are similar. Parks are, of course, often used for a variety of recreational purposes as well, which would normally not be allowed wherever they are trying to protect something.

## **Chapter 14**

### **Environmental Assessment and Environmental Protection**

#### **Chapter Summary**

Environmental assessments are designed to help prevent damage to the environment before a project begins by requiring public hearings, expert submissions, and an official report or assessment before the project starts. This is different from environmental protections laws, which are designed to penalize people or companies who have already damaged the environment. This chapter sets out how those laws will apply on the Wei Wai Kum and the Kwiakah Lands. Environmental assessment and protection will continue to apply on the Wei Wai Kum and the Kwiakah Lands, and the Wei Wai Kum's and the Kwiakah's consent will be required for any project on their lands.

#### **Environmental Assessment**

No project that triggers an environmental assessment will proceed on the Wei Wai Kum and the Kwiakah Lands without the consent of the Wei Wai Kum and the Kwiakah.

Canada and BC will still be allowed to expropriate lands in accordance with the Final Agreement, but they must meet various requirements in regards to expropriation (see the Lands chapter and appendices for more details).

#### **Wei Wai Kum and Kwiakah Participation in Environmental Assessments**

If a project in the Wei Wai Kum's or the Kwiakah's traditional territories triggers an environmental assessment and is expected to negatively affect the Wei Wai Kum's or Kwiakah's treaty rights, such as its hunting or fishing rights, the Wei Wai Kum or the Kwiakah will be able to participate in that process and get the information they need.

BC will respond to the Wei Wai Kum's and the Kwiakah's concerns before the project proceed.

#### **Law-Making**

For the Wei Wai Kum and the Kwiakah Lands, the Wei Wai Kum and the Kwiakah may make their own environmental assessment laws in regards environmental assessments and environmental protection.

Their laws must meet the same standards as federal law.

Federal and provincial laws will prevail in the event of a conflict.



## **Questions and Answers**

Q: Will the Wei Wai Kum and the Kwiakah be able to stop projects from proceeding on Wei Wai Kum and Kwiakah Lands after treaty?

A: The Wei Wai Kum and the Kwiakah will have a much better ability to prevent developments from happening on its lands if it does not want them to proceed. The Wei Wai Kum and the Kwiakah Lands will be constitutionally protected, and the Wei Wai Kum's and the Kwiakah's consent will be required for any projects to proceed on their lands. The governments do maintain the ability to expropriate land, but their ability to expropriate must meet a number of requirements as set out in the lands chapter and appendices. For the first time in history, it will be easier for the government to have projects go on lands other than the Wei Wai Kum and the Kwiakah's.

Q: What will the Wei Wai Kum's and the Kwiakah's role be in environmental assessments?

A: The Wei Wai Kum and the Kwiakah will be involved from the beginning for any environmental assessment that might affect the Wei Wai Kum's or the Kwiakah's hunting or fishing rights. If the project is going to be on the Wei Wai Kum and the Kwiakah Lands, the Wei Wai Kum and the Kwiakah consent will be required.

## **Chapter 15**

### **Forest Resources**

#### **Chapter Summary**

The Wei Wai Kum and the Kwiakah will own all forest resources on their own lands, including trees and various plants, and this chapter sets out how the Wei Wai Kum's or the Kwiakah's forestry activities will work with the Provincial system. It sets out how the Wei Wai Kum, the Kwiakah, BC, and Canada will work together to manage forest health and forest fires.

#### **Forest Resources on the Wei Wai Kum and the Kwiakah Lands**

The Wei Wai Kum and the Kwiakah will own all forest resources on the Wei Wai Kum and the Kwiakah Lands, which include trees and medicinal plants.

The Wei Wai Kum and the Kwiakah will have exclusive authority over their Forest Resources, meaning nobody else can log trees on the Wei Wai Kum and the Kwiakah Lands without the Wei Wai Kum's permission or the Kwiakah's permission with respect to their lands.

#### **Law-Making**

The Wei Wai Kum and the Kwiakah will be able to make laws in regards to logging on the Wei Wai Kum and the Kwiakah Lands as applicable.

Federal and provincial laws will prevail over the Wei Wai Kum and the Kwiakah laws if they are in conflict.

