

**IN-SHUCK-CH NATION BUILDING: THE TREATY
OPTION**

by

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Abstract

Over 17 years of treaty negotiations, three First Nations collectively known as In-SHUCK-ch have been rebuilding a governance system with the objective of bridging In-SHUCK-ch inherited jurisdictions with treaty jurisdictions. Today, substantive treaty negotiations are over. The study analyzes the difference between the status quo represented by life under the *Indian Act* and the treaty option represented by the draft *In-SHUCK-ch Nation Final Agreement* as completed in December 2009. Results of this study indicate that the treaty option outranks the status quo option based on five criteria.

Keywords: In-SHUCK-ch Nation; In-SHUCK-ch Nation Final Agreement; Treaty; British Columbia; Canada; Samahquam; Skatin; Xa'xtsa; Indian Act.

To family

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I thank Eppa (Gerard Peters) for broadening my worldview and John Richards for helping me make sense of it. I would like to thank Eppa, Bruce Milne, Gerry Walsh, Janice Parsey, Kennedy Stewart, and John Richards for making the defence of this study memorable.

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Executive Summary

In-SHUCK-ch nation building is problematic for several reasons related to the *Indian Act* and the federal division of powers in Canada. The In-SHUCK-ch Nation has negotiated a treaty with the Governments of British Columbia and Canada for the purpose of changing the status quo. The In-SHUCK-ch Nation political leaders now must choose whether to (1) submit the treaty to community referendum or (2) abandon the current effort.

The first option is a small step in the treaty making process. Submitting the treaty to a community referendum occurs when the Chief Negotiators initial the agreement. The community referendum process occurs over a year and ends in a vote. Before the In-SHUCK-ch Chief Negotiator initials the agreement, the support of political leaders is required. Without the support of the In-SHUCK-ch political leadership the In-SHUCK-ch negotiating team will abandon the current effort, which is the second option.

This study investigates the difference between the two options. In this study, five criteria are used to compare the two options. The criteria (1) exclusive use lands, (2) non-exclusive use lands, (3) governance, (4) financial sustainability, and (5) economic development potential are defined by 10 indicators. Based on the criteria set out in this study, the treaty option outranks the status quo option.

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1: Introduction

The policy problem explored in the study is not a typical policy problem dealing with incremental change, but rather is at the root of In-SHUCK-ch nation building strategies. This study investigates the choice between two options facing the In-SHUCK-ch Nation: between continuing to operate under the *Indian Act* (status quo) or allowing the In-SHUCK-ch Nation Final Agreement to go to community referendum. Continuing under the status quo means continuing to operate under the *Indian Act* but maintaining traditional Aboriginal rights. A referendum accepting the treaty preserves the original relationship between In-SHUCK-ch people and the Crown and removes aspects of the *Indian Act* seen as detrimental to the community. The treaty would implement Aboriginal rights held in common by In-SHUCK-ch people under Section 35 of the *Canada Constitution Act, 1982*. However, before any treaty referendum may occur, the political leadership must decide to initial the Final Agreement.

This study is constructed to assist the In-SHUCK-ch leadership in deciding whether to move forward with a treaty referendum by assessing whether the In-SHUCK-ch Nation Final Agreement is a positive alternative to the status quo. To do so, this study uses five criteria to compare the two options, with one or more indicator(s) assigned to each criterion. The conclusion shows that the treaty option outranks the status quo under the *Indian Act*. Although the decision to initial the treaty is a leadership decision, it is up to individual voters to decide if the treaty outranks the *Indian Act* by enough to justify its endorsement.

1.1 Outline of this Study

This study begins by introducing the In-SHUCK-ch Nation. The background section describes the goals for In-SHUCK-ch nation building and two options for achieving these goals. The next section defines the criteria for analyzing the options, and then the In-SHUCK-ch Nation treaty is briefly described by providing an overview of the data. The following analysis section highlights the differences between the treaty option and the status quo option. The options are ranked and compared. Finally, the conclusion summarizes the ranking.

1.2 About the Author

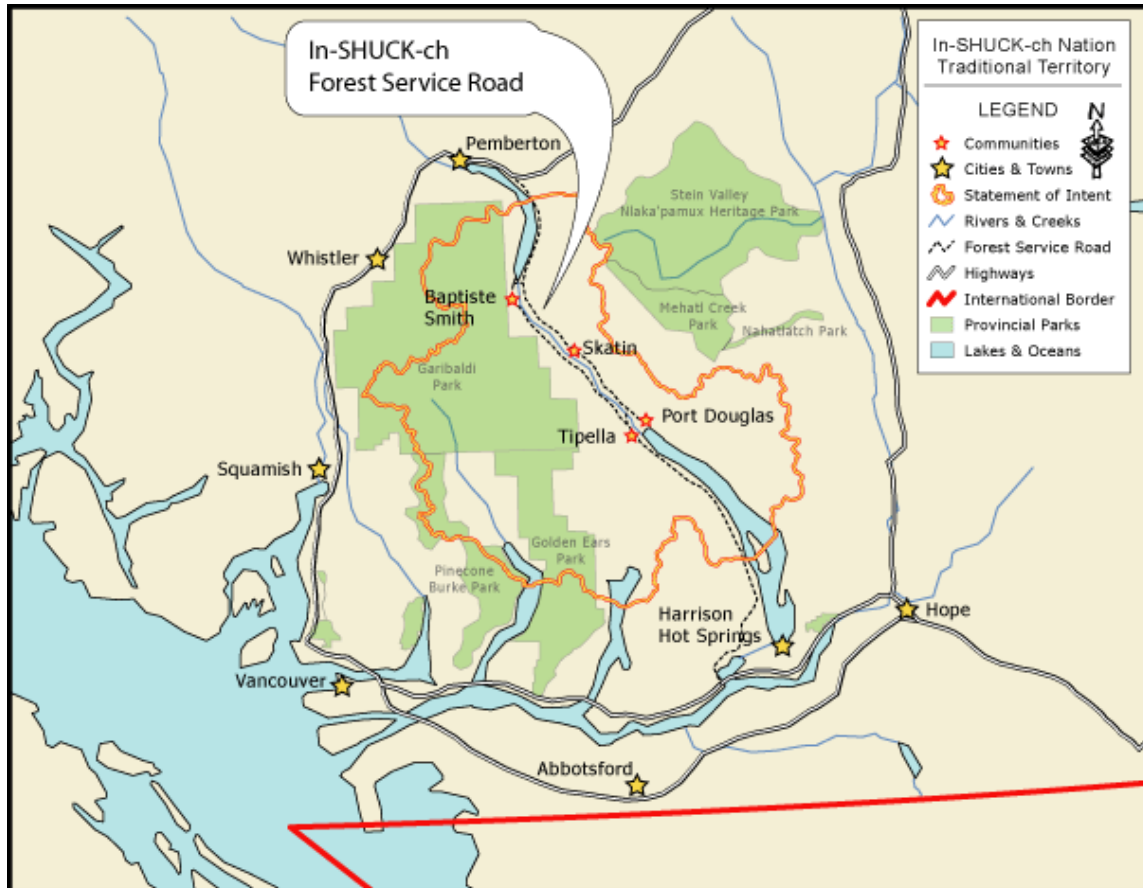
Much of the background and contextual information provided for the reader in this study is a product of a relationship between the author and the In-SHUCK-ch Nation. As a result, this study is influenced by the author's firsthand experience working with the In-SHUCK-ch Nation. The relationship began in 2006 through Simon Fraser University's Cooperative Education Program. As a coop student the author provided research and analysis services for In-SHUCK-ch political leaders and the In-SHUCK-ch negotiating team. Many of the conclusions are drawn from witnessing the In-SHUCK-ch Chief Negotiator in action. The In-SHUCK-ch negotiating team is the source of many details not publicly available. The negotiating team deserves much of the credit for this study but, all errors are the responsibility of the author.

1.3 In-SHUCK-ch Nation

The In-SHUCK-ch Nation defies easy definition. In-SHUCK-ch Nation could be defined as the amalgam of the Samahquam, Skatin, and Xa'xtsa First Nations. The In-SHUCK-ch Nation is

defined here to include In-SHUCK-ch territory (Timcw), In-SHUCK-ch people (Ucwalmicw) and an In-SHUCK-ch government. A description of each follows.

