

DITIDAHT  
TREATY

# Annual Progress Report

JULY 2014



## MESSAGE FROM CHIEF NEGOTIATOR – CHIEF COUNCILOR JACK THOMPSON:

### Why are we negotiating a treaty?

Throughout our history, our people have fought hard to reconcile our differences with Canada and BC. Each generation persevered and today we want to acknowledge the hard work and personal sacrifices made by our leaders during those years. It was 1965 when our Elders began to develop formal positions on our land claims. They took steps to identify and record important information for future generations, including Ditidaht historic cultural sites and our traditional use of resources.

In our view, we have three options to settle our outstanding land question (reclaim our homeland) with the Governments of Canada and BC.

Option 1: *Status Quo (do nothing)*. This option is for Ditidaht to remain under the *Indian Act* and continue to have the Minister of Indian Affairs have the final approval over all of our decisions and have our reserves remain as Crown land. Under this system, we are accountable to the Federal Government and not our Membership.

Option 2: *Litigation (go to court)*. This option is costly, time-consuming and there is no guarantee of the outcome. What is also important is that even when/if you win a decision in the Supreme Court of Canada (which takes decades), the courts traditionally order the Parties back to a negotiation table to come to agreement on how to implement the decision. (For example, the Nuu-chah-nulth fisheries case was sent back to the negotiation table by the courts)

Option 3: *Treaty (Negotiate)*. This option is for our people to negotiate with the governments of Canada and BC for lands, resources and cash so we can build our future for the benefit of all Ditidaht people.

In 1993, DFN entered into negotiations with the governments of Canada and BC. In 2010, Ditidaht suspended our aboriginal title court case (*George Jack Thompson v. The Queen*) in lieu of negotiations. Our negotiation team also changed to include myself as Chief Negotiator, Negotiator Robert Joseph and our legal counsel Robert Freedman and Jaela Shockey. Our goal is to reach a Treaty that will allow us to reclaim our homelands and re-establish self-governing authority for our people. We know the negotiation process is long – and frustrating, however this is not within our control. Unfortunately, we are tied to government timelines and mandates – which often change after federal and/or provincial elections.

We know that making progress at the negotiation table is painfully slow. The issues are complex but we're confident every possible issue is being negotiated. But we have to remain patient as we refuse to accept a bad agreement. Most importantly, we will continue to seek an agreement that returns our homelands and gives us authority over every significant matter in our lives.

We are not finished negotiating the AIP, but we are making solid progress on many difficult issues. For that reason, it's important to provide you with information as our work continues. We encourage each of you to review this AIP Progress Report 2014, and all the additional materials we will provide you - and ask questions.

## MESSAGE FROM NEGOTIATOR ROBERT JOSEPH

The following booklet is an annual progress report of Ditidaht First Nation (DFN) Treaty negotiations. DFN is currently in Stage 4 of a six-stage process of Treaty negotiations with the governments of Canada and BC. Stage 4 is called the negotiation of the Agreement-in-Principle (AIP) stage. Treaty making is a complicated process that takes years to complete. It requires negotiators to work together with community members to ensure we get the best deal possible. Our stage 4 negotiations are continuing and it is important we provide you with updates as negotiations proceed.