### **Timber Marking and Scaling**

Provincial laws in regards to weighing and measuring logs and tracking logs will continue to apply to trees and logs taken off the Wei Wai Kum and the Kwiakah Lands.

### **Manufacture and Export of Timber Resources**

The Wei Wai Kum and the Kwiakah can still export logs to other countries in accordance with federal law.

### **Forest and Range Health**

The Wei Wai Kum and the Kwiakah are responsible for the health of forests on the Wei Wai Kum and the Kwiakah Lands.

If Canada or BC become aware of health issues for forests on Crown lands that might affect forests on the Wei Wai Kum and the Kwiakah Lands, Canada and BC will warn the Wei Wai Kum or the Kwiakah as applicable.

The Wei Wai Kum and the Kwiakah will warn Canada and BC if forest health issues on the Wei Wai Kum and the Kwiakah Lands might spread to Crown lands nearby.

BC and the Wei Wai Kum and the Kwiakah will co-operate to minimize the affect of theses kinds of forest health issues that affect both of their lands.

The Parties will work out during Final Agreement negotiations more details in regards to how information will be shared to help protect forest health issues.

### **Wildfire Suppression and Control**

The Parties will enter into a separate agreement in regards to the cost of fighting fires that start on the Wei Wai Kum and the Kwiakah Lands, and this agreement will have various other details.

The Wei Wai Kum, the Kwiakah, Canada, and BC agree to share the costs of fighting fires that started on the Wei Wai Kum and the Kwiakah Lands.

The Wei Wai Kum and the Kwiakah will normally pay for one third of the costs of fighting fires on the Wei Wai Kum and the Kwiakah Lands up to a maximum set out in the side agreement.

If the Wei Wai Kum's or the Kwiakah's own negligence starts a fire, the costs for fighting the fire will not be limited.

The Wei Wai Kum and the Kwiakah do not have to pay for any costs of fighting fires off of the Wei Wai Kum and the Kwiakah Lands.

BC will respond to fires on the Wei Wai Kum and the Kwiakah Lands with the same priority they would for Crown lands.

Other forestry companies must finish their own obligations and responsibilities they had before the Wei Wai Kum and the Kwiakah Lands are transferred to the Wei Wai Kum and the Kwiakah (for example, clean up or tree planting requirements).

BC will still be allowed to do forest research on the Wei Wai Kum and the Kwiakah Lands.

During Final Agreement negotiations, the Parties will negotiate for BC to give the Wei Wai Kum and the Kwiakah long-term forest tenures Tree Farm Licenses so they can log other lands within their traditional territories. This will be in addition to the First Nation Woodland license that Wei Wai Kum has already negotiated.

### **Questions and Answers**

Q: What about logging in the Wei Wai Kum and the Kwiakah's traditional territories?

A: During Final Agreement negotiations, the Wei Wai Kum and the Kwiakah will seek revenue sharing for any project in their traditional territories. Also, the Wei Wai Kum and the Kwiakah will still have to be consulted for any logging that will affect their various treaty rights, hunting and fishing for example, in their traditional territories, and so the Wei Wai Kum and the Kwiakah could still negotiate benefit agreements.

Q: Will the Wei Wai Kum and the Kwiakah be able to do logging?

A: Yes. The Wei Wai Kum and the Kwiakah can log trees on its own lands if they would like to.

## **Chapter 16**

### **Water**

#### **Chapter Summary**

The Water chapter allocates an amount of water that the Wei Wai Kum and the Kwiakah can divert from local streams and sets out details about how the water can be used. If the Wei Wai Kum and the Kwiakah want, for example, they could allow others to receive some of their allocation for a cost, or they can save the water for their own communities. Water is likely to become an increasingly valuable resource, and so the Wei Wai Kum and the Kwiakah have sought a very large allocation of water to ensure enough for future generations.

#### **Water Reservation**

The amount of the water allocation will be determined during Final Agreement negotiations.

The Parties will work out details in regards to which streams the water will come from and how much can be diverted.

The water that is diverted can be used for domestic, industrial, or agricultural purposes.

The water allocation granted to the Wei Wai Kum and the Kwiakah will have priority over any water licenses granted afterwards.

### **Water Licences**

With the Wei Wai Kum's or the Kwiakah's consent, a person or a company can apply to BC to receive some of the Wei Wai Kum's or the Kwiakah's water.