Figure 1 In-SHUCK-ch Territory: Proximity to Urban Areas



Note. Adapted from *Land Stewardship Plan: In-SHUCK-ch Nation*

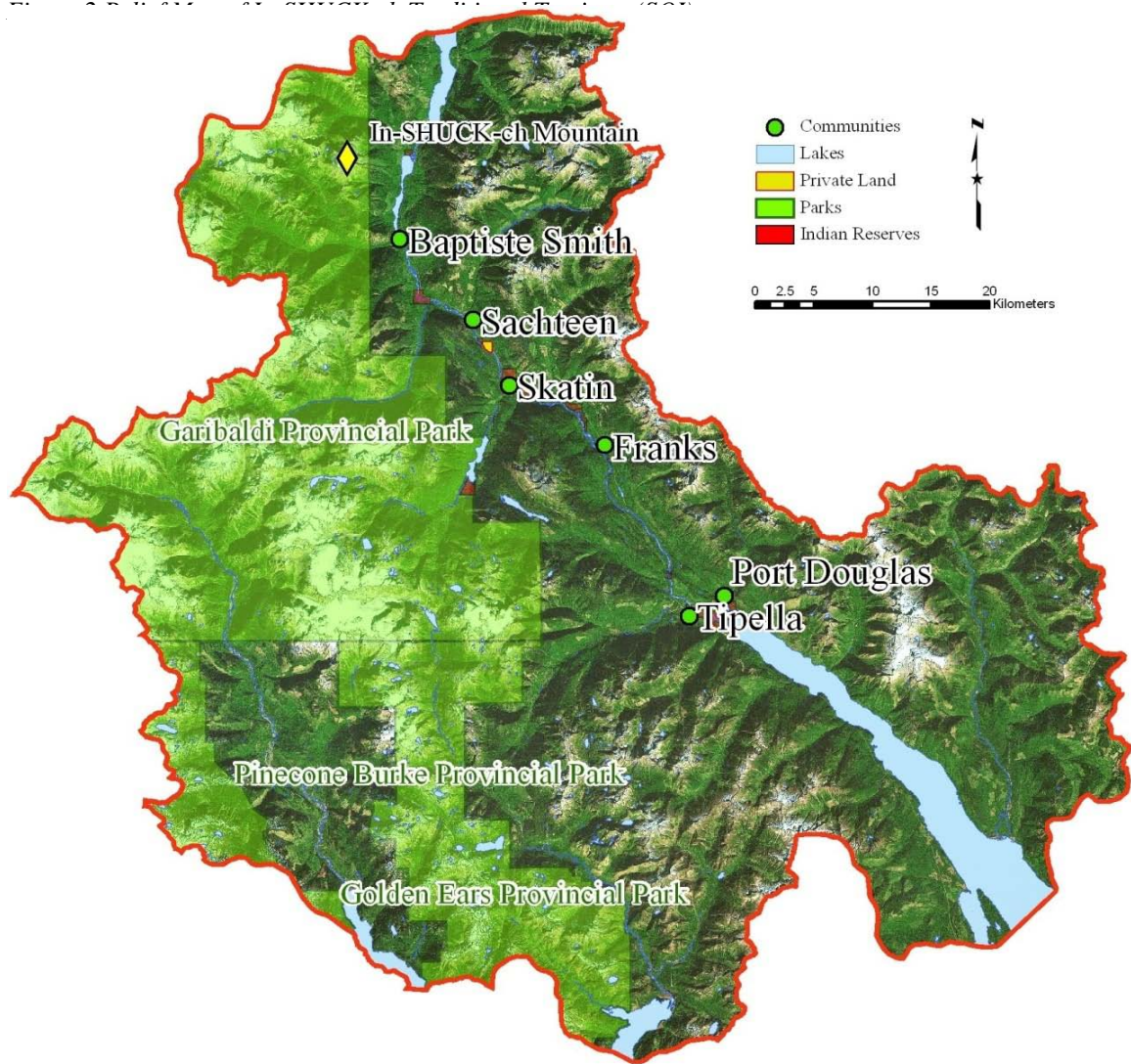
In-SHUCK-ch Traditional Territory reflects traditional uses of land. As shown in figure 1, In-SHUCK-ch territory is the “height of land around the watersheds of the Lower Lillooet, Stave and Pitt Rivers. The territory stretches north and south from approximately half way up Lillooet Lake to Long Island on Harrison Lake” (In-SHUCK-ch, 2006). The total surface area of the territory is approximately 477,000 hectares. Traditionally, In-SHUCK-ch people, following a seasonal pattern, moved throughout the territory and beyond. Significant concentrations of

culturally significant sites, including present day In-SHUCK-ch communities, are located in the valley between Lillooet Lake and Harrison Lake (In-SHUCK-ch, 2006).

For the purposes of treaty negotiations In-SHUCK-ch territory is often referred to as a Statement of Intent (SOI). Figure 1 also depicts In-SHUCK-ch territory in relation to the Sea-to-Sky region, the Fraser Valley region, the Metro Vancouver region, and the surrounding provincial park land. The map also shows the four most populous In-SHUCK-ch communities: Baptiste Smith, Skatin, Tipella, and Port Douglas.¹ Not included are the In-SHUCK-ch communities of Franks and Sachteen.

The In-SHUCK-ch Nation Final Agreement defines the rights of In-SHUCK-ch people within the Statement of Intent Area. The outline of the Statement of Intent also appears in figure 1.. The In-SHUCK-ch Statement of Intent is the product of modern mapping technologies, of historical and archaeological research, and of oral history. In-SHUCK-ch elders confirmed the Statement of Intent in 1994 (In-SHUCK-ch A Chronology of Events Highlighting the Mandate to Negotiate, 2010). Currently, access to the Fraser Valley from In-SHUCK-ch communities is limited to four wheel drive vehicles as In-SHUCK-ch communities are connected to urban areas only by the In-SHUCK-ch Forest Service Road (FSR) also shown in Figure 1. Access to Pemberton is limited to a gravel road, narrow in parts and subject to flooding, washouts, and falling rock. Port Douglas is 80 kilometres from the town of Harrison Hot Springs but residents must travel 100 kilometres to Pemberton to cash a cheque.

¹ The name Baptiste Smith has recently changed to Q'aLaTKú7em.



Note. Adapted from *Land Stewardship Plan: In-SHUCK-ch Nation*

Figure 2 depicts the mountainous terrain of the territory and situates In-SHUCK-ch communities in proximity to In-SHUCK-ch Mountain. The communities are situated on reserves, shown in red in figure 2. Each In-SHUCK-ch community is located down-river from the In-SHUCK-ch Mountain, considered sacred as it figures prominently in the history of the In-SHUCK-ch and all Stl’atl’imx peoples. Like the Maa-nulth First Nations belonging to the larger Nuu-chah-nulth cultural or tribal group, In-SHUCK-ch First Nations and their territory form part of a larger Stl’atl’imx cultural group.

Figure 3 Stl'atl'imx Territory

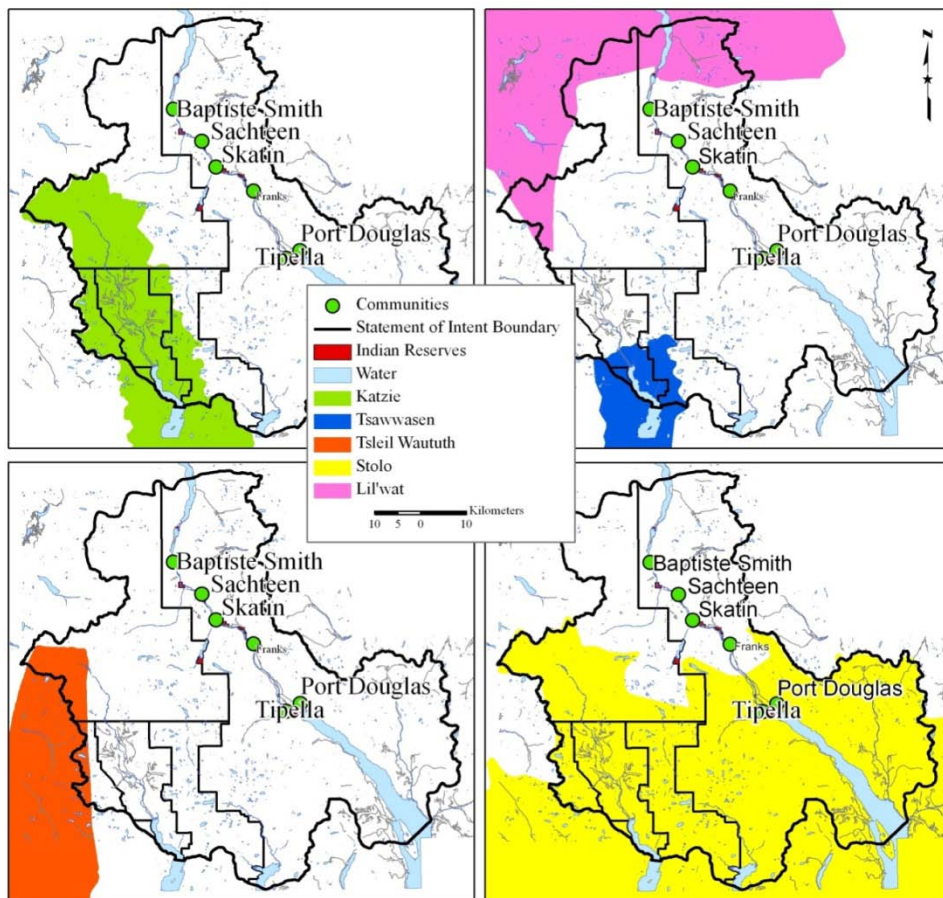


Note. Adapted from St'at'imc Chiefs Council Website

Figure 3 is a map depicting the larger Stl'atl'imx cultural group. In-SHUCK-ch territory is the small 'tail' to the southeast. Stl'atl'imx territory consists of two major watersheds that drain into the Fraser River in two different locations. The northern portion drains into the Fraser River near the town of Lillooet. The southern portion surrounds the Lillooet River system, which drains into the Fraser River via Harrison Lake and River. There are eleven first nations (Appendix A) and at least four subgroups of Stl'atl'imx (DePaoli, 2010). The Upper Stl'atl'imx peoples occupy

the watersheds in the northern portion of Stl'át'imx territory; the Lil'wat and In-SHUCK-ch occupy the watersheds feeding the Lillooet River down to Harrison Lake. The line between the Lil'wat and In-SHUCK-ch territories divides the Lillooet River drainage; it is just below Pemberton near the south end of Lillooet Lake. Like the Maa-nulth First Nations, In-SHUCK-ch is a smaller group of a larger cultural grouping not actively participating in treaty negotiations. A treaty does not alter the Aboriginal title or rights of neighbouring First Nations.

Figure 4 Shared Interests with in In-SHUCK-ch Territory (Overlap)



Note. Adapted from *Land Stewardship Plan: In-SHUCK-ch Nation*

Figure 4 contains multiple maps depicting the five Aboriginal groups claiming shared interests within In-SHUCK-ch territory. Shared interests arise due to different ways of defining traditional territory and due to the direct and extended family relations between neighbouring

Aboriginal groups. There are several familial ties between the Lil'wat to the north and the Stolo to the south. Not depicted in any of the maps is the recent claim made by the Chehalis First Nation which corresponds to the Stolo shared interests depicted in Figure 4 (Charlie, 2008). The Chehalis claim most of the traditional territory of the Xa'xtsa people, who form the southernmost of the three In-SHUCK-ch communities. The close historical relations between the Xa'xtsa and Chehalis people in the past makes for fuzzy borders today.

Further complicating the problem is the different ways of defining traditional territory. If the In-SHUCK-ch territory was to include the geographic extent of every traditional use of every In-SHUCK-ch Ucwalmicw, then In-SHUCK-ch territory would extend to include, among others, the Bridge River fishery in north Stl'atl'imx and the Lower Fraser fishery in Stolo territory. Conflicts in relation to the proper holders of Aboriginal rights (intra group) and overlapping claims (inter group) adds a dimension of complexity to treaty negotiations and economic development under the status quo. However, even with all the overlapping claims, there is a core In-SHUCK-ch territory unclaimed by others.

Drawing lines on maps to reflect the geographic extent of a First Nation is not straightforward because the diffusion of family and culture at the local level leaves few clear divisions between individual first nations. As a result, In-SHUCK-ch territory reflects the core interests of the In-SHUCK-ch. As defined, In-SHUCK-ch territory respects neighbouring Aboriginal interests, recognizing that some In-SHUCK-ch traditional uses occurred on land maintained by others. In-SHUCK-ch territory, as defined, ensures that the integrity of the southern Stl'atl'imx territory is maintained.

