

National Aboriginal Lands Managers Association

Kim Baird

Self-Government – The Tsawwassen
Experience: the ultimate lands and
resource management challenge:

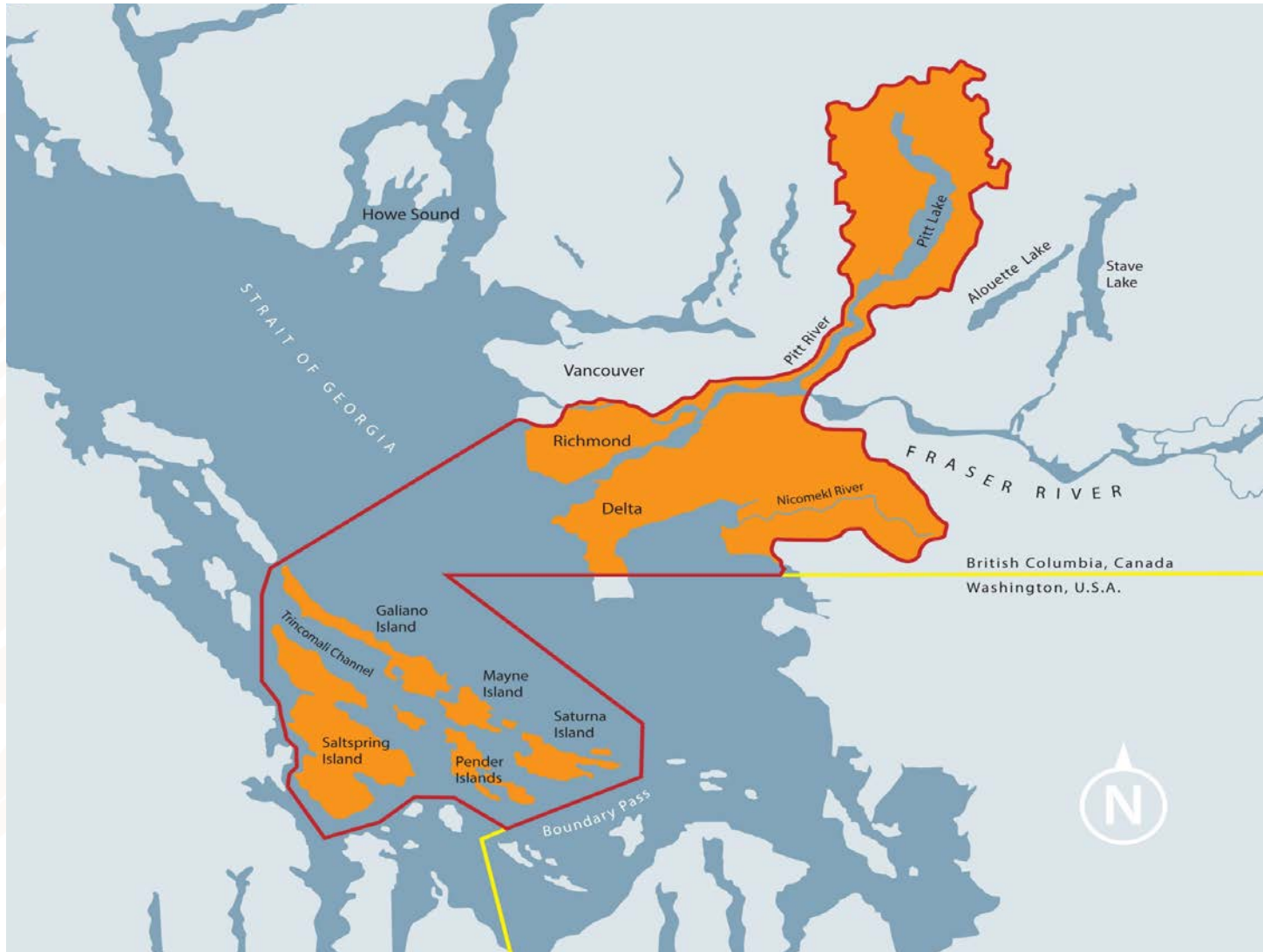




Overview

- Bio
 - **Former chief of Tsawwassen First Nation**
 - **Currently a consultant**
- Review of TFN treaty negotiation and the modern treaty model
 - **BC specific (first through the BC Treaty Commission process)**
- Review of TFN treaty implementation (self-governance)
- Focus on land management/jurisdiction issues throughout presentation

Background – Tsawwassen First Nation





TSAWWASSEN HEADLINES



www.vancouversun.com/tsawwassen+first+nation+rejects+proposed+facility/11594929/story.html

VANCOUVER SUN

NEWS BUSINESS OPINION SPORTS ARTS LIFE CAREERS OBITS CLASSIFIEDS DRIVING SIGN IN SUBSCRIBE

Tsawwassen First Nation rejects proposed LNG facility

CANADIAN PRESS 12.16.2015 |

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Construction of Tsawwassen First Nation mega-malls begins