BC will continue to help manage allocations of the Wei Wai Kum's or the Kwiakah's water to other people but will never give the Wei Wai Kum's or the Kwiakah's water to someone else without consent from the Wei Wai Kum and the Kwiakah.

The amount of water diverted from streams cannot affect the navigability of those streams or exceed minimums needed to maintain fish or fish habitat.

The Wei Wai Kum and the Kwiakah can still apply for other water licenses from BC if it would like to.

The treaty is not meant to prevent people who own water licenses from accessing the land and the streams, as they need to in order to get their water.

### **Law-Making**

The Wei Wai Kum and the Kwiakah can pass laws in regards to how their water is further allocated or used.

### **Other**

The Wei Wai Kum and the Kwiakah may sell water in accordance with federal and provincial laws.

If they want to, the Wei Wai Kum and the Kwiakah can participate in planning processes in regards to water anywhere within their traditional territories.

BC will negotiate with the Wei Wai Kum and the Kwiakah for the safe protection of any drinking water for any watershed that goes through the Wei Wai Kum and the Kwiakah Lands.

### **Questions and Answers**

Q: What is a water license?

A: Water licenses are used by people or companies that need more water, often because they need a lot of water or because they are not located near water services. Sometimes this can be farmers that need water to irrigate their crops, companies that need water for their industrial activities, or homes that do not otherwise have access to water. They get permission from BC by way of a license to divert water from a nearby stream or river.

## Chapter 17

### Fiscal Relations

#### Chapter Summary

After treaty, the Wei Wai Kum and the Kwiakah will still receive on-going funding from Canada for the Wei Wai Kum's and the Kwiakah's governments and the programs and services they provide. This chapter will set out the basic funding relationship between the Wei Wai Kum and the Kwiakah and Canada, and another agreement that goes with the treaty, called a Fiscal Financing Agreement, will provide specific dollar amounts that the Wei Wai Kum and the Kwiakah will receive. The Fiscal Financing Agreement will usually be updated every five years based on any new programs and services the Wei Wai Kum and the Kwiakah are providing.

The Wei Wai Kum, the Kwiakah, Canada, and BC all acknowledge they have a role to play in supporting the Wei Wai Kum and the Kwiakah governments and the services it provides to their communities.

Canada and the Wei Wai Kum and the Kwiakah will negotiate the details of their funding relationship during Final Agreement.

#### Questions and Answers

Q: Why are specific dollar amounts in a separate agreement?

A: The treaty is meant to last forever and cannot be easily amended. It is better for the Wei Wai Kum and the Kwiakah and Canada to maintain flexibility and allow the funding to be adjusted every few years. This will allow the funding amount to reflect changes in inflation, the Wei Wai Kum and the Kwiakah populations, or to various costs, and it will allow the Wei Wai Kum and the Kwiakah to take on new programs and services and obtain funding for those.

Q: Will our health or education benefits be affected by the treaty?

A: No, Canada will still keep track of who qualifies for status, and they will continue to administer your extended health and your funding for education. Those will not be affected. Someday, if the Wei Wai Kum and the Kwiakah decides as a whole that it would like to enhance these programs through treaty, they could.

## Chapter 18

### Capital Transfer and Loan Repayment

#### Chapter Summary

The Capital Transfer chapter provides a cash payment (actual amount to be negotiated) to the Wei Wai Kum and the Kwiakah. This money will not affect funding for regular

programs and services, such as health and education. The Wei Wai Kum and the Kwiakah will be able to use this money for economic development or however their membership decides.

The Wei Wai Kum and the Kwiakah will receive a cash settlement from Canada.

The Parties will determine a schedule of payments for the money (often over about 10 years).

The Parties will use a formula to determine how things such as inflation will affect the payments.

The Parties will determine how much the Wei Wai Kum and the Kwiakah has had to borrow to negotiate the treaty.

When everyone figures out how much the Wei Wai Kum and the Kwiakah owes in the end, the Parties will work out a payment schedule and deduct those payments from the capital transfer.

During Final Agreement, the Parties will negotiate resource revenue sharing.

### Questions and Answers

Q: The cost of negotiating the treaty will come out of the amount we receive for the treaty?