1.3.1 In-SHUCK-ch People

In-SHUCK-ch people descend from survivors of the Great Flood (In-SHUCK-ch, 2004). At one time all Stl'átl'imx people lived around Green Lake and Green River near present-day Whistler. After the flood, Ntci'nemkin (the man who rescued the people's children) sent out pairs of young men and women to settle "at all the good food places through the country" (In-SHUCK-ch, 2004). In-SHUCK-ch people descend from the young people Ntci'nemkin sent to the areas around Little Lillooet Lake and along the Lillooet River between Lillooet Lake and Harrison Lake.

Traditionally, In-SHUCK-ch people speak a sub-dialect of Ucwalmícwts but there is little written information with respect to the In-SHUCK-ch dialect (described by linguists as the Skookumchuck dialect). As of 2008, there are 33 In-SHUCK-ch Ucwalmicw fluent in Ucwalmícwts, 70 In-SHUCK-ch Ucwalmicw (people from home) who understand or speak Ucwalmícwts somewhat, and 13 In-SHUCK-ch Ucwalmicw actively learning Ucwalmícwts (In-SHUCK-ch, 2008). The term Ucwalmicw means people from home. The term is featured in the Xa'xtsa and Samahquam constitutions; it describes the people that belong to the Samahquam, Skatin, or Xa'xtsa In-SHUCK-ch communities.

Samahquam is a collective of families sharing the land surrounding Tenas Lake (Little Lillooet Lake). There are 317 Samahquam Ucwalmicw with just over 100 people normally resident on Samahquam reserve lands; twice as many Samahquam Ucwalmicw normally reside off Samahquam reserve lands. For all three communities, the majority living off-reserve normally reside in the Fraser Valley. The majority of Samahquam Ucwalmicw normally resident on Samahquam reserve lands live in Q'aLaTKu7em (formerly Baptiste Smith); only a few live on Sachteen. Samahquam Ucwalmicw are related by blood and marriage to among others Skatin Ucwalmicw and Xa'xtsa Ucwalmicw.

Skatin is a collective of families sharing the land surrounding qmemps, an important fishing spot on the Lillooet River. There are 385 Skatin Ucwalmicw with almost 70 people normally resident on Skatin reserve lands; there are five times as many Skatin Ucwalmicw normally residing off Skatin reserve lands. Skatin Ucwalmicw living on Skatin reserve lands are near the Head of the Lake School, the Church of the Holy Cross Skatin and Tsek a site of sacred waters. Skatin Ucwalmicw are related by blood and marriage to among others Samahquam Ucwalmicw and Xa'xtsa Ucwalmicw.

Xa'xtsa is a collective of families sharing the land surrounding the mouth of the Lillooet River. There are 235 Xa'xtsa Ucwalmicw with between 30 to 50 people normally resident on Xa'xtsa reserve lands; there are over three times as many Xa'xtsa Ucwalmicw normally residing off Xa'xtsa reserve lands. Xa'xtsa Ucwalmicw living on Xa'xtsa reserve lands live in two locations: Tipella on the Lillooet River and Port Douglas on Little Harrison Lake. Due to the proximity to the Fraser Valley, winters in Xa'xtsa are mild relative to the northern portions of In-SHUCK-ch and Stl'atl'imx territory. Xa'xtsa Ucwalmicw are related by blood and marriage to among others Samahquam Ucwalmicw and Xa'xtsa Ucwalmicw.

In-SHUCK-ch traditional culture defies rigid labels because "...many aspects of In-SHUCK-ch culture are similar not only to the Nla'kapmx (Thompson) and Secwepemc (Shuswap) on the British Columbia Plateau, but also to the Halkomelem (Lower Fraser River) and Squamish groups, due to their proximity" (In-SHUCK-ch, 2004). In-SHUCK-ch specifically and Stl'atl'imx generally defy the discrete definitions applied to Xa'xtsa, Skatin, Samahquam by colonial administrators, which continue today. The In-SHUCK-ch Nation Government is working on behalf of In-SHUCK-ch families to change the relationship they have with Canada and British Columbia.

1.3.2 In-SHUCK-ch Government

The In-SHUCK-ch Government is called the In-SHUCK-ch Nation Interim Government (hereinafter INIG). INIG is responsible for developing culturally appropriate institutions for defining, exercising, and protecting the Aboriginal title and rights of Xa'xtsa Ucwalmicw, Skatin Ucwalmicw, and Samahquam Ucwalmicw, collectively known as In-SHUCK-ch. The goal of INIG is to bridge the inherited jurisdictions of In-SHUCK-ch Ucwalmicw with Canadian jurisdictions (Eppa, 2009). Achieving the goal means In-SHUCK-ch Ucwalmicw through their institutions can apply In-SHUCK-ch N'takmen (traditional ways) to contemporary opportunities and challenges while respecting principles of good government within Canada.

In May 2005, Samahquam, Skatin, and Xa'xtsa Ucwalmicw met in General Assembly and declared themselves the In-SHUCK-ch Nation. The three band councils are constituted as the interim government with the mandate to "...define, protect and exercise our Aboriginal Title and Rights [and]...establish a Nation to Nation relationship with Canada. The guiding policy of the In-SHUCK-ch Nation is called the In-SHUCK-ch Nation *Seven Generations Plan*.

According to the *Seven Generations Plan*, In-SHUCK-ch is a way of describing the land and people sent 'down river' after the Great Flood in terms of the past, present and future. The names and organizational form have changed from time to time; nevertheless, In-SHUCK-ch captures more than Xa'xtsa, Skatin, and Samahquam. In-SHUCK-ch captures the traditional way Xa'xtsa, Skatin, and Samahquam come together to solve collective problems and celebrate collective victories. The plan defines the collective in terms of "...who we are, what is important to us, and where we want to go as a people and as a Nation" (In-SHUCK-ch, 2006b).

INIG is not a tribal council. However, like a tribal council or a municipal regional district, INIG is a second tier decision-making body. INIG is not a delegated authority of the

federal government or provincial government, but rather represents the Aboriginal title and rights of In-SHUCK-ch Ucwalmicw through corporate entities established under provincial law. INIG is funded through a cost sharing agreement between In-SHUCK-ch and the Governments of British Columbia (BC) and Canada. Only if a treaty is ratified will INIG be recognized as a government. Until that time, BC and Canada require the issuance of Band Council resolutions from each of the three In-SHUCK-ch Indian Bands to give legal effect to INIG decisions binding on the three Indian Bands. Despite the fact that INIG is not constituted by the *Indian Act*, it is still very much defined by it (Eppa, 2010).

In-SHUCK-ch Nation is three first nations that share a territory, share family relations, and that share a common past. The In-SHUCK-ch Nation is represented by a nascent government that is a two-tier indirect system of government. The leadership selected in each First Nation negotiates at the regional level. In-SHUCK-ch Nation is party to a Final Agreement. INIG is the second tier body that is responsible for treaty negotiations and furthering In-SHUCK-ch nation building goals.

2: Background

This section outlines the purpose of treaty negotiations. The purpose of treaty negotiation is to work towards achieving In-SHUCK-ch nation building goals. The goals are to implement self-government, enhance culture and become more self-sufficient.

2.1 In-SHUCK-ch Nation Building Goals

In-SHUCK-ch is presented as a Nation – a people, a land, and a government. The people share a unique language, history, and ancestry. In-SHUCK-ch people are the majority population in In-SHUCK-ch territory. In-SHUCK-ch nation building goals are derived from the historical record, the In-SHUCK-ch *Seven Generations Plan*, *Land Stewardship Plan*, Heritage Policy and Wealth Creation Plan and include:

- Implementing the inherent right to self-government
- Enhancing In-SHUCK-ch culture
- Achieving greater economic and financial self-sufficiency

These three goals express how the In-SHUCK-ch Nation will work towards attracting the approximately 80 per cent of In-SHUCK-ch people living outside the territory to come back to the territory. There are two main barriers to achieving these three goals. First, some living off-territory no longer considers moving back to In-SHUCK-ch territory. Second, there is not a consensus on the means for achieving these goals, although few argue against the goals (Eppa,

2009). As explained below, these three nation-building goals are the normative foundation for the evaluative criteria used for comparing the draft treaty against the *Indian Act*.

2.2 Self-government

For the In-SHUCK-ch, self-government is a means for protecting, defining, and exercising Aboriginal rights. The In-SHUCK-ch people have long lobbied the government of Canada to negotiate a treaty (Teit, 1911; DePaoli, 2010). Treaties following the BC Treaty Process include self-government. According to federal policy framework, "...Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources" (INAC, 2010). Some matters internal to the community go beyond the community (e.g. human rights, education, and health) and require provincial cooperation to be implemented as a Section 35 right..Only recently the Government of British Columbia, led by the Liberal Party of BC, acknowledged that aboriginal self-government is a right to be implemented under Section 35 of the *Canada Constitution Act, 1982*.

In-SHUCK-ch self-government negotiations require provincial government participation as law-making powers important to In-SHUCK-ch extend to provincial and national jurisdictions. According to *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*, the inherent right to self-government may be implemented as a right under Section 35 of the *Canada Constitution Act, 1982* or may be implemented under the existing legislative framework. The BC Treaty Process is the venue for implementing the inherent right to self-government under Section 35 for first nations in BC. Currently, first nations in BC must also negotiate a comprehensive land claim to implement their right to self-government. The outcome is a final agreement defining In-SHUCK-ch title and

rights, including First Nation law making powers, fiscal relations, and rules for the operation of In-SHUCK-ch, federal and provincial law (concurrent law model).

Implementing the inherent right to self-government under the status quo legislative regime is problematic. Among other problems, the *Indian Act* is silent on financial accountability; it discriminates against women in the event of the breakdown of a marriage; and is a barrier to economic development (Hurley, 2003; 2009b). For example, the *Indian Act* exempts property situated on-reserve from taxation and seizure, meaning provincial and federal income and transaction taxes do not apply on their own to income earned on-reserve or goods purchased on-reserve for status card holders. The tax exemption is a barrier to financing community services such as early childhood education as those employed on reserve do not provide adequate tax revenue.