Opening of two side-by-side mega malls slated for 2016

CBC News Posted: Jan 24, 2014 4:17 PM PT | Last Updated: Jan 26, 2014 12:11 PM PT



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Tsawwassen Chief Kim Baird defeated in band election

CBC News Posted: Sep 6, 2012 6:34 AM PT | Last Updated: Sep 6, 2012 9:49 PM PT 5



New chief elected 2:06

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Tsawwassen First Nation ruling sets stage for tense rematch

ROD MICKLEBURGH

Vancouver — Globe and Mail Update (includes correction)

Published Tuesday, Dec. 11 2012, 5:34 PM EST

Last updated Wednesday, Dec. 12 2012, 5:47 PM EST





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Tsawwassen First Nation re-elects young chief after first vote overturned

Tsawwassen, B.C. — The Canadian Press
Published Thursday, Apr. 11 2013, 12:49 PM EDT
Last updated Thursday, Apr. 11 2013, 12:54 PM EDT

0 comments

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A young chief has won his second election in barely seven months, confirming his position as leader of the Tsawwassen First Nation, B.C.'s first urban First Nations government.

Chief Bryce Williams has been elected by members of the suburban Vancouver First Nation, defeating former chief Kim Baird by 20 votes.



SWITCH TO ONLINE BILLING WITH MYHYDRO.

EDITORS' PICKS

- LIFE What time is the Super Bowl? A game day guide

TFN's Story



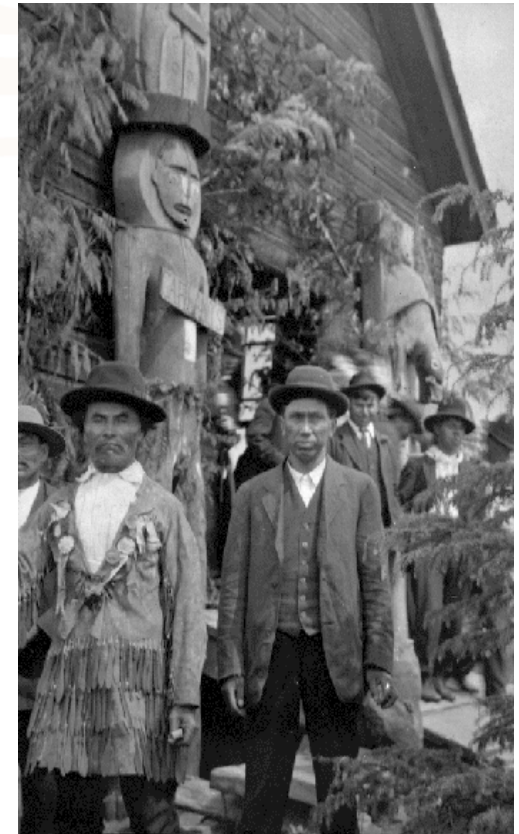
- Tsawwassen First Nation (TFN) members belong to the seafaring Coast Salish people.
 - Our traditional territory is located in southwest British Columbia, near Vancouver.
 - Profound connection with the ocean and lands
 - A long history of environmental stewardship.
- Low socioeconomic rates





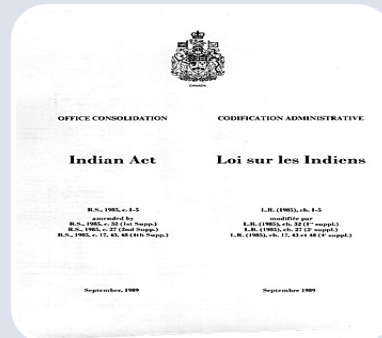
Negotiation Timeline

- BC Treaty Process began in 1993
 - TFN entered in early 1994
 - 6 stage process
- Agreement-in-principle in 2004
- Final Agreement initialed in 2007
 - Ratified by community in July 2007
- Received Royal Assent on June 26, 2008
- Treaty Effective Date of April 3, 2009





First Nation Governance Continuum



First Nations Land Management Act

- Select First Nations can participate in the FNLM
- The First Nation develops a Land Code that is consistent with the basic requirements setup in the FNLM
- The Land Code must be approved by the membership
- If successful, the Land Code replaces the various land management provisions of the *Indian Act*



Pre-European
Contact –
inherent right to
self-
determination

Colonial
systems forced
on First Nations
Indian Act and
by-law
development

Sectoral
governance
opportunities -
federal
delegation of
Indian Act
components
(Land Code)

Self-
determination:
- Asserted
-comprehensive
self-governance
agreements
-?