A: Yes. In this case, the Wei Wai Kum and Kwiakah will receive ## [1] million dollars a cash settlement minus the negotiation loan. The Wei Wai Kum and the Kwiakah will also probably receive more capital transfer during Final Agreement.

Q: How come it cost m# [2] millions dollars to negotiate the treaty?

A: # [3] million dollars is actually The actual cost is quite a bit less than other First Nations have spent negotiating a treaty. The negotiations are very complex and inevitably rely on various experts. The negotiations also inevitably require a fair amount of travel because BC is based in Victoria and Canada in Vancouver.

Q: What is resource revenue sharing?

A: It means that the Wei Wai Kum and the Kwiakah will get a share of revenues anytime a company harvests resources in the Wei Wai Kum's and the Kwiakah's traditional territories.

## Chapter 19

### Taxation

#### Chapter Summary

This chapter sets out what will change in regards to taxation for the Wei Wai Kum and the Kwiakah after treaty. The tax exemption enjoyed under the *Indian Act* will eventually be phased out for the Wei Wai Kum and the Kwiakah members. The Wei Wai Kum and the Kwiakah will be able generate their own revenues from taxation,

enhancing their programs and services and becoming more independent from Canada. The Wei Wai Kum, the Kwiakah, Canada, and BC will have to work together to ensure their different tax systems are not having unfair results.

If they want to, the Wei Wai Kum and the Kwiakah can tax their members on the Wei Wai Kum and the Kwiakah Lands to generate revenues for the Wei Wai Kum and the Kwiakah governments.

The Wei Wai Kum and the Kwiakah can work with Canada or BC to setup taxes of non-Members on the Wei Wai Kum and the Kwiakah Lands.

The Wei Wai Kum and the Kwiakah will work with Canada and BC to coordinate their efforts in regards to taxation, for example, to make sure the different systems are not having unfair results. During Final Agreement, the Wei Wai Kum, the Kwiakah, and BC will work out details in regards to property taxes for people who own their homes on the Wei Wai Kum and the Kwiakah Lands.

The Wei Wai Kum and the Kwiakah can establish penalties for anyone that breaks a Wei Wai Kum or a Kwiakah tax law.

The Wei Wai Kum and the Kwiakah governments will not have to pay taxes for the lands they own unless they develop the lands<sup>[4]</sup>. If they develop lands for the community, like office buildings, community buildings, housing for members, or public utilities, they will not have to pay taxes for those developments. If they develop lands to take advantage of natural resources, such forests or fisheries, they will not have to pay taxes.

If the Wei Wai Kum and the Kwiakah sells some of their lands and makes money on the sale, the money they make will not be taxable.

All the different assets that AANDC will transfer the Wei Wai Kum and the Kwiakah, like the bands' money and band office, will not be taxable. During Final Agreement, the Parties will negotiate the details in regards to phasing out the tax exemption under the *Indian Act*.

During Final Agreement, the Parties will negotiate a Tax Treatment Agreement, which will provide details about taxation and the Wei Wai Kum's and the Kwiakah's business operations (other treaty First Nations have negotiated so that businesses owned by them are not affected by taxation).

### Questions and Answers

Q: Many of the Wei Wai Kum's and the Kwiakah's members are low-income families or elders on pensions. How can we expect them to pay taxes?

A: Even though the tax exemption will no longer apply after treaty, low-income families and pensioners are more likely to benefit from taxation and will not suffer from it. Income tax is designed to have higher tax rates for people with high income. Low-income families will have to pay little to nothing for income taxes unless they start to earn more money. In regards to property taxes, Wei Wai Kum and Kwiakah can use

Social Housing models and Home Owner Grants to ensure low-income families and pensioners do not have to pay for property taxes that they cannot afford. Low-income families will also be eligible for sales tax credits. Because tax revenues will go back to the Wei Wai Kum and the Kwiakah governments, the governments will have more money to put into the programs and services that help those same people, like social assistance or old age security.

Q: How will businesses be affected?