Following this example, property exempt from seizure cannot fall out of band control, but also cannot be used as collateral for a mortgage to build a house. In addition, bands can enter taxation agreements to collect property taxes and transaction taxes on-reserve. For example, the Westbank First Nation collects taxes for servicing residential subdivisions built on-reserve. The majority of tax is paid by non-band members living on designated leased lands. As a result, bands are able to collect lease revenues and offset the cost of providing residential services on the rest of the reserve. The key to the success of urban first nations such as the Westbank First Nation is attracting a tax base to its lands. In remote areas where band members are the majority population and unemployment rates are high, financing self-government becomes more challenging (Andrew, 2009). Improving self-governance is essential for achieving the two other In-SHUCK-ch nation-building goals. Enhancing culture requires the cooperation and coordination of many people and entails raising revenues and expenditure to achieve the outcomes set out in planning documents.

2.3 Enhance Culture

The second In-SHUCK-ch goal is to enhance culture. Enhancing culture is difficult for a nation still feeling the effects of the Indian Residential Schools, the imposed reserve lands, and the imposed governance regime. In spite of these obstacles, individuals, families and communities are making strides to enhance In-SHUCK-ch culture. The In-SHUCK-ch Nation Interim Government has facilitated cultural enhancement by hosting Ucwalmícwts language classes; hosting traditional dancing classes; hosting traditional drum and craft making; and showcasing the progress of learners at the annual In-SHUCK-ch Days festival. Ceremonial aspects of In-SHUCK-ch culture are being practised; the culture of band governments is strongly influenced by the rules governing band governments (Eppa, 2009).

The greatest outstanding challenges to enhancing culture are increasing the number of individuals speaking Ucwalmícwts and changing the organizational culture imposed by the *Indian Act*. The *Indian Act* is silent on financial accountability and does not provide for redress by members of the first nation. Traditional governance was replaced by the *Indian Act*, over time a rivalry between the old and new authority developed. Today, this mistrust is an entrenched feature of the In-SHUCK-ch political culture. The In-SHUCK-ch are not the only group experiencing these institutional problems (Carlson, 2007). Enhancing culture in governing institutions is inextricably linked to self-government and financial and economic self-sufficiency.

2.4 Increase Financial and Economic Self-Sufficiency

The third goal is to achieve greater economic and financial self-sufficiency. Increasing financial and economic self-sufficiency is made easy by building institutions (National Centre for First Nations Governance, 2008). Institutions provide for long term managing of land, fostering

cultural enhancement, and re-developing a governance system. Each activity is not without cost. Assets of the In-SHUCK-ch Nation are growing. However, each first nation is funded for a system of financial management with standards less than generally accepted accountability principles. Financial accountability is imposed through funding agreements with each band (Hurley, 2009a). Moving towards economic self-sufficiency is difficult without an adequate financial management system, but will most likely require an increased resident population. Economic development projects attract people and investment but there is little organized effort to keep people and investment in the territory past the construction phase of the project. Increasing financial and capital revenue is possible but difficult under the status quo (Raybould, 2006).

Achieving these three goals will help increase the population in In-SHUCK-ch territory. In-SHUCK-ch people are the majority residents at just over 200 people. There are almost 800 members living away. Self-government provides the tools for re-developing a governance system that is culturally relevant and effective for the 21st century. Enhancing culture is needed to help re-build healthy relationships. Financial and economic self-sufficiency is challenging in remote areas with small populations that lack basic infrastructure such as a reliable roads and communications technology. The question is how to achieve the three goals.

3: Options for Achieving In-SHUCK-ch Nation Building Goals

The In-SHUCK-ch nation must choose between two options for achieving its nation building goals. The first is to continue working within the current federal and provincial policy frameworks – the status quo option. The second option is to accept the draft agreement – the treaty option. This section outlines these two options.

3.1 The Status Quo

In-SHUCK-ch territory is partitioned by the federal division of powers and administered under federal and provincial legislation. The In-SHUCK-ch Nation Interim Government is responsible for treaty negotiations and Xa'xtsa, Samahquam, and Skatin First Nations are responsible for the delivery of INAC programs and services to their on-reserve members. The status quo option is described here in terms of In-SHUCK-ch territory, governance, financial management, and economic development potential in present terms.

One side of the partition is federal land. In-SHUCK-ch first nation's reserve lands total 1284 hectares, less than one per cent of In-SHUCK-ch territory. The 1284 hectares is made up of 18 reserves distributed among the Samahquam, Xa'xtsa, and Skatin first nations. Currently, reserve land is the only land In-SHUCK-ch people may use to the exclusion of all others. The In-SHUCK-ch first nations enjoy the exclusive use and benefit of reserve lands, but they do not own the land. Title to reserve land is held by the Queen in right of Canada. The federal partition is meant to protect Indians and Lands reserved for Indians from provincial law. However, the

protective barrier is tempered by section 88 of the *Indian Act* that gives effect to provincial laws of general application to activities occurring on reserve land.

In-SHUCK-ch territory outside of federal land is provincial land and small parcels of freehold private property. Less than one per cent of In-SHUCK-ch territory is encumbered by private property; the rest is provincial Crown land. Approximately 66 per cent of In-SHUCK-ch territory is provincial Crown forest and 34 per cent is provincially protected park land (In-SHUCK-ch, 2006a). The In-SHUCK-ch Nation is negotiating to increase the amount of land available for the exclusive use and benefit of In-SHUCK-ch citizens in common.

Governance of the In-SHUCK-ch Nation is uncertain, overly complicated and depends on transfer payments in order to operate. INIG is constituted by the councils of three first nations pursuant to the *Indian Act*. The interim government is responsible for treaty negotiations; individual In-SHUCK-ch first nation governments are responsible for the delivery of on-reserve programs and services established by Indian and Northern Affairs Canada. In addition, the In-SHUCK-ch first nations have delegated their authority to a tribal council for centrally delivered advisory services and have delegated their authority to a Health Society for centrally delivered health services. There are three separate band governments administering programs and services for just over 200 band members living along the Lillooet River between Lillooet and Harrison Lake.

There is variation in the governance of the In-SHUCK-ch first nations. The Samahquam Nation Government, established by the Samahquam Constitution Act, is designed to control the Samahquam First Nation Band Council. Samahquam members directly elect representatives in a General Assembly. Samahquam Nation explicitly divides the responsibility for Aboriginal title and rights and the delivery of INAC programs and services between the band council and the Samahquam Nation Government. Skatin First Nations is governed by a hereditary council that is

head of the band and is also responsible for Aboriginal title and rights. Xa'xtsa First Nation is governed by a council that is head of the band council and responsible for Aboriginal title and rights. The council is elected in a general assembly. Despite the differences, there is one common characteristic shared among each In-SHUCK-ch first nation – difficulty in the financial management of INAC funded programs and services and as a result difficulty in protecting, defining, and exercising Aboriginal title and rights. The chiefs and councils of each band government also sit at the regional government. Two of the bands are subject to regular elections.

Programs and services available to individuals normally resident on reserve conform to INAC policies established under the authority of the *Indian Act*. According to the federal Auditor General, bands are required to submit, “...at least 168 reports annually from First Nations communities—many with fewer than 500 residents...many of these reports were unnecessary and, moreover, were not used by the federal government” (OAG, 2006). Bands, on average, are required to submit 14 reports to the federal government every month – one report for every two working days.

Band governance, education, social development, capital, physical works, and economic development are the core programs funded by INAC. The band governance program includes funding for chief and council positions, band administration, and management of the band membership list (Indian Registry). The education program covers funding for K-12 education delivered on-reserve and post-secondary funding for all band members regardless of their place of residence. The social development program funds social assistance payments covering basic and special needs; adult in-home care; family violence prevention; and the National Child Care Benefit. The physical works program funds the operation and maintenance of community buildings and other physical assets located on-reserve. The economic development program funds

economic development opportunities on reserve. The capital program funds the construction of physical works on-reserves. These programs are funded by INAC.

The band and an INAC department representative agree on a budget for the delivery of these core programs in a comprehensive funding agreement. If the band does not spend the money transferred under the funding agreement according to INAC policy, the money is “recovered” from the band. According to INAC website the *Intervention Process* requires that if a band becomes insolvent due to recoveries or otherwise, the financial management function of the band is impaired by a third party manager or a remedial management plan. The INAC intervention process is required because bands are the responsibility of INAC. In terms of delivering programs and services there is very little discretionary decision making allowed by the bands – the primary function of the band government and administration is to follow rules set elsewhere.

Complicating the financial management of each In-SHUCK-ch first nation is the delivery of programs and service centrally. The In-SHUCK-ch first nations’ portion of the Lower Stl’atl’imx Tribal Council (LSTC) and the Southern Stl’atl’imx Health Society funding is approximately \$600,000 dollars annually (INAC, 2010a). The management of central service delivery institutions can result in recovery of money from individual In-SHUCK-ch first nations. Projects drawing funds from multiple federal government departments are risky because each federal department has its own funding requirements but similar recovery policy. In addition, the In-SHUCK-ch Nation Interim Government relies on the individual In-SHUCK-ch first nations for authorizing program funding for activities such as governance development funded by INAC. When a band issues a Band Council Resolution authorizing a program application or a funding arrangement there is a risk that they will be responsible for the mistakes of others.

Table 1 In-SHUCK-ch First Nations Status Quo Program Funding

Program	Estimated Annual Funding	Major Program Expenditures
Education	\$748,375	Band Operated School \$344,557 Post-secondary Education \$321,668 Student Transportation \$57,270
Governance	\$638,775	Band Support Funding \$443,369 Advisory Services \$130,197 Economic Development \$47,281
Health	\$464,413	Primary Health Care \$170,707 Health Governance \$141,454 Mental Health & Addictions \$118,406
Social Development	\$457,132	Social Assistance \$245,000 Service Delivery \$64,622 National Childcare Benefit \$57,617
Physical Works	\$295,887	Operations & Maintenance \$295,887
Total Annual Funding	\$2,604,582	

(Source: INAC, 2010)

Table 1 reports the approximate annual funding for all three In-SHUCK-ch first nations on an annual basis. The totals do not include INAC on-reserve capital spending or transfers from the Department of Fisheries and Oceans. Totals are approximate because actual totals are subject to adjustments based on the number of eligible persons for each program, actual expenses submitted, and changes to INAC policy. In addition, actual totals will vary based on compliance reviews and recoveries by INAC (INAC, 2010a).