Negotiation Elements – the compromises

Process barriers

- Tax exemption phaseouts
- Own-source revenue clawbacks
- Constitutional status of the Land
 - section 35, 91 or 92?
- Certainty – intended as full and final settlement of TFN's aboriginal rights

Barriers specific to Tsawwassen:

- ALR – TFN required additional lands to develop sustainable economy
- Servicing and Regional Integration
 - TFN, like other FN's, have massive servicing and infrastructure deficits, coupled with poor relationships with municipal entities



Servicing and Regional Integration

- Servicing was a big issue
 - Water and sewer required for economic development
 - Services acquired from Delta, who controlled flows
- Tsatsu Shores development highlighted the issue
 - TFN required to build its own on-site treatment and water plant
 - Sued by DFO, had to navigate new permit process implemented by INAC which was since abandoned
- TFN is now a member of Metro Vancouver, Translink, Greater Vancouver Water District
 - Provides certainty of servicing to us but also a voice in the broader management of our territory



Other criticism about the model

- Some opposing views about this approach
 - **Within Canada's constitution (not sovereign)**
 - **Sets out limits on First Nation jurisdiction (democratic elections, charter of rights and freedoms, criminal code etc)**
 - **Fee simple lands**
 - **Agreeing to small percentage of whole territory**
 - **Defining aboriginal rights could be limiting them**



Treaty as a tool box

- Land claim and self-government aspects
- Jurisdiction and allodial ownership over 724ha of land
- Jurisdiction covers a number of areas
 - Land management
 - Environment
 - Municipal-type functions
 - Social policy elements
 - Social Assistance
 - Health
 - Education
- Side Agreements to the Treaty
 - OSR, Fiscal Financing, Tax Treatment, Real Property Taxation, Harvesting





What Laws apply to Tsawwassen? Canada, BC or TFN

- Tsawwassen has a fairly large scope of law-making power – including education, health, lands, justice, building and development, social assistance, child and family services, etc.
- The Treaty operates on the basis of a ‘Concurrent Law Model’ and the Final Agreement sets out whether Provincial, Federal or TFN Law prevails to the extent there is a conflict
- Provincial and Federal Laws of general application will apply, unless they have been displaced by a TFN law
 - **Certain Provincial and Federal Laws specifically apply through references to ‘treaty first nation’ (e.g. laws confirming TFN’s membership in the Regional District)**



(projections based on TFN Financial Plan 2011)	Pre-Treaty (2008)	Post-Treaty (Current)	10 years out (2020)
Total assessed value of properties	\$140 million	\$340 million (includes current exempt properties)	\$1.4 billion
Property Tax Revenue	\$570,000	\$700,000	\$17.5 million
Approximate Annual Revenue	\$12 million INAC Transfers + Property Tax	\$32 million One-time Treaty Transfers + Property Tax	\$33 million Lease Revenue + Property Tax

Community Engagement



- Several complex decisions faced our community
- Community was required to vote on many of these items
- Engagement was important right from the start
 - Ensured the end product was a 'good' cultural fit with the community, and its approval
- Treaty had 70% approval in the community
- Other votes included:
 - Land selection; land code under pre-Treaty FNLMA; Land Use Plan; Constitution; Land Act; Membership Act; Treaty;

Constitutional Development



- Constitution was developed by grass roots community members over 2 years
- Had to sort out some very sensitive topics like who should Tsawwassen citizens be, what should our new governance structure look like, how long should the terms be etc?
- Worked in partnership with SFU – with a grad student who led the whole process

CONSTITUTION HEADINGS TO DISCUSS



Purpose

Chapter 1 – Definitions

Chapter 2 – Founding Provisions

Chapter 3 – Objectives

Chapter 4 – Membership

Chapter 5 – Beneficiaries

Chapter 6 – Rights and Freedoms

Chapter 7 – Representation of Non-Members

Chapter 8 – Government

Chapter 9 – Provisions for the Removal of Elected Members

Chapter 10 – Filling vacancies between regular elections

Chapter 11 – Delegation of Powers and Joint Agreements

Chapter 12 – Adoption of Provincial and Federal Laws

Chapter 13 – Financial Administration

Chapter 14 – Audits

CONSTITUTION HEADINGS TO DISCUSS - continued



Chapter 15 – Revenue Collection and Public Money

Chapter 16 – Money Held in Trust

Chapter 17 – Expenditures

Chapter 18 – Public Service

Chapter 19 – Conflict of Interest Rules

Chapter 20 – Adjudicatory Bodies

Chapter 21 – Law Making

Chapter 22 – Elections

Chapter 23 – Referendum

Chapter 24 – Lands and Resources

Chapter 25 – Amendment

Chapter 26 – Intermittent Government Provisions

Chapter 27 – Interpreting the Constitution

Sample Schedule



Date	Topic
July 10	Non-member representation
July 24	Member/beneficiary/community member issues
Aug 14	Complaints and appeals process
Aug 28	Survey results and implications for constitution
Sept 11	Principles for the selection of a judicial council
Sept 25	Judiciary process/ dispute resolution
Oct 9	Judiciary process/ dispute resolution
Oct 23	Tax implications
Nov 6	Defining and measuring success
[REDACTED]	[REDACTED]
Dec 4	Final review of Constitution and required law/policies
TBA	Guest speaker from another community