A: Businesses earning income on Treaty Settlement Lands will pay taxes to the Wei Wai Kum/Kwiakah government.: Most businesses will not be affected by the changes. Those businesses and corporations owned by the Wei Wai Kum and the Kwiakah governments will continue to be exempt from taxation through the Tax Treatment Agreement. Individual citizens who own companies will have to pay taxes because of the removal of tax exemption under the Indian Act after treaty. Corporations owned by anybody other than the Wei Wai Kum and the Kwiakah already have to pay taxes and will continue to do so.<sup>[5]</sup>

Q: Can I see some numbers related to this?

A: The Wei Wai Kum-Kwiakah Treaty Society office has a variety of materials available in regards to taxation, including some sample numbers. Please feel free to contact the Treaty office for more information.<sup>[6]</sup>

## Chapter 20

### Approval of the Agreement-in-Principle

#### Chapter Summary

This chapter describes the process for determining community acceptance of the AIP.

The Wei Wai Kum and the Kwiakah needs some sort of must have a community approval process in place to accept the AIP. (This will involve a vote in which all band eligible voters can vote. Wei Wai Kum and the Kwiakah have decided to have an official vote under the *Indian Act* system when seeking the approval from the community).<sup>[7]</sup>

Canada and BC will have to go through their internal approval processes.

#### Questions and Answers

Q: What happens if only a small number of voters turn out?

A: The results of the vote will still count for the purposes of AIP.

Q: What percentage of voters must vote yes?

A: 50% +1 voters must vote yes.

Q: Who will handle the vote?

A: An electoral officer with past experience will be hired to oversee the voting process



and make sure it is fair.

Q: When will the vote be?

A: Currently, the Parties are hoping to hold the vote in 2015<sup>[8]</sup>.within 2 years.

## Chapter 21

### Eligibility & Enrolment

#### Chapter Summary

The Eligibility and Enrolment Chapter indicates who will be able to be a Wei Wai Kum and Kwiakah member under the treaty. It sets out what someone has to do to apply to become a member and what the process will be if someone wants to challenge the results of their application.

Eligibility for the treaty is not meant to affect Canadian citizenship or someone's eligibility to be a status Indian.

#### Eligibility Criteria<sup>[9]</sup>

PersonsAnyone with the Wei Wai Kum or and the Kwiakah ancestry is eligible to be enrolled under the Final Agreement. meaning he or she can show that his or her parent, grandparentgrandparent, or great-grandparent et cetera, was the Wei Wai Kum or the K

Anyone who is a member of the Wei Wai Kum Indian Band or the Kwiakah Indian Band is eligible (this is meant to capture people who might currently be members but are not of the Wei Wai Kum and the Kwiakah ancestry).

Anyone who is a descendent or adopted child of a Wei Wai Kum or a Kwiakah member is eligible.

It will not matter if someone was adopted instead of a biological child, and it will not matter if that person was adopted in accordance with the Wei Wai Kum or the Kwiakah custom or legally through BC.

Anyone who is married to a Wei Wai Kum or a Kwiakah member and accepted by the Wei Wai Kum or the Kwiakah custom is eligible (the Wei Wai Kum and the Kwiakah can decide what their customs are and who will or will not be included by this).

#### Applications for Enrolment

People who are eligible still have to apply for themselves and their children.

It is the responsibility of the person applying, not the Bands, to prove that he or she is eligible.

#### Other Land Claims Agreements

People cannot be in two treaties at the same time, Nisga'a or Kitselas and the Wei Wai Kum and the Kwiakah for example.

This section sets out the process for someone to choose which treaty they will belong to if they are eligible to belong to both (someone who is half-Nisga'a and half-Wei Wai Kum or half-Kwiakah for example).

### **Membership in a Band Other than Wei Wai Kum and Kwiakah**

People cannot belong to an Indian Band and the Wei Wai Kum or the Kwiakah treaty at the same time.

This section sets out the process for someone to switch to the Wei Wai Kum and the Kwiakah from another Band if they happen to be eligible for both (someone who is half-Gitksan and half-Wei Wai Kum or half-Kwiakah for example).

### **The Enrolment Committee<sup>[10]</sup>**

The Wei Wai Kum and the Kwiakah will create an Enrolment Committee, and applicants will have to apply to them.

This committee will be initially responsible for deciding who is and who is not eligible for the Wei Wai Kum and the Kwiakah treaty based on the applications they receive.

This committee will notify applicants of their decision.