The approximately 800 band members who do not live on an In-SHUCK-ch first nation reserve receive government-funded services based on residency (e.g. K-12 education and social assistance) from other governments. However, all registered band members are entitled to apply for post-secondary education funds from their band, and to participate in band governance. In addition, all registered band members are entitled to receive Non-Insured Health Benefits from Health Canada. Non-Insured Health Benefits is a funding program to ensure that status card holders have equitable access to health care across Canada. Non-Insured Health Benefits cover provincial health care premiums, dental care, pharmacy care, eye care, and patient travel costs. Because In-SHUCK-ch territory is remotely located, access to post-secondary education, health

services and labour markets is greater for those living in urban areas relative to those living on an In-SHUCK-ch First Nation reserve.

Band members living in urban areas on average earn higher incomes and attain higher education relative to those living on a reserve. Urban residents in BC have greater opportunity to earn an income and own a home compared to those living on an In-SHUCK-ch first nation-reserve. Individuals attending a school in a BC municipality are more likely to complete high school compared to those living on reserve (Richards and Scott, 2009). However, the remote In-SHUCK-ch territory provides outdoor opportunities not available in many urban areas.

A significant barrier to ‘attracting people home’ is that many Aboriginal people living in cities consider their city ‘home’. The recent Urban Aboriginal Peoples Study reports that 71 per cent of Aboriginal people surveyed “...consider their current city of residence *home*, including those who are first generation of their family to live in their city” (Environics, 2010). The majority of respondents stay connected with their communities of origin and feel proud of their Aboriginal identity. The high rate of Aboriginal people calling their city of residence home is surprising considering that more than half of respondents have “...little confidence in the criminal justice system...” and that 75 per cent of respondents feel they are stereotyped as addicts. Among the respondents “[e]ducation is their top priority, and an enduring aspiration for the next generation” (Environics, 2010). Road improvements and the community electrification project to be completed by the end of 2010 is a start to attracting people home.

Under the status quo option the In-SHUCK-ch territory, governance, financial wellbeing, and economic development potential are fragmented by Canadian federalism. Prior to 1871, In-SHUCK-ch people occupied and used large areas of land. Over time, the In-SHUCK-ch people were forced onto reserve lands and isolated from extended families, the provincial population and the growing provincial economy. In-SHUCK-ch people adapted to the laws imposed by Canada

and BC. Bands became dependent on INAC programs and services. The common law is bolstering the In-SHUCK-ch Nation bargaining positions with respect to treaty negotiations and third party developers are improving. The fragmentation of In-SHUCK-ch territory and people and the absence of fair and impartial rules for making collective decisions is a major barrier to developing culturally appropriate institutions. Culturally appropriate institutions are one way of bridging the Aboriginal title and rights of the In-SHUCK-ch people and the almost \$3 million dollars annually provided under the *Indian Act*.

Within the status quo option there are several other activities to pursue. A first nation may apply to adopt a land code under the *First Nation Land Management Act*, which provides self-government in respect of land management on-reserve. Another activity is to negotiate an agreement to take on the education jurisdiction in BC. Education jurisdiction "...is formal recognition, through signed Agreements, by the federal and provincial governments of a First Nation's right to make decisions about the education of its children" (FNESC, 2010). Another activity is to lobby government or pursue litigation to prove aboriginal title or rights.

The litigation option is not really a distinct option because court action, even if successful, results in negotiations with the governments of Canada and BC. In fact resolving claims of aboriginal rights is beyond the jurisdiction of a court, which is limited to questions of law. All options result in negotiation. The legal status of aboriginal title and rights is briefly described.

According to Canadian courts Aboriginal rights are a spectrum of rights. They include consumptive rights such as gathering plants, hunting and fishing. They also include access to land for non-consumptive activities such as spiritual ceremonies and practices, and include the right to the land itself – called Aboriginal title. Some people do not agree Aboriginal rights are a spectrum of rights; instead, Aboriginal rights are derived from Aboriginal title. By the same logic

Aboriginal title exists where land was traditionally used. However, Aboriginal title is defined as the right to the exclusive use of land and not all traditional uses of land occurred on exclusive use lands. One problem is that the defining feature of Aboriginal title, exclusivity, is a principle derived from western political philosophy and Anglo-American jurisprudence. Before Aboriginal title 'crystallized' there was already a system governing land rights between and among peoples. Another problem is that today land represents capital – in a market-based society no one is eager to relinquish a claim on capital. Aboriginal rights also include the right of self-government. Aboriginal rights are unique in that they are not individual rights but are rights held by the collective.

The federal and provincial governments argue Aboriginal rights are less than commercial rights. For example, consumptive Aboriginal rights such as hunting and fishing are restricted rights. First nation peoples are entitled to harvest animals and fish. As a general rule, the animals and fish harvested may be traded or bartered away, but they may not be sold for money. The Supreme Court has recognized the Aboriginal right to fish commercially but in doing so the Court has warned that “future claimants will have to discharge a heavy evidentiary burden...” to show that commercial fishing was not just incidental but integral to the distinct Aboriginal culture (Allain, 1996). Although some treaty packages include commercial fishing quotas, so far they are not Section 35 rights. Federal and provincial governments argue that market-based transactions were incidental not integral to Aboriginal cultures; therefore the rights to sell harvested goods for money is not an Aboriginal right. The same logic does not apply to Aboriginal title.

Aboriginal title is the right to the land itself, which includes the right to dispose of the land – for money. Aboriginal rights to hunt and fish allow individuals to harvest fish and wildlife

for food, social, and ceremonial purposes only – commercial Aboriginal rights must be proven². But, reserve lands can be alienated and sold or Aboriginal title lands may be defined and sold as treaty settlement land.

Aboriginal title may be asserted in a court of law. Like the treaty option, going to court is long and expensive and results in a certification of Aboriginal title or not. To date, no court has certified a claim of Aboriginal title but there are over twenty modern treaties negotiated in Canada. The court option requires further negotiations because Aboriginal title includes a jurisdictional component. Implementing the jurisdictional component of Aboriginal title is beyond the scope of court authority. Going to court to assert aboriginal title if successful will result in negotiations.

In the past few years courts have provided guidance on accommodating Aboriginal rights in Canada generally and BC specifically. In the absence of legally defined Aboriginal rights the Crown, not third parties, is responsible for consultation and accommodation of Aboriginal rights. Consultation is triggered when an activity considered on Crown land may infringe on Aboriginal rights. The degree of consultation required is proportionate to the strength of the *prima facie* evidence supporting the claim. Nevertheless, infringement on Aboriginal title is justified in the furtherance of a compelling legislative initiative. The honour of the Crown must be upheld when dealing with Aboriginal rights. In its recent decision in *Rio Tinto Alcan v. Carrier Sekani Tribal Council* the Supreme Court of Canada ruled that historical infringements such as the building of a dam in the 1950's do not trigger the duty to consult in related activities today. Although Aboriginal rights may be used as an economic asset under the status quo, economic benefits are limited and are derived from the infringement of Aboriginal rights. Litigation is not a complete

² See Gladstone

option but considering the currently legislative framework on-reserve, “[o]nly a treaty can properly structure a rational scheme of cooperative governance for federal, provincial and aboriginal governments to control, preserve and manage the resources on aboriginal and adjacent lands” (Hogg, 2008).

3.2 The Treaty Option

The treaty referendum option addresses fragmentation by providing In-SHUCK-ch Nation the resources for re-developing culturally appropriate institutions in a modern context. The treaty option consolidates and defines In-SHUCK-ch rights and benefits and provincial and federal settlement legislation implements them, thus reducing the fragmentation described above. The In-SHUCK-ch Nation has negotiated the In-SHUCK-ch Nation Final Agreement (the Agreement). The Agreement, if ratified, will implement In-SHUCK-ch treaty rights through legislation passed by the provincial legislature and the federal parliament.

A Final Agreement is the central component of a treaty package described as a new relationship among the parties. Upon ratification, it is intended to provide the In-SHUCK-ch Nation with the legal tools and financial resources for achieving In-SHUCK-ch nation-building goals. Properly implemented, a treaty “...can provide the basis for Aboriginal self-government, including the taxing powers and funding entitlements that will make the Aboriginal government a true partner with the federal and provincial governments. This is where the real advances for Aboriginal rights will come from: by converting them into treaty rights” (Hogg, 2008).

A Final Agreement is a comprehensive land claim (Hurley, 2009) and a self-government agreement (Hurley, 2009a). If the In-SHUCK-ch Nation approves the Final Agreement, the *Indian Act* no longer applies to In-SHUCK-ch land or people with treaty – beyond the provisions for defining and registering as an Indian. Henceforth, it would be the responsibility of In-

SHUCK-ch to establish a legislative and regulatory regime capable of organizing the necessary programs for achieving In-SHUCK-ch goals. The treaty package provides what the parties to the agreement consider necessary to achieving their mutual goals.

On the Effective Date of the treaty, In-SHUCK-ch self-government would be restored. Matters internal to the In-SHUCK-ch Nation become the jurisdiction of the In-SHUCK-ch Nation. Indian status is preserved to maintain the relationship In-SHUCK-ch people have with the Queen of Canada dating back to the *Royal Proclamation*, 1763. For In-SHUCK-ch, the connection with the Queen of Canada does not change but the day-to-day relationship does. This is why a treaty is described by the BC Treaty Commission as a new relationship among parties to the agreement.

According to the General Provisions, certainty is achieved through the exchange or modification of Aboriginal rights and title. Undefined Aboriginal rights are a contingent liability for British Columbia as they represent an unknown cost to economic development on Crown land. The In-SHUCK-ch Nation Final Agreement (the Agreement) defines In-SHUCK-ch Aboriginal rights as treaty rights. Doing so provides certainty for all parties and In-SHUCK-ch receives a new role in development projects located between Lillooet and Harrison Lakes – an ownership role – a role limited on-reserve and currently not available with undefined and unrecognized Aboriginal rights. Some argue that the modification of rights model has the same legal effect as the extinguishment clauses of the historic treaties (Donovan and Company, 2006). Since the provincial government has shifted its policy in respect of Aboriginal self-government, that argument is weakening. However, for those who view Aboriginal rights as a function of Aboriginal title and those who believe Aboriginal rights have international personality, reconciliation with Canada and British Columbia is a long ways away (Schouls, 2005). Despite the negative vote on the Lheidli T'enneh Final Agreement, first nations in BC that have ratified

final agreements have done so with strong majorities of members voting in favour.

Communicating the substance of long and complicated documents drafted by lawyers is difficult (BC Treaty Commission, 2009).