Community Engagement – Addressing Treaty Issues



- Treaty Pro/Con Debate
 - Held open debate
 - Pro/con info sheets
- Self-governance meetings
 - Constitution meetings, workshops
 - Challenge anti-Treaty to participate and develop a better system
 - Identified institutions and processes
- Fiscal/Tax/Capital Transfer
- Lands – CP replacement interest consultations
- Held many meetings to explain complexities, work through issues
- Youth meetings, Family meetings, Elders lunches
- Also used workshops, developed info pamphlets, held a conference, an essay contest, art project, etc.
- Held a youth vote
- Workshops on specific issues –non-member representation, Tax/fiscal, constitution, intergovernmental relations

TFN AGM





Pre-Treaty Implementation

- Over 40 projects that would prepare TFN as much as possible for its upcoming responsibilities
 - Institutional Projects – Laws Development, Strategic Plan, Government Organization, etc.
 - Financial Projects – Budgeting, Financial Management, Taxation Framework
 - Intergovernmental (Relationship) Projects – Delta, Metro Vancouver, Shared Territories, Implementation Committee, Translink, Leaseholders
 - Land Issues – Land Use Plan, land-related legislation, lands transfer process



Pre-Implementation projects:

- 10 - Land Title Transfer Process
- 12 – Boundary Survey work

- TFN Land Conveyance documents held in Escrow at midnight April 3, 2009.



Pre-Implementation Project 9 - Land Use & Development Planning



- Important for TFN to retain jurisdictional authority over land use planning
 - Treaty Effective Date Land Use Plan is deemed to comply with the regional growth strategy
- Regional integration recognizes our Land Use Plan as different
 - TFN is not a local government, it is a treaty first nation member of the regional district

