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GITXSAN TREATY NEGOTIATIONS

AGREEMENT-IN-PRINCIPLE CHAPTER:

LANGUAGE AND CULTURE

November 1, 2002

Draft #11

<p>Note: Gitxsan propose additional definitions for various Gitxsan words, and a definition for the term “cultural property” (attached).</p> <p>Note: BC prefers that all acknowledgements go into a General Provisions chapter.</p> <p>Note: BC requests a definition of “leadership” in s.2 and s.3.</p>	<p>DEFINITIONS</p> <p>“Gitxsan Cultural Artifact” means any object created by, traded to, commissioned by, or given as a gift to a Gitxsan person or Gitxsan community, or that originated from a Gitxsan community or Heritage Site and that has past and ongoing importance to Gitxsan culture or spiritual practices, but does not include any object traded to, commissioned by or given as a gift to another First Nation or person.</p> <p>“Cultural Heritage Resources” means Heritage Sites, Gitxsan Cultural Artifacts and Gitxsan ancient human remains.</p> <p>“Gitxsan Lands” means those lands identified as Gitxsan Lands in Appendix [XX] of the Final Agreement.</p> <p>“Gwal’yeinsxw” means ...</p> <p>“Heritage Site” means a site of archeological, historical or cultural significance and includes graves and burial sites.</p> <p>“Lax yip” means ...</p> <p>GENERAL</p> <ol style="list-style-type: none">1. The Parties acknowledge the importance of the continuation and preservation of the culture, values and traditions of the Gitxsan.2. The Parties acknowledge the importance of Gitxsan leadership in the preservation, conservation and management of Gitxsan Cultural Heritage Resources.3. The Parties acknowledge the importance of Gitxsan leadership in the interpretation and representation by Canada and British Columbia of Gitxsan culture and society.
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<p>Note: Gitxsan identified financing issue to be addressed by the parties.</p> <p>Canada and BC require internal review of provisions 5 through 9.</p>	<p>4. Canada and British Columbia support continued access for Gitxsan to federal and provincial cultural and educational programs.</p> <p>5. The Parties recognize that Gitxsan language and culture are integral to the distinctive nature of Gitxsan society.</p> <p>6. The Parties recognize and wish to [protect] the cultural, political, and economic distinctiveness, and the social well-being of the Gitxsan.</p> <p>7. The Parties recognize that the use of Gitxsan language and culture reflects the Gitxsan connection to the [Lax Yip] and [Gwelx Yeinst].</p> <p>8. The Parties agree that the Gitxsan interest in preserving and enhancing Gitxsan language and culture can be reconciled with the interests of Canada and British Columbia in promoting appreciation of cultural diversity.</p> <p>9. The Parties recognize and wish to [protect] a way of life that is based on a spiritual and long-standing relationship between the Gitxsan and the land.</p>
<p>Note: Geographic scope is an issue. Canada and BC require internal review of these provisions.</p> <p>Note: Gitxsan will define “Ayook”. BC prefers those elements of the Ayook required for the Final Agreement to be clearly spelled out.</p> <p>Note: Canada may review sections 12, 13, and 14</p>	<p>JURISDICTION</p> <p>10. [The Gitxsan may make laws to preserve, protect, promote, and develop Gitxsan culture and language, including laws to authorize or accredit the use, reproduction and representation of Gitxsan cultural symbols and practices, and the teaching of the Gitxsan language.]</p> <p>11. [<u>Gitxsan (Ayook/laws that reflect Gitxsan tradition and practices)</u> in respect of: a) the conservation and protection of Cultural Heritage Resources on Gitxsan Lands; and b) access to Cultural Heritage Resources on Gitxsan Lands may be enacted, consistent with the Final Agreement, and registered in the Gitxsan Registry of Laws.]</p> <p>12. [In the event of a conflict between a federal or provincial law and a</p>

<p>following any changes in definitions.</p> <p>Note: the issue of jurisdiction in s. 16 remains outstanding.</p> <p>Note: the issue of law making authority in s. 17 remains outstanding.</p>	<p>Gitxsan law made under paragraph 10 and 11, the Gitxsan law will prevail to the extent of the conflict.]</p> <p>13. [Notwithstanding paragraph 11 (b), Gitxsan will not unreasonably deny public access to Cultural Heritage Resources on Gitxsan Lands.]</p> <p>14. Gitxsan laws in respect of the conservation, protection and management of Gitxsan Cultural Heritage Resources on Gitxsan Lands will have an effect equivalent to or exceed the effect of federal and provincial laws for the conservation, protection and management of Gitxsan Cultural Heritage Resources.</p> <p>15. Federal and provincial laws will apply to Cultural Heritage Resources on Gitxsan Lands.</p> <p>16. Except as provided for by federal or provincial law, Gitxsan jurisdiction under section 10 to make laws in respect of Gitxsan culture and language does not include jurisdiction to make laws in respect of intellectual property, the official languages of Canada or the prohibition of activities outside of Gitxsan Lands.</p> <p>17. The parties support the protection and promotion of Gitxsan interests regarding intellectual property subject to exclusive federal lawmaking authority and international trade obligations and agreements on intellectual property.</p>
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HISTORIC, SACRED AND HERITAGE SITES