Aboriginal and treaty rights are collective rights but they are not identical. Aboriginal rights are undefined and unrecognized collective rights pertaining to the use and occupation of land. To be an Aboriginal right recognized and enforced at common law, use of resources and occupation of land must be proven not just asserted. However, asserting rights is enough to seek economic rent from development projects on Crown land. Treaty rights include Aboriginal rights but go beyond matters integral to culture and the collective. They include, for example, the right to representation on regional and hospital district boards. Treaty rights are Aboriginal rights modified to include powers and jurisdictions necessary for the exercise of Aboriginal rights in a modern context within Canada and British Columbia.

3.2.1 BC Treaty Process

A Final Agreement is produced in stage five of the six stages of the BC Treaty Process. Negotiations are intended to be a non-adversarial method of resolving, comprehensively, barriers to the mutually beneficial exercise of Aboriginal rights and Crown jurisdictions in BC. The BC Treaty Process was established through tripartite negotiations among the First Nation Summit representing first nations in BC, and the governments of BC and Canada. Representatives of BC and Canada negotiated a bilateral agreement distributing the cost of treaties in BC; the former assumes 40 per cent of the cost in terms of land and cash; and, the latter assumes 60 percent of the cost in terms of cash. Negotiations are limited by negotiating mandates controlled by the principals of each negotiator. Within these constraints, the six stages of the BC Treaty Process facilitate the development of a deal in terms of land, cash and jurisdictions. The six stage process

is important but the importance of individual actors and their ability to overcome constraints imposed upon them should not be underestimated.

Table 2 Six Stages of the BC Treaty Process

Stage 1	<ul style="list-style-type: none"> • First Nation registers a mandate to negotiate, a statement of intent to negotiate (with map) and the body responsible for negotiations.
Stage 2	<ul style="list-style-type: none"> • Parties establish basic rules such as criteria determining 'readiness to negotiate' and a willingness to remedy overlap issues.
Stage 3	<ul style="list-style-type: none"> • Framework setting out the scope of negotiations is negotiated.
Stage 4	<ul style="list-style-type: none"> • Substance of the Framework Agreement is negotiated, jurisdictions are set out 'in principle' with a land and cash offer.
Stage 5	<ul style="list-style-type: none"> • Details of the jurisdictions set out 'in principle' are negotiated into a Final Agreement, put together with the formal land and cash offer, and voted on by the First Nation.
Stage 6	<ul style="list-style-type: none"> • If the treaty is ratified by referendum the parties implement the treaty.

(Adapted from BC Treaty Commission website)

3.2.2 What does a Final Agreement Change?

Implementing a treaty changes the application of the *Indian Act*. Status rules and funding of *Indian Act* benefits continue but the *Indian Act* no longer applies to other governance areas. Perhaps the most significant change concerns a more refined definition of Section 35 rights (2.4.2).

The treaty option merges the rights and benefits provided under the *Indian Act* with defined Aboriginal rights into treaty rights. For example, the In-SHUCK-ch Nation Final Agreement combines all the rights and benefits of the three In-SHUCK-ch first nations and defines In-SHUCK-ch Nation Aboriginal rights, including the authority of the In-SHUCK-ch Nation Constitution. The result is an official change to the Crown's Aboriginal policy goals in respect of the In-SHUCK-ch Nation. The original policy goal of the *Indian Act* was to assimilate

Aboriginal people – assimilation according to the dictionary means made to be equal, in this case, equal to Canadians.

There are two clauses to bear in mind in assessing whether the treaty is an instrument of assimilation. The first is section 2.3.1 that states “This Agreement does not alter the Constitution of Canada...including the identity of In-SHUCK-ch Nation as Aboriginal people of Canada within the meaning of the *Constitution Act, 1982*; and sections 25 and 35 of the *Constitution Act, 1982*.” The second is section 2.9 of General Provisions. This section states that in terms of equality, In-SHUCK-ch Nation citizens who are Canadian citizens “...continue to be entitled to all of the rights and benefits of other Canadian citizens...” (2.9.1). Nothing stops an In-SHUCK-ch Nation organization or In-SHUCK-ch Nation citizens from being able “...to participate in, or benefit from, programs established by Canada or British Columbia for Aboriginal people, registered Indians or other Indians...” (2.9.2). In-SHUCK-ch citizens may apply for any program or service offered by BC or Canada if the In-SHUCK-ch Nation is not responsible for that program or service under the In-SHUCK-ch Nation Fiscal Financing Agreement (2.9.3). In-SHUCK-ch Nation and In-SHUCK-ch Nation citizens are equal in status and identity to other Aboriginal groups and individuals in Canada. In-SHUCK-ch Nation citizens are ‘Canadians plus’ (Cairns, 2000).

The General Provisions clauses 2.9 imply In-SHUCK-ch people will be equal to Canadians in legal status ‘plus’ they will enjoy constitutionally protected rights and benefits not available to other Canadians. Those enrolled under the In-SHUCK-ch treaty, post effective date, are Canadian citizens ‘plus’ treaty beneficiaries. In addition, nothing affects an individual’s mobility rights: those enrolled are free to un-enrol as a treaty beneficiary and join another treaty first nation or band pursuant to the *Indian Act*. Philosophical discussions on the term assimilation remain open but they are outside the scope of this analysis.

Instead of focusing on hypothetical or abstract interpretations of the proposed In-SHUCK-ch Nation treaty package, this study narrows to focus on the measurable differences between the status quo and the treaty package as two options representing alternative means for achieving In-SHUCK-ch nation-building goals. The following sections construct evaluative criteria and indicators to evaluate the status quo versus the Final Agreement.

4: Criteria

This section sets out the criteria for organizing the data and evaluating the options. The two earlier presented options are evaluated according to five criteria central to achieving In-SHUCK-ch nation-building goals: (1) non-exclusive use lands; (2) exclusive use lands; (3) governance; (4) financial sustainability; and (5) economic development potential. Description of the five criteria and associated indicators follow.

Criteria	Indicators
Non-Exclusive Use Land	Stewardship Rights
	Cultural Rights
Exclusive Use Land	Area
	Scope of Jurisdiction
Governance	Scope & Depth of Authority
	Accountability
Financial Sustainability	Operating Revenue
	Capital Revenue
	Financial Accountability
Economic Development Potential	Economic Benefit

The criteria and each indicator are used to compile the data and rank the options. The ranking rules are as follows. Each indicator is scored zero or one. If there is no clear advantage between the two options for a particular indicator, then it is given a score of one for both. If the

indicator favours one option over the other, then the indicator is scored one for the relevant option and zero for the other.

4.1 Integrity of Non-Exclusive Use Land

Non-exclusive use land is the land within In-SHUCK-ch Nation traditional territory that is outside In-SHUCK-ch exclusive use lands expressed through the treaty process (see Figures 1, 2, and 4).

Integrity of non-exclusive use land has two main indicators: stewardship rights and cultural rights. Stewardship rights are indicated by the recognized stewardship roles In-SHUCK-ch Nation has in In-SHUCK-ch territory. Cultural harvesting rights are indicated by enforceable rights across the traditional territory.

Stewardship rights come from an interest in the land. Non-exclusive use rights associated with a traditional way of life are based on two parts: use of land and care of land. Traditionally, valleys, rivers, lakes, meadows, forests and mountains were considered large and diverse ‘gardens’. Instead of growing food in one spot, people moved around taking advantage of fresh foods as the seasons changed (Teit, 1910). Throughout the seasonal movements, stewardship practices developed aimed at improving the productive capacity of the land. For example, the In-SHUCK-ch Traditional Use Study points out that burning helped berries and other plants grow the following year in terms of productivity. While technologies have changed many traditional ways, it does not diminish the sense of duty the In-SHUCK-ch Nation has for the stewardship of In-SHUCK-ch territory. Stewardship rights are indicated by the recognized roles In-SHUCK-ch Nation has in relation to managing non-exclusive use land. Recognized roles are indicated by references to In-SHUCK-ch or In-SHUCK-ch First Nations management of traditional territory.

Cultural rights also come from an interest in land. Property rights associated with a traditional way of life are based on two parts: use of land and care of land. These two elements

are part of a seasonal migration around the territory. Cultural rights include all activities ancillary to harvesting and stewardship activities. Cultural rights are indicated by harvesting rights on non-exclusive use lands. Stewardship and cultural rights are found in the treaty document, common law, and traditional use studies.

4.2 Integrity of Exclusive Use Lands

Integrity of exclusive use lands refers to the land in which the In-SHUCK-ch Nation holds the right to its exclusive use. There are two kinds of exclusive use lands: treaty settlement lands and reserve lands. There are two indicators of integrity of exclusive use lands: area and jurisdiction. Area refers to the surface area of exclusive use lands (exclusive use lands are measured in hectares. A hectare is equal to 10,000 square meters and 2.471 acres of land.) Jurisdiction refers to authority to manage land. In addition to the inherent stewardship role, land management includes creating and managing interests in exclusive use land. Jurisdiction is measured by the scope of jurisdiction in exclusive use lands. Scope of jurisdiction includes: ownership rights, creating interests in land, disposing of land, expropriating land, escheatment interest, land-use zoning, and land-use planning. The scope of jurisdiction is found in the Indian Act and the treaty documents.

4.3 Governance

Governance means collective decision-making for the community by a sovereign body. The inherent right of self-government is the right of the collective to make decisions that affect the collective. There are two indicators of governance as an evaluative criterion: autonomy and accountability. Autonomy is defined as the scope and depth of decision making authority. Scope and depth of authority is measured by the type of available law-making instrument and the

breadth and depth of law-making authorities. The type of law-making instrument is either statute or by-law. The breadth of law making authorities is the number and scope of subject matters under the decision makers' authority. The depth of law making authority is the constraints and limitations on the decision makers' authority. The measure for the breadth authority is constructed as follows. First, all specific references to decision making authority set out in the Final Agreement and the *Indian Act* are listed in two columns. Specific references are grouped into related subject matters. Second, each group within each column is assigned a thematic heading defined broad enough to encompass all specific reference in the group. The total number of broad themes in each column is the measure of the breadth of authority relative to the other column.

The measure for the depth of authority is constructed as follows. First, all specific references to decision making authority set out in the agreement and the *Indian Act* are listed in two columns. Each column is subdivided and the headings of the subdivided columns are authorities that are sovereign and authorities that are subject to limitations, to minimum standards, or to rules of disallowance. The numbers of authorities that are sovereign are divided by the total number of authorities. The result is sovereign authorities expressed as a percentage of all specific references to decision making authority in each column.