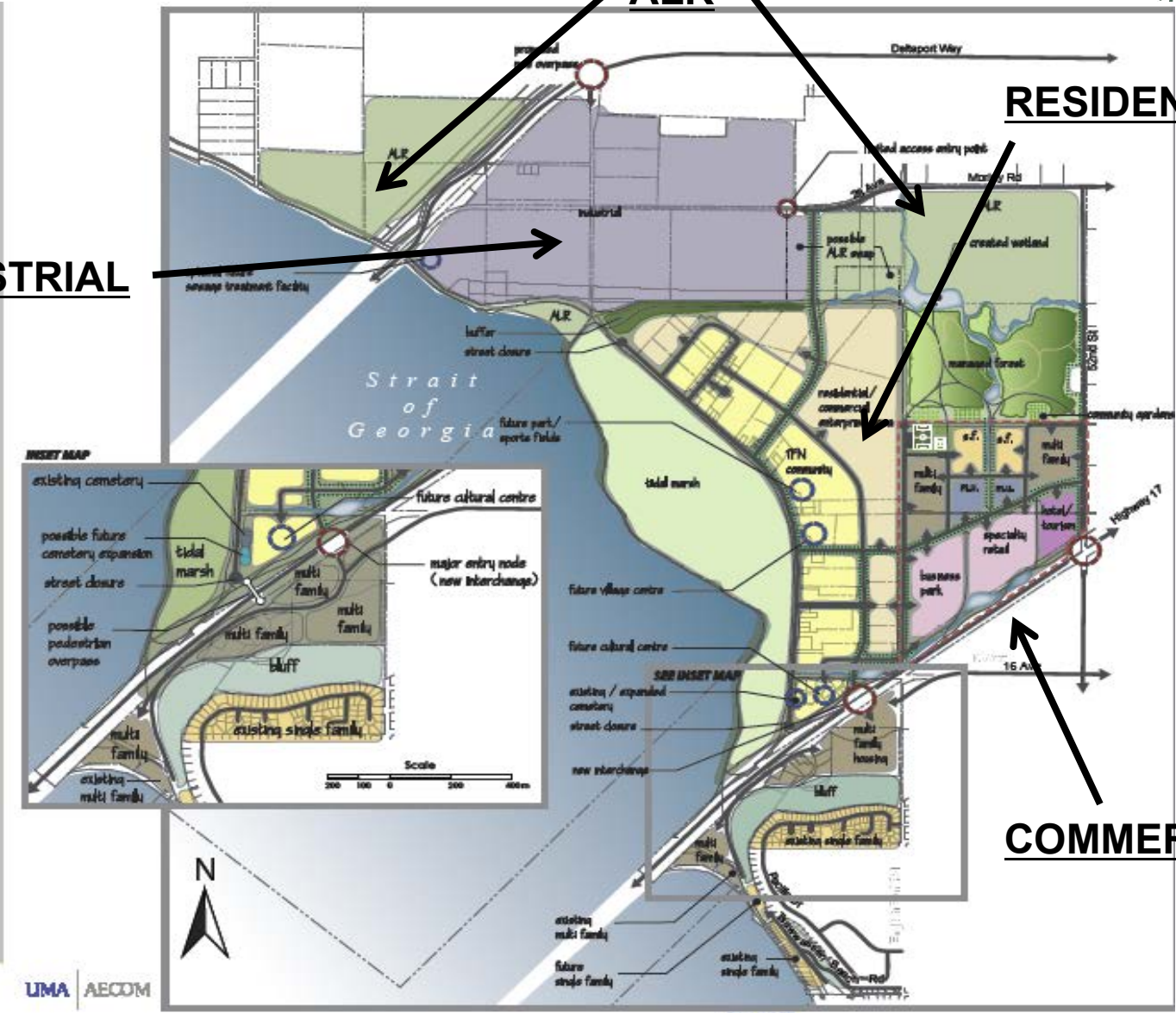


INDUSTRIAL

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RESIDENTIAL

COMMERCIAL



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Tsawwassen Laws



- TFN enacted 23 Laws on Effective Date
 - Ambitious and innovative suite of self-government legislation that takes down most powers provided for in Final Agreement
 - TFN chose to do as much as possible as early as possible
 - Is already being modelled by other First Nations
 - TFN Constitution sets out highly accountable governance structure
 - Land legislation particularly important to be able to develop
- Several amendments to Laws since Effective Date
- Public, online registry of Laws
 - and Regulations
 - Ensures transparency

Legislative Framework



1. Constitution Act
2. Government Organization Act
3. Financial Administration Act
4. Government Employees Act
5. Elections Act
6. Membership Act
7. Administrative Review & Judicial Proceedings Act
8. Community Governance Act
9. Property Taxation Act
10. Land Act
11. Land Use Planning & Development Act
12. Interpretation Act
13. Fisheries, Wildlife, Migratory Birds & Renewable Resources Act
14. Economic Development Act
15. Education, Health & Social Development Act
16. Child and Family Act
17. Culture & Heritage Act
18. Community Safety & Security Act
19. Members Guarantee Act
20. Freedom of Information and Protection of Privacy Act
21. Laws Enforcement Act
22. Conflict of Interest Act
23. Traditional Territory Boundary Commission Act

Key Principles



- Centrality of Laws
 - Organizing principle for Tsawwassen Government are its Laws, set by Legislature
 - All actions of Tsawwassen Government must be consistent with TFN Laws
- Separation of Politics from Administration
- Delegation model
 - All actions of Executive Council delegated to it by Legislature through a Law, E.C. delegates to CAO, CAO delegates to Managers...
 - Ensures accountability through clear responsibility lines
- Policy Driven:
 - Laws and regulations express policy – need to have a clear understanding of the problem and the options
 - Laws can be expensive – ensuring that the law meets the needs of the community reduces the costs of developing laws and reduces the risk that the law will need to be amended

What is the difference between a Law, a regulation and a policy?



- Laws:
 - May only be made by the Legislature – generally less specific
 - Must be provided for under Treaty
- Regulations:
 - Have the force and effect of Law, but may be enacted by Executive Council
 - Must be provided for under a Law – Each Act sets out where the Executive Council may make regulations
 - Regulations add detail to the law
- Policy:
 - Policies do not have the force of Law, but they still must be followed
 - Policies must not conflict with laws or regulations – will be consistent

Pre Treaty Legislative Review Process



Preparation and Review of Bills For Effective Date

Stage 1 Analysis & Drafting Stage

- Research and analysis of issues and problems
- Review of current TFN bylaws, BCR's and policies
- Review of other FN legislation
- Review of work of TIAC and Treaty Implementation Projects
- Discussion with TFN staff and advisors
- Discussion with legal advisors and legal review as needed
- 1a- Preparation of policy and content briefs (to go to Stage 2a)
- 1b- Preparation of detailed drafting instructions (stages 2b-5b. May not be needed for every Act)
- 1c- Preparation of draft legislation by legislative drafters(for stages 2c - 5c)
- Monitor progress & make, changes as directed

Stage 2 Oversight Committee Review

- 2a- Review of policy and content briefs to go to Stage 3 with recommendations
- 2b- Review of detailed drafting instructions (may not be needed for every Act) to go to Stage 3 with recommendations
- 2c- Review of draft legislation to go to stage 3 with recommendations

Stage 3 Chief & Council Review

- 3a- Review of policy and content briefs to go to Stage 4 with recommendations
- 3b- Review of detailed drafting instructions (may not be needed for every Act) to go to Stage 4 with recommendations
- 3c- Review of draft legislation to go to stage 4 with recommendations

Stage 4 TIAC Review and community Review

- 4a- Review of policy and content briefs to go to Stage 5 with recommendations
- 4b- Review of detailed drafting instructions (may not be needed for every Act) to go to Stage 5 with recommendations
- 4c- Review of draft legislation to go to stage 5 with recommendations

Stage 5 CHIEF & COUNCIL PASS LAW

- Laws enacted by Chief and Council on Effective Date

- Note:** 1. Referenda will occur after community consultation of draft bill as required.
2. Each stage will have rounds a, b and c as required.