### WHAT IS AN AIP?

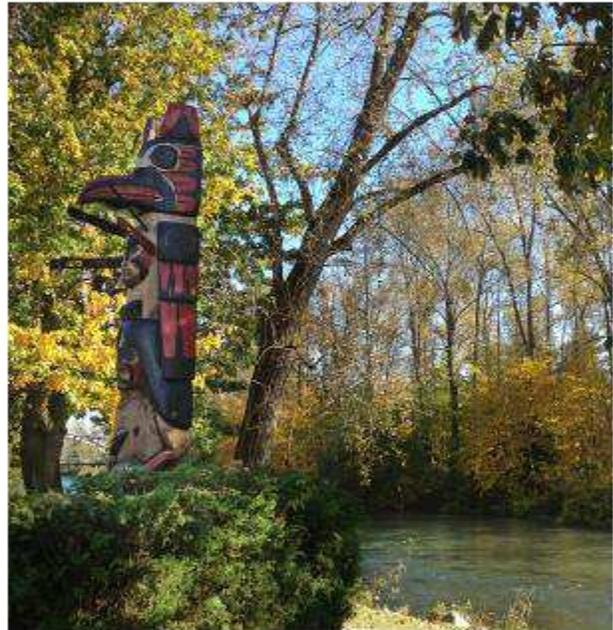
An AIP is a starting point for a final treaty. It is a long, legal, technical document (hundreds of pages plus appendices that is difficult for most of us to read). Basically, it means that we are reaching agreements 'in principle' with Canada and BC in many areas. However, AN AIP IS NOT THE FINAL TREATY and is not legally binding but will form the basis of final agreement negotiations.

For that reason, a number of activities have been planned by the Treaty Team to inform members about the AIP. As we continue AIP negotiations, it's important you become familiar with the issues we are negotiating. Information bulletins, community meetings, videos and the website will be used to help provide you with information to keep you up to date on the status of AIP negotiations. We strongly encourage you to participate in as many activities and as possible, ask questions, become informed about our treaty and provide your input.

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## WHAT IS THE INCREMENTAL TREATY AGREEMENT?

The Incremental Treaty Agreement (ITA) simply refers to the unique negotiation process we are engaged in - that differs from other treaty negotiations because it provides DFN with early benefits. The ITA provides Ditidaht early transfers of land before the Treaty comes into effect. This means we will receive specific parcels of land at planned stages of negotiations as we reach specific milestones (in addition to whatever lands we negotiate in the treaty). These early transfers provide DFN with complete ownership and return of these land parcels for our people - that we keep - regardless of whether a treaty is ever concluded.



## LANDS & SELF-GOVERNMENT

The following chart provides a summary of what we have achieved so far in terms of lands negotiations including early land transfers back to DFN as we continue our AIP negotiations. Most importantly, DFN will keep these early transfers of land even if we never reach a final agreement. The chart also summarizes what we are seeking in terms of self-government.

LANDS		
What we achieved SO FAR	How much	Under What Agreement or Stage of Negotiation
Early transfers of land back to Ditidaht at various milestones of negotiations – DFN retains complete ownership regardless of whether a treaty is achieved or not.	Doobah 349.6 hectares (At Signing of ITA - March 2013)	Incremental Treaty Agreement (ITA)  At signing of ITA - March 2013
Transfer of Malachan Block B if an Agreement in Principle reached	Malachan: Block B: 25.3 hectares (At Signing of AIP) subject to availability to remove lands from TFL 44. Otherwise, alternate lands will be negotiated.	Incremental Treaty Agreement (ITA)  At signing of an Agreement in Principle
Transfer of Malachan Block A if a Final Agreement for the treaty is reached.	Malachan: Block A: 45.3 hectares (at signing of Final Agreement) subject to availability to remove lands from TFL 44. Otherwise, alternate lands will be negotiated.	Incremental Treaty Agreement (ITA) if a Final Agreement for the treaty is reached
Initial Ditidaht Treaty Settlement Lands (TSL) selection identified to Canada & BC. Complete ownership of TSL transfers back to DFN on Effective Date of Treaty	Our TSL land selection: 9,645.1 hectares  (currently under negotiation)	Negotiation of the AIP (stage 4 of the treaty)
SELF-GOVERNMENT		
What we are seeking	Authority	Under What Agreement or Stage of Negotiation
Full authority and decision-making for Ditidaht First Nation government on TSL	Government structure designed by Ditidaht (Government structure no longer imposed by Indian Act)	Negotiation of the AIP (stage 4 of the treaty) &  Ditidaht Constitution (to be developed)
Authority to develop and enact our own laws on TSL	Authority to make laws over core areas and numerous fundamental matters related to DFN lands and our People	Negotiation of the AIP (stage 4 of the treaty) &  Ditidaht Constitution (to be developed)
Together with TSL, the SEA will give us decision-making at various levels through out the whole of our Traditional Territory	Decision-making throughout the whole of our traditional territory (18 large watersheds)	Strategic Engagement Agreement (SEA) & AIP (stage 4 of the treaty)