Accountability means the mechanisms available so that political representatives are accountable for political decisions, and administrative decision makers are accountable for administrative decisions. Accountability is measured by listing all the accountability mechanisms in the Final Agreement and in the *Indian Act*. The indicator for accountability is the range of accountability mechanisms required under each option.

4.4 Financial Sustainability

Financial sustainability refers to the ability to finance the activities necessary for nation building. There are three indicators of financial sustainability: annual operating revenue, capital revenue, and financial accountability. Annual operating revenue determines the limit of annual expenditures on the activities of the In-SHUCK-ch Nation. The funding differs between the two options as there are differences in responsibilities.³ Operating revenue is measured by transfers for programs and services and by the Fiscal Financing Agreement (FFA) side agreement.

The second indicator of financial wellbeing is capital revenue. Capital revenue represents the potential for building things. Capital spending can potentially increase annual operating expenditures. Capital revenue is measured in terms of exclusive use lands, cash, and capital program access.

The third indicator of financial wellbeing is financial accountability, the standards for managing, accounting and reporting of finances. Financial accountability is measured by the number and quality of the provisions targeting financial accountability in the Final Agreement and the *Indian Act*.

4.5 Economic Development Potential

Economic development potential means the potential for economic development that is a direct result of the treaty package. It is admittedly difficult to isolate the economic development potential in each option. The economic development potential has one indicator: the economic

³ (Data for operating revenue are unverified and come from INAC.)

development potential that is available only if a treaty is ratified, the specific benefits and opportunities available with the treaty option.

These five criteria are used as the basis for describing the In-SHUCK-ch treaty package in the next section. The treaty package is described in terms of non-exclusive and exclusive use lands; governance; financial sustainability; and economic development potential, and then the criteria are used to evaluate the options.

5: Description of the Treaty Package

The In-SHUCK-ch Nation Final Agreement (hereinafter the Agreement) is currently draft 64. Draft 64, substantively, is likely the final revision of the draft final agreement. The Agreement is similar to that of the Tsawwassen First Nation Final Agreement and that of the Ma-an'ulth Final Agreement. The general provisions are the same in these final agreements, but the details and side agreements are not the same as in other treaty packages.

The General Provisions Chapter defines the nature and purpose of the Agreement. The Agreement “is a treaty and land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.” The Agreement is a “...full and final settlement in respect of the Aboriginal rights, including Aboriginal title, in Canada of In-SHUCK-ch Nation.” For certainty, the Agreement “...exhaustively sets out [In-SHUCK-ch Aboriginal rights]... their attributes, the geographic extent of those rights, and the limitations to those rights...” Chapters of the Agreement respecting substantive rights share the same composition: the right is defined; its attributes are described; the area where the right may be exercised is described, and any limitations on the right are stipulated. Including procedural chapters, the Agreement consists of twenty-eight chapters in total.

The purpose of the Agreement is to achieve certainty for the In-SHUCK-ch Nation, British Columbia, and Canada. The agreement provides In-SHUCK-ch certainty in the exercise of its treaty rights and ensures “Canada, British Columbia and all other persons can exercise their rights, authorities, jurisdictions and privileges in a manner that is consistent with this Agreement...” In-SHUCK-ch jurisdictions are limited through defining In-SHUCK-ch law-

making powers outside the scope of In-SHUCK-ch authority (e.g. criminal law) and through the use of concurrent law rules. Each In-SHUCK-ch right includes law-making powers with respect to the exercise of that right. Concurrent law rules ensure In-SHUCK-ch laws made in respect of matters internal to In-SHUCK-ch prevail in the event of a conflict with a provincial or federal law. For In-SHUCK-ch jurisdictions that extend beyond matters internal to In-SHUCK, federal or provincial law will prevail in the event of a conflict between laws. The concurrent law model ensures there is not a void of law and minimum standards apply in the absence of In-SHUCK-ch law and the application of the *Indian Act*. In-SHUCK-ch Nation Land is not defined as reserve land and the *Indian Act* has no effect except as provided for in the Final Agreement.

According to the Final Agreement, after a twelve-year transition period the *Indian Act* only applies when determining Indian Status. Indian Status will no longer be the basis for defining who belongs to the In-SHUCK-ch Nation. In-SHUCK-ch will have statutory control of its own citizenship. In-SHUCK-ch law with respect to who belongs or not (citizenship) prevails in the event of a conflict with provincial or federal law. However, In-SHUCK-ch citizenship does not affect Indian status because the Final Agreement does not affect the identity of In-SHUCK-ch citizens as Aboriginal people in Canada.

The Agreement is the constitutionally protected part of a broader treaty package including a number of side agreements. The Agreement sets out the lands owned by the In-SHUCK-ch Nation and the lands where In-SHUCK-ch treaty rights are enforceable. The Agreement sets out the authority and rules for exercising authority in a manner respecting Canadian political culture and In-SHUCK-ch cultural values. The Agreement displaces the *Indian Act* governance provisions. A brief overview of the treaty package follows.

5.1 Non-Exclusive Use Lands

The legal connection between the land and the collective is partitioned into exclusive use lands and non-exclusive use land. Territorial integrity is maintained by provisions throughout the Agreement. Territorial integrity is the extent to which traditional rights are recognized across In-SHUCK-ch exclusive and non-exclusive use lands. The chapter titled, The Role-Off In-SHUCK-ch Nation Treaty Settlement Lands clarifies the roles and responsibilities In-SHUCK-ch will have on In-SHUCK-ch non-exclusive use lands and beyond.

There are many provisions in the Agreement that provide the In-SHUCK-ch Nation a role on all In-SHUCK-ch land. The most prominent provisions set out in the Agreement relate to traditional activities including the harvesting of resources such as plants, fish, wildlife, migratory birds, and other resources that are integral to In-SHUCK-ch culture. Another prominent provision relates to the stewardship of resources such as plants, fish, wildlife, migratory birds, water and even park lands on all In-SHUCK-ch lands. The stewardship role includes the right to participate in the federal or provincial environmental review process for any development project considered on all In-SHUCK-ch lands. The In-SHUCK-ch Nation also has the right to have matters relevant to In-SHUCK-ch Nation considered in any provincial planning process covering all In-SHUCK-ch lands. These are the core attributes in the In-SHUCK-ch treaty package related to In-SHUCK-ch non-exclusive use lands.

5.2 Exclusive Use Lands

In-SHUCK-ch exclusive use land is 16,356 hectares (160 km²). The land selection process was collaborative instead of an offer from the province. Within the mandates set by BC and Canada, lands selected for In-SHUCK-ch exclusive use lands were based on a range of

criteria. The criteria reflect the multiple values of land. First, the overall selection of land should provide equal treatment to each In-SHUCK-ch first nation. Second, land should be contiguous. Third, land should reflect traditional and modern land uses. Fourth, land should be of high economic value (waterfront, bench lands and unique sites). Fifth, lands should provide maximum strategic value. With few exceptions In-SHUCK-ch Ucwalmicw will share in common the exclusive use lands of the In-SHUCK-ch Nation.

The Appendices to the Final Agreement list all the exceptions to In-SHUCK-ch title. Exceptions are interests (Appendix D) on and exclusions (Appendix E) to In-SHUCK-ch title. For example, Appendix D-1 lists all individual interests in In-SHUCK-ch Nation Lands in terms of Certificates of Possession and traditional holdings. Appendix D includes other interests such as public utilities, access roads, tenures, licences, and permits issued under provincial law. Subject to the interests listed in the Appendices, In-SHUCK-ch Nation, including In-SHUCK-ch Nation Community Governments, hold clear title to exclusive use lands.

The majority of In-SHUCK-ch exclusive use land surrounds the Lillooet River. The Lillooet River is a natural border splitting the exclusive use land into two blocks along the river banks. The two blocks stretch from the south shore of Lillooet Lake to the north shore of Harrison Lake effectively covering land access to the Lillooet River. Within these two contiguous blocks are the present day In-SHUCK-ch communities. In addition, In-SHUCK-ch will own parcels of land around the Sloquet River and Fire and Glacier Lakes.

In-SHUCK-ch exclusive use lands have economic development potential. To realize that potential will require the capacity to make good decisions on behalf of the collective. The In-SHUCK-ch nation collectively owns the title to these lands, including the surface and subsurface resources. In addition, In-SHUCK-ch law applies to exclusive use lands. To facilitate the development of private wealth and the creation of jobs and profits, In-SHUCK-ch may survey and

register parcels of exclusive use lands in the BC land title system. Granting transferable property rights to parcels of In-SHUCK-ch exclusive use lands enables those parcels to be given a market value, mortgaged, and developed. Granting transferable property rights to a parcel of In-SHUCK-ch exclusive use lands to individuals not only facilitates wealth creation but is also a form of wealth redistribution. To be a benefit, the collective must be able to determine when it is and when it is not in the collective's best interest to grant individuals transferable property rights from In-SHUCK-ch exclusive use lands. In-SHUCK-ch Nation Land includes ownership rights and law-making authority.

In-SHUCK-ch exclusive use lands were agreed to in principle by the In-SHUCK-ch Chief Negotiator and the Chiefs of each In-SHUCK-ch first nation. There is one notable change to In-SHUCK-ch exclusive use lands. 20 Mile Bay on Harrison Lake was returned to non-exclusive use status as a result of a Nation-to-Nation treaty with the Chehalis First Nation. The economic value in the 20 Mile Bay lands was exchanged with additional land elsewhere and additional capital transfer upon Effective Date. The provincial and federal negotiators were committed to moving forward with 20 Mile Bay as In-SHUCK-ch exclusive use lands but thinking of the long-term economic development challenges, In-SHUCK-ch Nation opted for a treaty with Chehalis instead.

In-SHUCK-ch exclusive use lands are small relative to the total In-SHUCK-ch territory but not all land is equal in value. Although the land package slightly favours the Xa'xtsa First Nation, the treatment of each In-SHUCK-ch first nation lands is more or less equal. The bulk of In-SHUCK-ch exclusive use lands forms a band surrounding the Lillooet River and joins the three In-SHUCK-ch reserve communities. The high concentrations of economically valuable lands and the lands with high concentrations of culturally significant sites are located at the valley bottom and thus are within In-SHUCK-ch exclusive use lands. Old growth forest is sparse outside

of provincial park land in In-SHUCK-ch territory. In-SHUCK-ch exclusive use lands are of strategic value because harvesting or extracting resources from the Lower Lillooet River Valley will likely require the use of In-SHUCK-ch exclusive use lands. As the majority landowner in the area, In-SHUCK-ch Nation will have a stake and a role in the development of In-SHUCK-ch territory.