How are Laws, Regs and Policies made?



- Three key steps in the development of Laws, Regs and Policies:
 - 1) The policy process
 - 2) The drafting process
 - 3) The enactment or adoption process

The Policy Process



Problem Identification

- Who identifies 'a problem'?
- Does it require legislation?

Policy Analysis

Staff will take direction from the Legislature and/or the Executive Council to analyze identified problems

Staff will:

- Analyze the problem: look at best practices, interview key people, consult with community
- Present options to Advisory Council (open to all Members) for input
- Present options to Executive Council for decisions on how to proceed

The Drafting Process



Develop a draft Law

- Policy decisions made by Executive Council are incorporated into the draft Law (a Bill)
- Staff work with lawyers to finalize the Bill



The Enactment Process

How does a Bill become Law?

- The Tsawwassen Government Organization Act outlines some requirements for how the legislature functions
 - e.g. Advisory Council role
- Tsawwassen Legislature must have 3 readings of a Bill before a vote can be called
- Legislature has opportunity to ask question of other legislators and staff (managers, etc.)



Bill_9_drafting_instructions_banff version [Compatibility Mode] - Microsoft Word

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(more definitions to follow)	
Suggested Provisions and Clause by Clause Instructions:	Sources of Clause and Explanatory Notes:
Part 2 – Administration	
- May need something specific regarding the application of this Act on Effective Day.	- Possible need for a clause exempting TFN from adhering to certain provisions of this Act regarding the disposition and

July 22/2008 2

Tsawwassen First Nation Land Use Planning and Development Act drafting Instructions

2. Except as otherwise specifically stated in this or any other TFN Act, the Executive Council is responsible for the administration of all TFN Lands.	registration of interests for Effective Day – esp. concerning things such as applications of dispositions
	- Should the Act do more to distinguish the role/responsibilities of the EC in relation to Other Tsawwassen Lands?

Page: 2 of 22 Words: 5,871 English (U.S.) 100%

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Tsawwassen Legislature



Legislation will:

- Create powers to exercise authorities and responsibilities set out in the Treaty.
- Provide general legislative direction for the formulation of land policy
- Delegate authority to the EC to set regulations and policies where advisable
- Retain final authority over dispositions policies through annual review of EC regulation and policy decisions
- Establish framework and basic criteria respecting terms, conditions and requirements for dispositions
- Create TFN reservations and restrictions on interests registered in Lands Title Office to prevent the alienation of lands, authorize Members to enter into mortgage agreements with financial institutions

EC

Authority to set regulations and policies respecting:

- Dispositions
- Registration, amendment and cancellation of interests
- Application of restrictive covenants, provisos, restrictions, easements and/or rights-of-way
- Land exchanges
- Fees and rents
- Application procedures for TFN dispositions
- Policies and procedures to enable mortgages
- Application for the removal of lands from the ALR

Director of Lands

Authority to approve of dispositions, subject to regulations and procedures established by the EC

Direct Lands Department and advise EC on lands policy

Exercise any of the powers delegated by the EC

Lands Committee

May be established to advise on land policy including matters of importance relating to the disposition of lands – i.e. amending disposition criteria

The composition of the committee is defined in the legislation – potential option to have the Advisory Council assume the role of LC as required

CAO

Authority to register TFN fee simple interests, leasehold interests in the BC LTO