## DITIDAHT TREATY LANDS PACKAGE – Today at STAGE 4 – SO FAR

Ditidaht owned and occupied our lands for thousands of years before the arrival of Europeans. Today, the reality is legal title of our Reserves (legally recognized ownership) is held by the Government of Canada ‘for the use and benefit of Ditidaht First Nation’ and British Columbia has legal ownership of many of our lands. Governing authority for reserve lands remains with the Minister of Indian Affairs under the *Indian Act*. This is absolutely unacceptable and our goal is to have our homelands returned to us. The Ditidaht lands package – at stage 4 of negotiations - includes various categories as outlined below:

### Existing Indian Reserves

Currently the government of Canada owns and has authority over DFN reserve lands. The treaty will convert the DFN Indian Reserve lands into ‘DFN Treaty Settlement Lands’. This means DFN will regain legal ownership and we can use our Treaty Settlement Lands in whatever way we decide in the future.

### Treaty Settlement Lands – So far

The AIP will provide the highest form of legal ownership (called “fee simple”) ownership and control. In our negotiations, we have asked for 11,443.9 hectares [1 hectare = 2.47 acres] as Ditidaht Treaty Settlement Lands (TSL), although we do not yet know how much land we will get as TSL. Ownership means that we have full governance over these lands and can use the lands for a variety of purposes such as housing, traditional uses, and economic development.

### Pre-approved Lands

Pre-approved lands are lands DFN may select that we can purchase within 15 years of the effective date of the Treaty. This means DFN has the opportunity to further expand our treaty land base within the first 15 years of the Treaty. We are working on identifying such lands.

## THE STRATEGIC ENGAGEMENT AGREEMENT:

The Strategic Engagement Agreement (SEA) is an agreement that is connected to the AIP. We are negotiating to maximize our governance authority within our entire territory (off-treaty settlement lands). This authority would include strategic land use planning, resource development, cultural and environmental protection. The SEA, together with TSL, will give us decision-making ability through the whole of our Traditional Territory.

## RESOURCES:

### FORESTRY

Under the AIP, DFN will own the forest and range resources within our TSL. As owners, DFN will have exclusive authority to manage, protect, enhance and harvest forest and range resources. We will have the right to set, collect, and administer any fees, rents, or other charges, except taxes, relating to harvesting of forest or range resources on TSL. DFN will also have law-making authority over forest and range resources. We will also be negotiating for ownership and control of forest and range resources on lands we have selected within the Federal Park Reserve.

### FISHERIES

Fisheries negotiations at all treaty negotiation tables have been deferred until Canada completes its review of the findings and recommendations of the *Cohen Commission Report*.

### WILDLIFE

DFN will have the right to harvest wildlife throughout our entire traditional territory. We may also trade and barter wildlife among ourselves or with other aboriginal people of Canada. DFN will also have authority to identify DFN citizens as harvesters, including methods, timing and location of harvesting, trade and barter and other matters.

## CULTURE & HERITAGE

Since time immemorial, traditional laws and teachings dictated our responsibility to manage and protect all lands, waters and resources to sustain our people and way of life. Under the AIP and our constitution, DFN will have authority to make laws to honour our past and build on our traditions as we move forward including laws to:

- Protect and enhance our language and culture
- Protect our sacred sites
- Rename geographical place names within our territory.

