FIRST NATIONS SUMMIT

NEWS RELEASE

For Immediate Release
October 15, 2007

Tsawwassen Treaty a significant step but government must revise negotiation mandates to reach further agreements

Coast Salish Territory/ Vancouver, BC – The First Nations Summit congratulates Chief Kim Baird and the members of the Tsawwassen First Nation for reaching their agreement and the milestone introduction of Tsawwassen First Nation Treaty Settlement legislation in the BC Legislature.

However in the attached open statement, the First Nations Summit leaders caution that reaching further settlement agreements is in serious jeopardy unless the federal and provincial governments change their negotiating mandates and commit to act with integrity and in good faith in further negotiations, to ensure the recognition of aboriginal title and rights.

The First Nations Summit also highlighted the need to resolve overlaps, such as that with the Douglas Treaty First Nations and Tsawwassen, before moving towards a final agreement. The Summit further noted that government must acknowledge the unique elements of each agreement and should not attempt to use one agreement as a template for other negotiations.

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The First Nations Summit speaks on behalf of First Nations involved in treaty negotiations in British Columbia. Further background information on the Summit may be found at www.fns.bc.ca.

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Statement from the First Nations Summit
"New relationship"? "Old relationship"?

The introduction of the Tsawwassen final agreement to the legislative assembly and the First Nations sponsored rally outside the legislature surely will raise some public eyebrows about the perceived inconsistencies and mixed messages. Undoubtedly as well it will challenge the best and the worst in us.

Following the last election we heralded and welcomed the First Nations-BC Government "New Relationship" agreement with enthusiasm, optimism and hopeful resolutions. We felt at last here was a Premier who would bring more than rhetoric and empty promises to the much tarnished image of the honour of the Crown. We extolled the merits of the document to anyone who would listen, and even to those who didn't care. We spent countless hours and days talking to our people in virtually every community across this province. We were confident that we had a solid agreement with a Premier who would honour his word and his commitments.

This document, negotiated under the Premier's authority, and sometimes with his direct participation, was to dispense with old colonial, adversarial and fundamentally racist relations based on Crown policies denying the very existence of the first peoples and their rights including aboriginal rights and title. The negotiations came on the heels of the Haida and Tlingit decisions in the Supreme Court of Canada.

In January 2005, prior to the provincial election, the Premier called a meeting with First Nations leaders. He asked whether there was a way for First Nations people and the provincial government to put aside the old adversarial approach and establish news ways of working together. Considering the significance of Supreme Court of Canada's Delgamuukw decision and its relevance to the Premier's request, the First Nations leaders in attendance agreed. In fact, the many groundbreaking Supreme Court cases formed the impetus for the new relationship document.

The cornerstone of the new relationship document is the Premier's acceptance, and recognition, of the existence of aboriginal rights (including the inherent right to self government) and title, and that this recognition would be the basis for "reconciliation" efforts between First Nations and the Crown. This commitment by the Premier to recognize these rights, we believed, would be reflected in changes to provincial legislation, regulations and policies. As well we expected every provincial government ministry and agency would incorporate this commitment into their annual service plans and budgets.

As First Nations leaders we did not want to see small changes to existing services. We fully expected that the "denial" and extinguishment policies underlying government programs, and negotiations and litigation strategies would be replaced with the Premier's recognition commitment. This we believed would lead to a fundamentally new, respectful and constructive relationship.

Although we remain the true optimists, the sad reality is the Premier's recognition commitment has yet to find its way into one piece of legislation, regulation or policy. It has not resulted in any meaningful change to the government's negotiations, litigation policies or mandates.

We now understand all was not well in government caucus and in Cabinet. Soon after the last election the new relationship document was discussed at, at least two caucus meetings where it did not fare so well. The very first agreement negotiated under the new relationship – the forest and range agreement – negotiated with officials from the Premier's office, was modified at the Cabinet level to reflect the old denial strategy of the Crown. The Premier's commitment to recognition of aboriginal rights and aboriginal title was being effectively undermined.

Without a doubt there are numerous resource and program agreements, but nowhere in these agreements will you find the Premier's commitment to the existence of aboriginal rights and aboriginal title.

So without a fulfillment of the Premier's commitment, First Nations continue to resort to litigation, blockades and protests. And with these actions the adversarial relationships and mistrust continues.

For example Musqueam has won three major cases against either or both governments and seems poised to make large gains through these, but it has been an expensive process for them. This is happening at a time when Musqueam is attempting to negotiate its treaty. The governments have routinely attempted to dispose of "Crown" lands while negotiations are underway. The only option for Musqueam has been to defend its interests in the courts.

The governments' approach was condemned by the United Nations Committee on the Elimination of Racial Discrimination early this year, where it strongly criticized Canada and the provinces for their "strongly adversarial positions" forcing Aboriginal peoples into expensive litigation to defend their interests.

This apparent unwillingness on the part of the province to accept and incorporate the Premier's commitment to recognize the existence of aboriginal rights and title is a major source of frustration and outrage in First Nations communities. Where this matter was initially in the Premier's office it is now firmly in the grips of an intransigent bureaucracy and Crown lawyers who refuse to recognize the Premier's commitments. Meanwhile the Premier has moved onto other matters, such as climate change.