18. The Parties will address the role of the Gitxsan in the protection, conservation and management of Heritage Sites off Gitxsan Lands.
19. Federal and provincial laws will continue to apply to any existing National Historic Sites or Heritage Sites on Gitxsan Lands on the Effective Date, unless otherwise agreed.
20. The Gitxsan may enter into agreements consistent with provincial programs in operation from time to time to create historic sites or sacred sites including sites of cultural, heritage or spiritual importance to the Gitxsan, to educate the public or commemorate Gitxsan language and culture within the Gitxsan SOI area.

CULTURAL ARTIFACTS

21. The Parties acknowledge the integral role that the Gitxsan Cultural Artifacts play in the continuation of Gitxsan culture, values and traditions, whether those artifacts are held by Gitxsan, the Canadian Museum of Civilization, the Royal British Columbia Museum.
22. Gitxsan will own Gitxsan Cultural Artifacts found on Gitxsan Lands after the Effective Date, unless another person establishes ownership of that artifact.
23. After the Effective Date, if any Gitxsan Cultural Artifact discovered outside Gitxsan Lands comes into the permanent possession or under the control of Canada, Canada may lend or transfer its interest in that artifact to the Gitxsan in accordance with any agreements negotiated outside the Final Agreement with Gitxsan.

24. If an artifact held by the Canadian Museum of Civilization as of the Effective Date is established to the satisfaction of the Gitxsan and the Canadian Museum of Civilization to be a Gitxsan Cultural Artifact, the Gitxsan and the Canadian Museum of Civilization may negotiate and attempt to reach agreement concerning the disposition of, or custodial arrangements for, that artifact.
25. If an artifact held by the Royal British Columbia Museum as of the Effective Date is established to the satisfaction of the Gitxsan and the Royal British Columbia Museum to be a Gitxsan Cultural Artifact, the Gitxsan and the Royal British Columbia Museum may negotiate and attempt to reach agreement concerning the disposition of, or custodial arrangements for, that artifact.
26. Appendix A and Appendix B sets out all artifacts in the permanent collections of the Canadian Museum of Civilization and Royal British Columbia Museum respectively which have been identified as Gitxsan Cultural Artifacts.
27. At the request of the Gitxsan, Canada and British Columbia will use reasonable efforts, in accordance with federal and provincial laws, to facilitate Gitxsan access to public and private collections that are known to hold Gitxsan Cultural Artifacts.

ANCIENT HUMAN REMAINS

28. Subject to federal and provincial laws, any Gitxsan ancient human remains removed from Heritage Sites will be returned to the Gitxsan.

PLACE NAMES

29. The Parties will address the naming or renaming with Gitxsan names of geographic features and locations associated with the Gitxsan within the Gitxsan SOI area.
30. Appendix C sets out those geographic features within the Gitxsan SOI area which the Gitxsan have identified for consideration for renaming.

Gitxsan will review the Education provisions.

LANGUAGE AND CULTURE INSTRUCTION, CERTIFICATION AND CURRICULUM

31. The Gitxsan Nation/Government may make laws in respect of pre-school to grade 12 education on Gitxsan Lands of Gitxsan citizens, including the teaching of Gitxsan language and culture, provided that those laws include provisions for:
 - a. curriculum, examination, and other standards that permit transfers of students between school systems at a similar level of achievement and permit admission of students to the provincial post-secondary education systems;
 - b. certification of teachers, other than for the teaching of Gitxsan language and culture, by:
 - i. a Gitxsan Institution, in accordance with standards comparable to standards applicable to individuals who teach in public or independent schools in British Columbia, or
 - ii. a provincial body having the responsibility to certify individuals who teach in public or independent schools in British Columbia; and
 - c. certification of teachers, for the teaching of Gitxsan language and culture, by a Gitxsan Institution, in accordance with standards established under Gitxsan law.
32. In the event of an inconsistency or conflict between a Gitxsan law under paragraph 31 and a federal or provincial law, the Gitxsan law prevails to the extent of the inconsistency or conflict.
33. If the Gitxsan Nation/Government make(s) laws under paragraph 31, at the request of the Gitxsan Government or British Columbia, those Parties will negotiate and attempt to reach agreements concerning the provision of Kindergarten to Grade 12 education to:
 - a. persons other than Gitxsan citizens residing within Gitxsan Lands; and

<p>Note: Canada notes that reference to “aboriginal title” in section 2 will be unacceptable. Also, sections 3 through 6 will require internal review. Section 6 is problematic from Canada’s perspective if the terms “Lax Yip” and “Gwelx Yeinst” refer to land ownership.</p>	<p>b. Gitxsan citizens residing off Gitxsan Lands.</p> <p>BACKGROUND</p> <p>(See attached provisions 1-8)</p>
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Appendix A: Artifacts in the permanent collection of the Canadian Museum of Civilization which have been identified as Gitxsan Cultural Artifacts.