## CASH

### CAPITAL TRANSFERS

The AIP provides that Canada and BC will provide cash payments to DFN. These cash payments are also called 'capital transfers'. Payments would start on the Effective Date of the treaty and would likely be paid over a 10 year period. Interest on the unpaid cash (during those 10 years) will be added to the payments to DFN. Capital transfer money is separate from program and service funding. In other words, Canada will still have the responsibility to fund our programs and services.

There will be no strings attached to Capital Transfer monies we receive in the treaty. The DFN Government will be accountable directly to DFN Members - instead of to Department of Indian Affairs. Notably, a number of financial administration laws and procedures must be in place before the Effective Date of the treaty. The DFN government will have to follow these laws. Investment and spending decisions will be made according to strict processes that will be set out in DFN laws and regulations. Most importantly, DFN will have complete control over these monies and can utilize it for all kinds of DFN initiatives. These may include economic development, capital infrastructure (roads, water, and sewer), investment and purchasing more DFN land.

## ON-GOING PROGRAMS & SERVICES FUNDING

Under the AIP, you will NOT lose your Indian Status. Ditidaht Status Indians will continue to be eligible for all programs and services available to all aboriginal people, including services such as medical and dental benefits. A side-agreement to the treaty will be negotiated called a "Fiscal Financing Agreement" (FFA). The FFA will replace existing arrangements for the transfer of AANDC funding for programs and services to Ditidaht. In other words Canada will continue to provide funding for agreed-upon programs and services through the FFA, instead of current block funding agreements. It is expected DFN will enter into 5 year FFAs with automatic renewals built in.

Future negotiations will be based on the following principles:

- Canada's on-going responsibility to fund programs and services
- DFN's responsibility to contribute to program and service costs from its own revenue

## RESOURCE REVENUE SHARING PAYMENTS:

The Parties have agreed to negotiate resource revenue sharing payments. Resource revenue sharing payments will be paid by Canada and BC to DFN. This payment is a share of the revenues BC collects annually for resources removed from our territories.

## NEGOTIATION LOAN REPAYMENT

DFN will repay negotiation loans in annual instalments starting on the Effective Date of the treaty. Loan payments will be deducted from capital transfer payments. The negotiation loan can be prepaid at any time without penalty.

How is the constitution connected to the treaty?  
Because the treaty requires the Ditidaht people approve our own constitution on or before the Effective Date of a treaty. Developing a constitution is how DFN will choose the structure of government best suited to our needs. For example, it will establish the branches of our government that will:

- Have authority to make laws (legislature);
- Be responsible to carry out the laws (executive);
- Resolve conflicts (dispute resolution bodies / judiciary)

## ACCOUNTABILITY

Most importantly, the constitution will confirm the source of DFN government's authority is grounded in the Ditidaht people. For example, it will describe the process for how our people will provide direction to the DFN government on significant agreements, finances, goals and other priorities.

A constitution has been described as the 'rules of the game' – rules to ensure our future government understands the extent and limits of its powers. All DFN government action will be guided and controlled by the constitution. Rules will be put in place to assure the DFN people (and those wanting to be on our lands) that the operation of our nation is not a free-for-all. Most importantly, once we have our own constitution, it tells the world that DFN has moved away from the *Indian Act* system of governing.

## CITIZENSHIP

Under the AIP, you will NOT lose your Indian Status. Ditidaht Status Indians will continue to be eligible for all programs and services available to all aboriginal people, including medical and dental benefits. The constitution will include general criteria for who is entitled to be a citizen of DFN. The constitution will also enable the government to enact a citizenship law that must be in place on Effective Date. The citizenship law is where details about who is and isn't eligible to be a DFN citizen will be set out.

TAXATION:  
Historically, a complex socio-economic system played an important role within Ditidaht and with neighbouring tribes. Wealth was important for

subsistence, trade, gifts and to pay for services. Prior to contact, practices to re-distribute wealth were based on our traditional sharing principles. Our people shared a collective responsibility to ensure all of our people thrived. In the future, these traditional principles will be reflected in a modern self-governing regime through taxes.