### **Enrolment Appeal Board**

There will be an Enrolment Appeal Board made of the Wei Wai Kum and the Kwiakah representatives and representation from Aboriginal Affairs and Northern Development Canada.

If someone is unhappy with the result from his or her application to the Enrolment Committee, he or she can appeal to Enrolment Appeal Board.

The decision of the Enrolment Appeal Board will be final, and the person cannot appeal to a court without a good reason (those reasons are set out in this chapter).

### **Costs**

Canada and BC will pay for the costs of the initial enrolment.

### **Enrolment After the Initial Enrolment Period**

After all of the initial work is done, enrolment is entirely up to the Wei Wai Kum and the Kwiakah.

### **Questions and Answers**

Q: I am a Bill C-31 Indian or Bill C-3 Indian, Indian; will I still be eligible for treaty?

A: Yes.

In fact the treaty extends membership much further than the *Indian Act* so that your children and grand-children/grandchildren will be eligible for treaty benefits even if they marry non-Aboriginal spouses. That would not be the case under the *Indian Act*.

Q: I am married to a Wei Wai Kum or a Kwiakah member, but I am not a Wei Wai Kum or a Kwiakah myself, will I be eligible?

A: That will be up to the Wei Wai Kum and the Kwiakah. Non-Wei Wai Kum and non-Kwiakah spouses will be eligible if the Wei Wai Kum and the Kwiakah chooses to accept them under their custom laws. How the Wei Wai Kum and the Kwiakah defines those laws is up to the Wei Wai Kum and the Kwiakah.

Q: Will we lose our Indian status?

A: No. Canada will still keep track of who has Indian Status. Under treaty, you will eventually lose your tax exemption, but you will still be eligible for health and education benefits as a status Indian.

Q: If I do not have status but am eligible under the treaty, will I gain status?

A: No. As a Wei Wai Kum or Kwiakah member under treaty you will have all of the rights under the treaty, which will including include hunting, fishing, and voting in elections, but the treaty does not change eligibility for Indian status.

## Chapter 22

### Ratification of the Final Agreement

#### Chapter Summary

The Ratification of the Final Agreement chapter describes the process for determining whether the community accepts the treaty.

The Final Agreement will be legally binding.

The Wei Wai Kum and the Kwiakah must allow anyone who is eligible under the treaty to vote (not just current band members; see the Eligibility and Enrolment Chapter).

The Final Agreement must be done by secret ballot.

The majority of eligible voters must vote yes to the Final Agreement (meaning essentially that anyone who does not vote will count as a no).

The Wei Wai Kum and the Kwiakah must also vote to accept their Constitutions.

Canada and BC will need approval from their respective Ministers.

### **Questions and Answers**

Q: Will the vote for the Final Agreement be different from the vote for the AIP?

A: Yes. Only band members will be voting for the AIP, but anyone eligible under the treaty will be able to vote for the Final Agreement. This will include a few more people that are not currently in the bands. Also, anyone who does not vote for the AIP does not count as a yes or a no. Anyone who does not vote for the Final Agreement will count as a no vote. For example, if the majority of voters do not even show up for the Final Agreement vote, it cannot succeed.

Q: Why do people who do not show up to vote for the Final Agreement count as a no?

A: Because the treaty is so permanent, the Parties all want to be sure that the majority of the Wei Wai Kum and the Kwiakah people really did want it.

## **Chapter 23**

### **Implementation**

#### **Chapter Summary**

The Implementation Chapter sets out what the Wei Wai Kum, the Kwiakah, Canada, and BC will do to prepare for the Wei Wai Kum and the Kwiakah becoming self-governing First Nations under treaty. The Parties all acknowledge there will be a lot of work to be done and that it will take time and resources to help the Wei Wai Kum and the Kwiakah take on its new responsibilities.

As part of treaty, the Parties will develop an Implementation Plan setting out everything the Parties will need to do during the first 10 years of the Wei Wai Kum's and the Kwiakah's treaty.

Canada and BC will still be involved during implementation.

The plan will set out who will be responsible for various obligations.

The Parties will review the Implementation Plan after 10 years and consider what else needs to be done.

#### **Questions and Answers**

Q: Does the Implementation Plan cover the period leading up to the treaty effective date?