Record all dispositions and descriptions of TFN Lands in the BC LTO

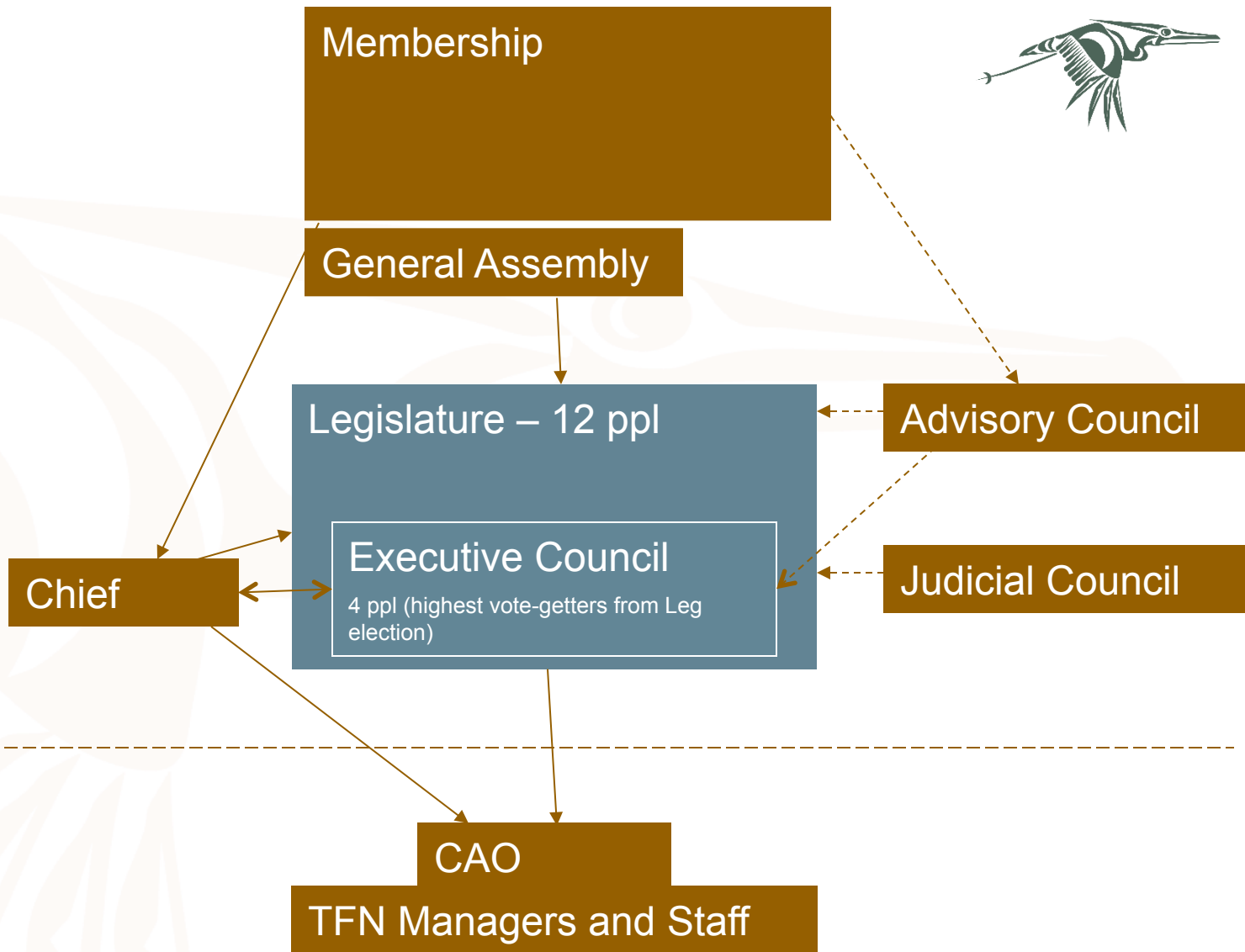
Sit as an ex-officio member of the Lands Committee

Note: Continuity with the Land Code is ensured as the legislation will set out referendum procedures for seeking community approval important matters relating to lands – i.e. changes to land disposition policy

Our Government Institutions



- TFN approach – create a culture of governance:
 - Legislature of 13 (12 Legislators and 1 Chief)
 - Executive Council of 5 (Cabinet-type function)
 - Transparent and Accountable Budget Process
- Powers of a Natural Person – Ability to enter into contracts/agreements/partnerships without the need of Indian Affairs
- ‘Business Forward’ Strategy – government framework to inspire market confidence, and attract external investment



Legislature



- 12 people plus Chief for total of 13
- Meet in a legislative ‘session’ – a series of meetings that will occur over a two-month period
- Responsible for:
 - Discuss and enacting proposed Tsawwassen Laws
 - Approving the annual Budget
 - Hearing and considering the advice of the Advisory Council
 - Passing other resolutions or directives for Executive Council to consider
- Accountable directly to Tsawwassen Members through elections and under TFN laws (current legislature in place since September election)

Tsawwassen Legislature



Executive Council



- 4 people plus Chief for total of 5
- Meet weekly, and as required
- Responsible for:
 - Day-to-day matters of Tsawwassen Government (many general Tsawwassen Government responsibilities are assigned to Executive Council)
 - Generally manage and provide strategic direction to CAO and Tsawwassen Government
 - Pass regulations, approve policies, and prepare laws for Legislature to consider
 - Prepare Budget for consideration by Legislature
- Accountable to Legislature at sessions and to Membership through elections and under TFN laws
 - No formal portfolio assignments

Chief



- Elected through a separate ballot from Legislature
- On-going, hands-on management on day-to-day basis
- Responsible for:
 - Head of Legislature & E.C., directs CAO
 - Oversees activities of Tsawwassen Government, through CAO
 - Strategic policy and program direction
 - Represents TFN Government externally, at ceremonial, official and other events
- Accountable directly to Tsawwassen Membership through elections and under TFN laws