Taxes will be one important source of revenue we will utilize to run our DFN government. It will help to provide benefits for our people including water and sewer systems, roads, sidewalks, and recreation facilities. Some of the taxes now being paid to Canada and BC will come directly back into DFN as revenue. In the AIP, our current tax exemptions (section 87) will be phased out over 8 – 12 years. However, it's also important to keep in mind that our current tax exemptions are not an Aboriginal or treaty right. Rather, the exemptions are provided to Status Indians at the discretion of the government of Canada. So, whether we sign a treaty or not, we have no guarantee section 87 tax exemptions for Status Indians will continue in the future.

## GOVERNANCE

### DITIDAHT CONSTITUTION

Developing a constitution is an essential building block to self-government. It will take time to draft our constitution and will require input from our people. Community members, the treaty team, Chief & Council and our legal counsel will help draft the constitution. Work on the constitution will start during stage 5: Final Agreement negotiations. The constitution is the foundational document that will tell the world who the Ditidaht people are, define our territory and describe our system of government. Once it comes into effect, it will be the highest law of DFN. The constitution will establish the institutions of our government and outline the powers of government.

## DITIDAHT TREATY LANDS – CONFIRMING OUR LAND SELECTION

This spring, Ditidaht confirmed our interest in the Treaty Settlement Lands selected for negotiation, since our identification of lands of importance for treaty in September 2010. These lands will make up the package of lands that will be used by the parties, when Ditidaht, BC and Canada work together in negotiations to secure the land selections in the treaty process. While we won't get all of the lands we selected, the most important part is that the lands we will be offered – will come from the areas we selected. They won't be from lands which are not as valuable or important to us as a Nation.

At this time, we are now waiting for the government's response to our land selections. We look forward to better understanding, in the coming months, the lands which BC and Canada are able to discuss for a lands offer, both in terms of the lands we have selected within and outside of Pacific Rim. We anticipate that land selection negotiations will heat up this year, and are presently anticipating Canada's confirmation of its ability to provide us with a mandate for revised lands and cash offer. The recent Tsilqo'tin decision has given us leverage with respect to Aboriginal title, so we expect that Canada will no longer delay our important land selection negotiations, in order to maintain the momentum in our treaty negotiations.

## IMPORTANCE OF PARK LANDS IN TREATY:

We know that there won't be a treaty without some treaty settlement land coming from the park, so this has been an important part of our communication strategy in treaty over the past few years.

We have continued to meet regularly with Parks Canada, with respect to negotiating for treaty lands within the park, to form part of the land and cash offer. We have been working hard in terms of prioritizing federal park negotiations and lands discussions, while at the same time, exploring mechanisms to provide additional protection for our cultural resources throughout our territory. Much work has been done to confirm the importance of the lands within Pacific Rim National Park Reserve, which are Ditidaht's home lands, and the lands which Ditidaht is negotiating to have return as part of treaty.

Ditidaht has also met with community members to identify important priorities, interests and issues that need to be addressed with Parks Canada, in order to move forward in a positive way. Ditidaht held 3 community sessions to develop a vision for the future with Parks Canada in Nitinaht, Port Alberni, Nanaimo. Further to these meetings, we have been communicating to Parks Canada the community's interests in ensuring that there is certainty, economic opportunities, cultural protections, and mechanisms in place to protect Ditidaht's pre-existing rights which require priority. Our work with Parks Canada will dovetail well with our eco-tourism objectives which are foundational to effective Treaty implementation.

### LOCAL GOVERNMENT NEGOTIATIONS

Along with the work we are doing at the main treaty table, we also have a local government side table. We are presently focusing our efforts on negotiating a memorandum of understanding and engagement protocol with the Cowichan Valley Regional District. We will also be working with the Alberni-Clayoquot Regional District in the future to ensure that similar engagement processes exist in both districts, so that our common interests can be identified, and opportunities to work together explored.

