

## Example of Modification of Rights Certainty Model

November 15-17, 2011 Video Conference

### 1.11.0 CERTAINTY

#### Full and Final Settlement

1.11.1 This Agreement constitutes the full and final settlement in respect of the aboriginal rights, including aboriginal title, of each Maa-nulth First Nation.

#### Exhaustively Set Out Rights

1.11.2 This Agreement exhaustively sets out the Maa-nulth First Nation Section 35 Rights of each Maa-nulth First Nation (**Consider how DFN is to be described - Dehcho Dene vs. DFNs**), their attributes, the geographic extent of those rights and the limitations to those rights to which the Parties have agreed, and those rights are:

- a) the aboriginal rights, including aboriginal title, modified as a result of this Agreement, of that Maa-nulth First Nation in and to its Maa-nulth First Nation Lands and other lands and resources;
- b) the jurisdictions, authorities and rights of its Maa-nulth First Nation Government; and
- c) the other Maa-nulth First Nation Section 35 Rights of that Maa-nulth First Nation.

#### Modification

1.11.3 Notwithstanding the common law, as a result of this Agreement and the Settlement Legislation, the aboriginal rights, including the aboriginal title, of each Maa-nulth First Nation, as they existed anywhere before the Effective Date, including their attributes and geographic extent, are modified, and continue as modified, as set out in this Agreement. **[need to ensure that all s.35 rights are covered. Canada to continue its work on any potential exemptions for transboundary issues and the retention of certain historic treaty rights]**

1.11.4 For greater certainty, the aboriginal title of each Maa-nulth First Nation anywhere that it existed before the Effective Date, including its attributes and

geographic extent, is modified and continues as the estates in fee simple to those areas identified in this Agreement as the Maa-nulth First Nation Lands and Other Maa-nulth First Nation Lands of that Maa-nulth First Nation.

### **Purpose of Modification**

- 1.11.5 The purpose of the modification referred to in 1.11.3 is to ensure that as of the Effective Date:
- a) each Maa-nulth First Nation has, and can exercise, its Maa-nulth First Nation Section 35 Rights set out in this Agreement, including their attributes, geographic extent, and the limitations to those rights, to which the Parties have agreed;
  - b) Canada, British Columbia and all other persons can exercise their rights, authorities, jurisdictions and privileges in a manner consistent with this Agreement; and
  - c) Canada, British Columbia and all other persons do not have any obligations in respect of any aboriginal rights, including aboriginal title, of each Maa-nulth First Nation to the extent that those rights, including title, might be in any way other than, or different in attributes or geographic extent from, the Maa-nulth First Nation Section 35 Rights of each Maa-nulth First Nation set out in this Agreement.

### **Release of Past Claims**

- 1.11.6 Each Maa-nulth First Nation releases Canada, British Columbia and all other persons from all claims, demands, actions or proceedings, of whatever kind, whether known or unknown, that that Maa-nulth First Nation ever had, now has or may have in the future, relating to or arising from any act or omission before the Effective Date that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, of that Maa-nulth First Nation.

### **Indemnities**

- 1.11.7 Each Maa-nulth First Nation will indemnify and forever save harmless Canada or British Columbia, as the case may be, from any and all damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that Canada or British Columbia, respectively, may suffer or incur in connection with or as a result of any suit, action, claim, proceeding or demand initiated or made before or after the Effective Date relating to or arising from:

- a) the existence of an aboriginal right, including aboriginal title, of that Maa-nulth First Nation that is determined to be other than, or different in attributes or geographical extent from, the Maa-nulth First Nation Section 35 Rights of that Maa-nulth First Nation set out in this Agreement; or
  - b) any act or omission by Canada or British Columbia, before the Effective Date, that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, of that Maa-nulth First Nation.
- 1.11.8 A Party who is the subject of a suit, action, claim, proceeding or demand that may give rise to a requirement to provide payment to that Party pursuant to an indemnity under this Agreement:
- a) will vigorously defend the suit, action, claim, proceeding or demand; and;
  - b) will not settle or compromise the suit, action, claim, proceeding or demand except with the consent of the Party who has granted the indemnity, which consent will not be arbitrarily or unreasonably withheld or delayed.

### **Specific Claims**

- 1.11.9 Notwithstanding any other provision of this Agreement, nothing in this Agreement precludes a Maa-nulth First Nation from pursuing claims in accordance with Canada's Specific Claims Policy.
- 1.11.10 For greater certainty, claims referred to in 1.11.9 will not result in any land being declared to be, or being set aside as "Lands reserved for the Indians" within the meaning of the *Constitution Act, 1867* for a Maa-nulth First Nation, or an Indian Reserve for the use and benefit of a Maa-nulth First Nation.

### **1.12.0 OTHER ABORIGINAL PEOPLES**

- 1.12.1 Nothing in this Agreement affects, recognizes or provides any rights under section 35 of the *Constitution Act, 1982* for any aboriginal people other than Maa-nulth First Nations.
- 1.12.2 If a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that any aboriginal people, other than a Maa-nulth First Nation, has a right under section 35 of the *Constitution Act, 1982* that is adversely affected by a provision of this Agreement:

- a) that provision will operate and have effect to the extent it does not adversely affect that right; and
  - b) if the provision cannot operate and have effect in a way that it does not adversely affect that right, the Parties will make best efforts to amend this Agreement to remedy or replace that provision.
- 1.12.3 If Canada or British Columbia enters into a treaty or a land claims agreement, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*, with any other aboriginal people and that treaty or land claims agreement adversely affects Maa-nulth First Nation Section 35 Rights as set out in this Agreement, Canada or British Columbia, or both, as the case may be, will provide the applicable Maa-nulth First Nation with additional or replacement rights or other appropriate remedies.
- 1.12.4 At the request of the applicable Maa-nulth First Nation, the Parties will negotiate and attempt to reach agreement on the provision of those additional or replacement rights or other appropriate remedies contemplated by 1.12.3.
- 1.12.5 If the Parties are unable to reach agreement on the provision of the additional or replacement rights or other appropriate remedies as contemplated by 1.12.4, the provision of those additional or replacement rights or remedies will be determined in accordance with Stage Three of Chapter 25 Dispute Resolution.