Advisory Council (s.37)

- Membership and frequency of meetings is up to Executive Council
- Responsible for:
 - Bringing issues and feedback from unelected members
 - Providing feedback to Executive Council and Legislature
 - Providing important community input on proposed laws, regulations, policies
 - Forum to raise concerns, questions
- Accountability defined according to structure selected by new Government
 - Formal membership of 7 – membership is voted on at TFN's AGM
 - All Members are welcome and encouraged to attend

Judicial Council



- Created in constitution
- Made up of 5 – but only 1 member
- Independent member with specific expertise such as legal or accounting
- Meant to review TFN laws
- Recently used to review our election – the very first time

TFN Prosecutor



- This role was created to prosecute TFN laws in the provincial court system.
- Went with this approach because we felt it best to have someone versed in our laws dealing with them in the provincial system
- The provincial judicial system granted us standing to be able to accomplish this
- This is an innovation of sorts that hasn't been used much

Our Economic Development Corporation



- TFN Economic Development Corporation (TEDC) – arms-length, corporate entity
 - Actively seeking partners to develop the skills, training and employment side of these developments
 - Mandate to ensure TFN members benefit from the creation of new jobs and business opportunities and become active contributors to the local economy
 - Led by experienced Board of Directors with TFN representation



Implementation – ‘The Firsts’

- First day
- Record-keeping
- New system of ‘Orders’, Laws, and Regulations
- First budget
- First election
- First meeting of Legislature
- First meeting of Metro Vancouver & Translink
- First Property Taxation Authority
- Neighbourhood Plan





Institutional Stabilization

- Legislature
 - Culture of Governance
 - Assuming roles; challenge function for Budget
 - Resolutions
- Advisory Council
 - Establishing process
- Lands Department
 - Zoning and other regulatory processes
- All staff
 - New Budget process, new decision process
- Change Management



Current images from Tsawwassen



Aerial View of Tsawwassen Mills



Photo of new leasehold residential unit



Rendering of TFN Industrial site

Measurement & Planning



- Measurement
- Health Plan study
- Employment survey
- Community Well-being/Quality-of-Life
- Planning
- Budget & Reporting Cycle
- 10-year Financial Plan

Reporting Cycle





Planning – Fall (October-December)

Service Plan Development

Management team identifies program and service, and capital initiatives based on inputs gathered throughout the year

Sources include:

- Membership, (through AGM and surveys),
- elected leadership through visioning and meeting discussions,
- the 5 year Strategic Plan (2008-13),
- Cultural Strategic Plan, Health Plan,
- multi-year financial plan, and
- 10 year Capital Plan

Planning (before start of
fiscal year)

Budgeting– Winter (January-March)



- Identified Operating and Capital Expenditures are prioritized, and cost out
- Annual Budget compiled and presented for approval to
 - Finance and Audit Committee,
 - Executive Council, and
 - Legislature
- Budget presented to Advisory Council for input
- Budget must be approved by March 31 of each fiscal year

Budgeting (before start of fiscal year)

Operating – Fiscal Year (April 1 – March 31)



- Government delivers on approved program and service, and capital initiatives identified in the approved budget
- Financial and non-financial performance in service areas is tracked throughout the year
- Staff collect input from Membership, and leadership throughout the year

Operating (during fiscal year)

Reporting & Input Gathering



Reporting & Input
Gathering
(during & after fiscal year)

- Financial Audit completed by July 31
- Annual Report on previous years performance (operations and financial) by August 15
- AGM held to present results of Annual Report, and gather input, which feeds into next year's Service Planning
- Communicate progress to the Membership
 - Regular community newsletters,
 - Semi-annual newsletter updates,
 - Regular Executive Council and Legislature updates

Do It Again!





Innovation and Opportunities

- Social Assistance
 - Major program review
- Education
 - Planning for school
 - New education strategy
 - Post-secondary education
- Daycare
- Economic Development
 - Commercial
 - Industrial
 - Residential



Back to the present

- The mall project and other economic projects I haven't described are a means to an end
- We are facing the most change we have faced since contact
- The on the ground reality of self-government is much different than the theoretical framework we started with at TFN
- Everything we do is to try to make sure the quality of life of our members match our neighbours
- The model is controversial – but I think there is a lot to learn from our experience
- We are now in the headlines because of what we've achieved and will stay there – our community is engaged and excited, wary and tired – but it is clear we are driving our own destiny now.



Lessons Learned

- Think Big – you can get a lot done
 - Jump in with both feet – we did not do ‘incremental’
- Build the appropriate capacity for new self-governance powers as soon as possible
 - Staff, Members, consultants, other specialists
 - Funding is challenging, but be creative – grad student interns can be a good resource
- Think strategically about your human capital in relation to your employment and development opportunities
- Community engagement throughout entire process