Some of our shared goals so far include: improving communication and building relationships for the future in terms of improving road access, safety, and developing eco-tourism and cultural sharing opportunities throughout the region.

### TREATY CHAPTER NEGOTIATIONS

We continue to make progress toward completing the treaty “agreement-in-principle”, which is divided into chapters that set out our different rights – from lands and governance, to cultural and heritage protection, to our wildlife harvesting and gathering rights. At this point, many of the issues which we have not yet reached agreement on, will either become less important once we see the land selection offer, or we will be able to address our concerns through other processes – like in the consultation agreement off of our treaty lands. For the tricky issues, such as the fish chapter, we are “punting” or delaying our negotiations on this until the next stage of treaty, so that we can make progress now on other areas where there aren’t as many obstacles.

### TREATY RELATED MEASURES PROJECTS

Part of being in treaty, includes having access to funding to do other “related” work that will be important in order to increase our capacity and ability to govern after treaty. Right now, we continue to collect and put our traditional use information into a database through the Traditional Use project. This will allow us to document our harvesting activities, and cultural rights throughout the territory so we can ensure important areas are protected.

### COMPREHENSIVE COMMUNITY PLAN

The most recent Treaty Related Measure Project is the “CCP” – we recently got approval to conduct a Comprehensive Community Plan which will allow us to work together to determine our common visions.

For the Community Plan, we will be working with Ditidaht members to identify the areas of priority for you, in terms of where we should focus our efforts. We will ultimately be able to set out our goals and plans in a number of areas – lands and resources, governance, health and social, education, economic development, etc. – through this community-driven process. We look forward to working together with you on this over the next year, so stay tuned!



## HOW WILL LAWS BE DEVELOPED & IMPLEMENTED?

Throughout our history, DFN had traditional laws and principles that were passed on to each generation. Under the treaty and our own constitution, DFN will have authority to enact laws over core areas related to our lands and people. This will happen over time, after the final agreement is reached - during stage 6 (implementation). We will develop laws over matters such as:

- Government: Government organization; employees; elections
- Lands: Land use planning and development
- Finances: Financial administration, revenue & economic development
- Resources: Forestry, wildlife, fisheries
- Matters related to our people: Citizenship; children & families, health, education
- Culture & Heritage

## ARE WE READY FOR SELF-GOVERNMENT?

### CAPACITY BUILDING:

'Governance capacity' exists when communities have capable governments that are legitimate (in the eyes of its citizens) and effective (in addressing the needs of its citizens). We understand there is work to be done to prepare for self-government and building capacity will take time. Funding will allow training and mentoring to take place in the coming months and years to ensure DFN has the necessary capacity and skills to be successful. The negotiators will also negotiate for implementation funds to utilize during Stage 6: the implementation stage.

### ASK QUESTIONS – BECOME INFORMED!

The Treaty team wants to ensure everyone receives information about the current status of negotiations and answers your questions. This is one of the most important matters in our Nation's history. Remember, throughout our history, each generation of Ditidaht has worked to reconcile our differences with Canada and BC. Please participate in the discussion and become informed.

## WHAT'S NEXT?

We will continue to share information with you about the progress of the AIP negotiations. This will be done in various open houses, AIP Information Meetings (on & off reserve); treaty information bulletins delivered house to house; by mail to off-reserve members, and posted on the DFN website at [www.ditidaht.ca](http://www.ditidaht.ca)



## QUESTIONS?

Many members have questions about the treaty. Our team will make an effort to answer all questions in writing and to share those responses with all members. We will also keep a list of Frequently Asked Questions and will include them in future information bulletins. Please don't hesitate to ask questions. Email us at [dtdots@shaw.ca](mailto:dtdots@shaw.ca) or call 250-755-7824.

We want to hear from you.