Appendix B: Artifacts in the permanent collection of the Royal British Columbia Museum which have been identified as Gitxsan Cultural Artifacts.

Appendix C : Geographic Features within Gitxsan SOI identified by Gitxsan for consideration for renaming.

DEFINITIONS OF GITXSAN TERMS

Cultural Property means Gwalyeinxw, being the inheritance passed on from generation to generation, together with the responsibility of the Wilp to protect this inheritance and ensure its sustainability.

Adaawak: the Adaawak are a sacred official litany, history, or recital of the most important laws, history, traditions and Laxyip of a Wilp which is repeated, performed and authenticated during a feast. It is an oral statement of the sacred heritage of a Wilp and contains a statement or description of the Wilp’s spiritual connection and relationship to their Laxyip.

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Ayookw: Gitxsan laws, based on principles of respect and reciprocity.

Ayuuks: Sacred crests which belongs exclusively to a Wilp.

Gandidils: guidelines for behaviour that help to sustain us mentally, physically, emotionally and spiritually which will help us to learn how to react or not to react to life's situations.

Gwelx yee' inst: Tangible, including lands and resources, crests, totems, and power robes, and intangible, including time immemorial, breath, and spirit songs, oral histories, ancient names and assets owned by the Wil'naat'ehl since time immemorial and passed on in perpetuity without diminishment.

Huwilp: Plural for Wilp.

Limixoo'y: a lament or dirge (mourning song) that was composed by a Wilp's ancestors of the ancient past (literally from the breath of our grandfathers) which echo a very significant event of a Wilp such as the death of a Simogit or loss of Laxyip (also displayed on a Wilp's totem pole). The Wilp/Wil'naat'ehl will use their limixoo'y during a funeral, during a feast before a new Chief's legaa, during a headstone raising and during a totem pole raising ceremony: for a Wilp/Wil'natehl to seek strength from their ancestors.

Lipgyet: to have the freedom to live according to the Gitxsan Ayookw, to be self-reliant and self-sustaining.

Laxyip: Gitxsan Lands owned by the Wilp with a historical significance as to how ownership came through the adawaak of that Wilp.

Pdeek: Each Wilp has its origins and those that have a common ancestry associate themselves as Pdeek, one of four phratries: the Ganeda or Lax Seel (Frog Clan) the Lax Gibuu (Wolf Clan), the Lax Skiik (Eagle Clan) and the Giskaast (Fireweed Clan).

Wil'naat'ehl: Ones closest kindred. A supporting group of Huwilp; may refer to Huwilp that are historically related and have connections through the adaawak. May also refer to the immediate extended family within the Wilp, the Wilp - in its entirety, or all the Huwilp - in a Clan.

Wilp: The House: the decision-making and land-holding unit of the Gitxsan. As such it is both government and economy. It is headed by a Simogit (hereditary chief), who uses a model of consensus decision-making. Wilp members are usually but not necessarily related by blood. They have formal social responsibilities to each other. The Wilp takes ultimate responsibility for the care of children. Membership to a Wilp is determined at birth (matrilineally) or adoption and signifies Gitxsan citizenship.

Wilksaleks: Plural of Wilxsi' wixw.

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Wilxsi' witxw: The father's side. The fathers Wilp provides the security of a second Pdeek to protect, support and to aide the individual through life. Gitxsan laws do not have a cut-off age for providing services to individuals. The Wilxsi' witxw supports the individual on a continuum: from the cradle to the grave.

Yuuhlimxw: Advice and important concepts that help create a balanced life and is provided by members of the Wilp, Wil'naat'ehl and Wilksaleks.

Background Language for Consideration From Gitxsan Sept. 5, 2002

1. [moved to General provisions]
2. Section 35 of the *Constitution Act, 1982* recognizes and affirms the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada, which includes Aboriginal title.
3. The Government of Canada recognizes the inherent right of self-government is an existing Aboriginal right within the meaning of subsection 35(1) of the *Constitution Act, 1982*.
4. The Gitxsan have a special relationship with Canada which is reflected in subsection 91(24) of the *Constitution Act, 1867* and sections 25 and 35 of the *Constitution Act, 1982*.
5. [moved to General provisions]
6. [moved to General provisions]
7. [moved to General provisions]
8. [moved to General provisions]