A: No, this particular plan is meant to cover the period after the treaty is in effect. The Parties will all be doing a lot of work leading up to the effective date as well.

## Chapter 24

### Transition

#### Chapter Summary

This chapter sets out how the Wei Wai Kum and the Kwiakah will transition from being a band under the *Indian Act* to being self-governing under treaty. This includes transferring various assets and money from Canada to the Wei Wai Kum and the Kwiakah and determining what will happen to the bands' various by-laws.

If someone dies just before the treaty becomes effective, the *Indian Act* will apply to their estate until their estate is settled.

Canada will try to warn the Wei Wai Kum and the Kwiakah members who have registered a will with Aboriginal Affairs and Northern Development Canada ("AANDC" formerly INAC), to let them know that they may need to re-do their wills so that the will is consistent with the treaty.

If someone does not have the capacity to take care of himself or herself (for example, someone with a significant mental health issue), and AANDC is currently helping to take care of that person, then AANDC will continue to take care of him or her after the treaty for as long as necessary.

If AANDC is administering property for a child who is under age, AANDC can continue to do so under the *Indian Act* for as long as necessary.

#### Continuation of *Indian Act* Bylaws

The bands' by-laws will continue for a while after the treaty, but then if the Wei Wai Kum or the Kwiakah want the by-law to continue, it will have to pass a new similar law under the treaty.

#### Transfer of Band Assets

Canada will transfer various assets to the Wei Wai Kum and the Kwiakah governments. This includes things like the bands' money, office buildings, and office equipment.

#### Questions and Answers

Q: Why do people have to re-do their wills?

A: There will be some differences in regards to the law and wills before and after treaty. To be safe, it is best if people re-do their wills and consider the treaty, so they can be sure their wishes are still fulfilled when they die.

Q: Why does the band have to re-do their by-laws?

A: Similarly, it is best that the new Wei Wai Kum and Kwiakah governments look at existing by-laws and consider how the treaty might affect those by-laws. Some by-laws may not make sense post-treaty, and it is best if the Wei Wai Kum and the Kwiakah

governments consider that.

Q: Does Canada really own the band's money, buildings, and office equipment right now?

A: Yes. Under the *Indian Act*, a band does not own these things themselves. AANDC owns them for the benefit of the band.

## Chapter 25

### Dispute Resolution

#### Summary

The Dispute Resolution chapter sets out a process for resolving any future disputes that may arise between the Wei Wai Kum, the Kwiakah, Canada, and BC. The Parties rely on the Dispute Resolution chapter throughout the treaty; anytime they think the Parties may have to negotiate something else after the treaty is in effect. The process sets out various stages all designed to ensure the Parties use the easiest method they can first before resorting to more serious methods. Some of the process is set out in an appendix.

The Parties acknowledge their goal is cooperate and work together to minimize disagreements.

Any time the treaty uses the words "will negotiate and attempt to reach agreement" this chapter will apply.

The Parties agree to resolve disputes through stages.

In Stage One, the Parties will participate in negotiations together. They will discuss the issue and try to work it out among themselves.

In Stage Two, the Parties will use someone to facilitate negotiations. This may include a mediator or other person who can help facilitate more open discussions.

In Stage Three, the Parties will use an arbitrator. This will be someone neutral who gets to make a final decision much like a judge. The arbitrator will listen to each of the Parties and get the information he or she needs to make a decision. When he or she makes a decision, it will be final except in circumstances where the arbitrator made an error in law. This stage will only be used where the Parties have agreed to use it in the treaty.

Stage Four is when the parties take the matter to court. The judge has the final say. The Parties agree to go to the Supreme Court of British Columbia. A Party can normally only appeal to a higher court if there is a question of law.

#### Questions and Answers

Q: Why does a treaty need this chapter?

A: It helps to give the Parties some predictability in terms of the process that will be

followed for disputes. The process includes things like deadlines and requirements for written notices. This way, the Parties will have to be up front with one another and will know what is expected of one another.

## **Chapter 26**

### **Amendment**

**The amendment chapter summary is under development**

## **Chapter 27**

### **Definitions**

#### **Chapter Summary**

The Agreement-in-Principle (AIP) uses many definitions to avoid repetition and make drafting easier. Anytime a definition is relied upon, the words are capitalized, and a reader should check for its definition in this chapter.