In the absence of any standards to determine the legal and political nature of Indigenous rights and the relationship of these to Crown's interests, politicians, bureaucrats and government lawyers have routinely resorted to old strategies that assert that Indigenous peoples' rights are extinguished and must be proven through the courts that they continue to exist. These policies are developed unilaterally and arbitrarily serving only the Crown's interests.

In recent years these policies and the approach used to develop them have been under increasing scrutiny and challenge from First Nations peoples. The standards for determining the nature of Indigenous rights and their relationship to Crown interests have been transformed in significant ways by some 34 cases in the Supreme Court of Canada, as well as by the "minimum standards" provided in the universal Declaration on the Rights of Indigenous Peoples adopted at the United

Nations by 144 countries. Unfortunately much to the public's embarrassment Canada along with only three other countries voted against its adoption.

The Tsawwassen final agreement (curiously not referred to as a "treaty" within the text of the document) will be considered both in the provincial legislature and federal House of Commons. The Tsawwassen First Nation should be commended for its significant efforts to conclude this deal. The community members considered the agreement and, given the unique circumstances that most of their lands have been taken up by third party interests, voted to ratify it.

It is an agreement that is unique to the Tsawwassen First Nation. But there are important issues which both governments need to seriously consider. The agreement embodies in it the core Crown strategy of "modifying" constitutionally recognized and affirmed aboriginal rights (including the inherent right of self government) and title. The question is, how can you “modify” constitutionally recognized and affirmed rights in a political agreement?

This Crown "modification" strategy is seen by many First Nations communities as the Crown's new strategy to extinguish aboriginal rights and title, which flies directly in the face of the Premier’s commitment to recognize, not deny or extinguish aboriginal rights and title.

In fact in reviewing this approach the UN Committee on the Elimination of Racial Discrimination expressed grave concern that the modification strategy was simply a new form for extinguishing aboriginal rights and recommended the governments serious review of this approach. The Crown needs to provide assurances to First Nations that the "modification" strategy will not result in the extinguishment of any aboriginal rights or title. This is one of at least four distinct reasons why First Nations people have called for a rally at the legislature today.

Three other distinct reasons have been raised in support of the rally:

1. Are there any negative impacts on the aboriginal rights or title of neighbouring First Nations who are not in negotiations with governments? This is an important issue raised by the Semiahmoo First Nation who feel their rights will be compromised by the terms of this agreement. It is extremely important for the government to provide clear and unequivocal assurances, by legislation, to the neighbouring First Nations communities that their rights will not in any way be negatively impacted by the terms or geographic extent of the agreement.

2. Are there any negative impacts on the interests of those First Nations in southern Vancouver Island who in pre-confederation times entered into treaties with the Crown under Governor James Douglas? Again the government needs to provide clear assurances that neither the terms nor the geographic extent of the agreement will impair the legal interests of the tribes who entered into the "Douglas Treaties”.

3. Will the agreement serve as a “template” for other First Nations in BC who are in negotiations with governments? This is an extremely important issue for all First Nations in negotiations. The fact that the province, in spite of the Premier's commitments in the new relations document to recognize the existence of aboriginal rights and title, has not changed its policies or negotiating mandates gives rise to serious skepticism and fear among First Nations. Again it is incumbent on the government to provide clear assurances to First Nations that this agreement will not serve as a ceiling for other negotiations or agreements. A number of First Nations have agreed to work together under a “unity protocol" to advance their respective

interests in six areas. Both governments need to meet with this group of First Nations to determine how their interests will be dealt with.

The people in Tsawwassen First Nation made a clear choice. We understand the choice was made freely and on an informed basis prior to their vote. But buried deep in their agreement is a "me too" clause which provides that if other First Nations negotiate terms which are better than that in Tsawwassen agreement the terms would be imported into their agreement. Was this an important incentive in the eventual choice of the Tsawwassen First Nation voters?

However government negotiators at the other tables insist they cannot agree to terms that exceed the Tsawwassen agreement because to do so would result in the “me too” clause coming into effect. This is at best duplicitous and in extreme bad faith on the part of the Crown.

During this past summer we met extensively with senior government officials and came to an agreement with the former Minister of Indian and Northern Affairs to examine and revise the government’s policies and mandates on negotiations and began work in this area.

This is an extremely important step, but one subject to the vagaries of federal politics and other government priorities. For example, while this initiative was underway we found ourselves with yet another federal Minister. Minister Strahl agreed to continue with the commitments made by the previous minister. We fully expect to find a way to address the serious impediments to reaching agreements with standards that incorporate the Supreme Court of Canada decisions and the provisions of the UN Declaration on the Rights of Indigenous Peoples.

First Nations patience and goodwill is always there. It has been tried many times but continues unabated. We need politicians in both governments to act with integrity and in good faith. At the very least the honour of the Crown demands it.

Grand Chief Edward John
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Chief Judith Sayers
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