5.3 Governance

The treaty package establishes the In-SHUCK-ch Government under Section 35 of the *Constitution Act, 1982*, defines the law-making authority of the In-SHUCK-ch Government, and sets out rules for the interoperability of BC, Canada, and In-SHUCK-ch laws. Including the In-SHUCK-ch Nation Constitution, the treaty package implements In-SHUCK-ch's inherent right of self-government.

The treaty package gives legal effect to the In-SHUCK-ch Nation and its system of governance. The governance section of the Agreement sets out the powers of the In-SHUCK-ch Nation and provides sets out each In-SHUCK-ch Community as legal entities capable of owning assets, being sued, and exercising authority. The In-SHUCK-ch Nation and each of its constituent communities act through representative governments. Each representative government operates through democratically controlled In-SHUCK-ch Public Institutions. The Agreement sets out all In-SHUCK-ch jurisdictions. Through the In-SHUCK-ch Constitution all In-SHUCK-ch jurisdictions vest in In-SHUCK-ch Nation collectively or vest in In-SHUCK-ch Nation Communities separately. The In-SHUCK-ch Nation Government is comprised of all In-SHUCK-ch Nation Public Institutions.

In-SHUCK-ch Nation Community Governments are a unique part of the In-SHUCK-ch Nation Government. Each In-SHUCK-ch Community Government will exercise delegated In-

SHUCK-ch authority under community constitutions consistent with the In-SHUCK-ch Constitution and the Agreement. The powers of In-SHUCK-ch Community Governments are beyond the reach of the legislative body delegating their powers. Once In-SHUCK-ch jurisdictions vest in a Community, the powers of that Community Government may not change without also amending the In-SHUCK-ch Constitution. Amendments to the In-SHUCK-ch Constitution affecting the status of an In-SHUCK-ch Community must be supported by a majority of eligible In-SHUCK-ch voters including a majority of eligible voters from the affected In-SHUCK-ch Community.

By recognizing the In-SHUCK-ch Nation's inherent right to self-government, the treaty package expands In-SHUCK-ch jurisdictions. The In-SHUCK-ch Nation government may enact laws in relation to the following matters.

- Lands and Resources (surface title, surface and subsurface resources ownership)
- Cultural Activities (preservation and promotion of In-SHUCK-ch heritage including the use of Ucwalmícwts; resource harvesting; stewardship; and ceremonies)
- Social Development (individual and family wellbeing)
- Public Administration (corporate services; program and service delivery; compliance; access to justice)
- Financial Management (budgeting, accounting and reporting annually; taxation; regulation of business; audits; policies and procedures; compliance and enforcement)
- Health (individual health of residents & public health)
- Education (K-12 and post-secondary)
- Infrastructure (public works and transportation)

- Community Governance (membership; land ownership, use & planning; finance, business licensing; infrastructure; peace, order and public safety including alcohol regulation)

In addition to these law-making powers, the In-SHUCK-ch Nation Government will be responsible for intergovernmental affairs. In-SHUCK-ch intergovernmental affairs include activities related to consultation, negotiating harvest agreements, the management roles in the traditional territory, membership in a BC Regional District, and all matters respecting the education and adoption of an In-SHUCK-ch resident anywhere in BC.

5.4 Financial Wellbeing

The treaty package affects the financial wellbeing of the In-SHUCK-ch Nation. In summary, the treaty package improves In-SHUCK-ch financial wellbeing because it provides predictable and flexible funding, which in turn helps In-SHUCK-ch decision makers to set priorities and be accountable for financial transactions.

In-SHUCK-ch Nation will receive the following capital transfers if the treaty package is approved:

- One time \$34.7 million capital transfer (less the balance of the negotiating loan).
- \$10 million capital (over five years) from Indian and Northern Affairs Canada (INAC) and continued access to capital program subject to INAC policy
- One time \$3.3 million for developing processes and mechanisms for managing incremental jurisdictions.

In-SHUCK-ch will receive an annual transfer of \$4.3 million to help pay the cost of In-SHUCK-ch self-government and to deliver federal and provincially mandated programs and services. Over time as the In-SHUCK-ch Nation develops its own sources of revenue, federal transfers will be

scaled back. The \$4.3 million transfer rises by 3.11% annually. This transfer is equal to the annual funding agreements for each of the In-SHUCK-ch bands from three federal departments (Health Canada, Department of Fisheries and Oceans, and INAC) plus funding for the incremental activities required under the terms of the Agreement.

The annual transfer is predictable and use by In-SHUCK-ch governments of the transfer is flexible. The transfer formula is negotiated at five-year intervals. In addition, the amount transferred will not be clawed back. The transfer is flexible because reporting conditions are reduced to outcome-based measures. Because the funding is stable and predictable, and reporting is based on outcome measures, the In-SHUCK-ch Nation Government can more easily be held accountable to In-SHUCK-ch citizens. Stable and predictable funding will help implement the required system of financial administration comparable to other governments in Canada. The criteria for negotiating the fiscal agreement every five years is set out in the Agreement. For example, negotiators will take in to account “...the desirability of reasonably stable, predictable and flexible fiscal arrangements” among the parties (21.1.3(h)). Having a transparent and predictable financial administration is essential for creating the conditions for attracting capital for economic development projects and attracting people home.

5.5 Economic Development Potential

The treaty package contains benefits that affect the economic potential for the In-SHUCK-ch Nation. In-SHUCK-ch has the ability to register parcels of land in the BC Land Title Office. In-SHUCK-ch can register land on behalf of the nation or on behalf of an individual. Registering land may provide individuals the ability to use land as collateral for a mortgage or a business loan. Conditions may be placed on parcels to protect title from falling out of the hands of the collective in the event of a foreclosure or other legal proceedings. In-SHUCK-ch Nation

Government is responsible for setting the rules in which interests in In-SHUCK-ch Nation Land are created. In addition, In-SHUCK-ch Nation will have:

- the ownership rights to all resources located on or under the land,
- a water reservation of 50 billion litres of water per year for any use,
- the opportunity to develop an adventure tourism tenure on In-SHUCK-ch non-exclusive use lands,
- access to In-SHUCK-ch lands via an all-season, two lane gravel road (\$30 million),
- early access to In-SHUCK-ch settlement lands, and
- a forest tenure covering a large portion of In-SHUCK-ch territory outside of exclusive use lands and provincial park land.

5.6 Conclusion

The In-SHUCK-ch treaty package is a comprehensive lands claims agreement, a self-government agreement, and side agreements establishing fiscal and other important relationships between the parties. The constitutionally protected Agreement sets out the land, capital transfer, fiscal relations, and powers of the In-SHUCK-ch Nation in relation to the Crown represented by British Columbia and Canada. The terms of the financial and economic components of the treaty package are contained in side agreements not constitutionally protected.

The treaty sets out In-SHUCK-ch roles and responsibilities applicable on In-SHUCK-ch territory. In-SHUCK-ch territory is partitioned in terms of In-SHUCK-ch Nation exclusive use lands and In-SHUCK-ch Nation non-exclusive use lands. The agreement sets out the extent of exclusive use lands and the jurisdictions applicable on those lands. In-SHUCK-ch non-exclusive land represents multiple values including cultural and strategic value. The next section compares the In-SHUCK-ch Nation Final Agreement to the status quo in terms of these five criteria.

6: Differences between the Options

The treaty option outranks the status quo option. The following table provides an introduction to the rankings. The following table is repeated below.

Table 3 Ranking the Options: Summary Matrix

Criteria	Indicators	Treaty Option	Status Quo
Integrity of Non-Exclusive Use Land	Stewardship Rights	1	0
	Cultural Rights	1	1
<i>SubTotal</i>		2	1
Integrity of Exclusive Use Land	Area	1	0
	Scope of Jurisdiction	1	0
<i>SubTotal</i>		2	0
Governance	Scope & Depth of Authority	1	0
	Accountability	1	0
<i>SubTotal</i>		2	0
Financial Sustainability	Operating Revenue	1	1
	Capital Revenue	1	1
	Financial Accountability	1	0
<i>SubTotal</i>		3	2

Economic Development Potential	Economic Benefit	1	0
<i>SubTotal</i>		1	0
<u>Overall Ranking</u>		<u>10</u>	<u>3</u>

6.1 Integrity of Non-Exclusive Use Land

Integrity of non-exclusive use land has two central components: stewardship rights and cultural rights. The treaty option and the status quo both offer a level of territorial stewardship. Currently, stewardship roles on the traditional territory outside reserve lands are formally the responsibility of the province and the federal government. The In-SHUCK-ch First Nations are invited to participate in various stewardship activities in accordance with federal and provincial consultation policy. The treaty option formally recognizes several stewardship roles across the traditional territory (the area specified in the original Statement of Intent).

First, the treaty obliges the federal Department of Fisheries and Oceans (DFO) to work constructively with the In-SHUCK-ch Nation. The treaty package does not allocate a number of fish. Rather, it allocates a role in the management of the regional fishery, which includes the negotiation of an annual allocation of salmon. As a result, the treaty package contains an increase in the recognized stewardship role with respect to salmon and salmon habitat within the In-SHUCK-ch territory and across larger management regions.

Second, the treaty package provides the In-SHUCK-ch Nation ownership of all the land around the Lillooet River between Harrison and Lillooet Lake. As a result, the In-SHUCK-ch Nation will have the responsibility to preserve and protect the sensitive riparian zone surrounding the lower Lillooet River.

Third, the In-SHUCK-ch Nation will have a recognized role in the management of any parks existing on In-SHUCK-ch territory. The treaty package provides In-SHUCK-ch representation on planning and management boards. Although the minister retains decision-making authority, the minister is answerable to the In-SHUCK-ch Nation in accordance with the terms of the Agreement.

Fourth, the In-SHUCK-ch Nation will have a voice in decisions affecting Crown land in the In-SHUCK-ch Nation non-exclusive use areas. For example, the In-SHUCK-ch Nation may:

- participate in all public planning processes affecting In-SHUCK-ch territory,
- participate in negotiations with BC regarding the dispossession of Crown land affecting In-SHUCK-ch territory, and
- participate in water planning processes.

These four examples of stewardship roles and responsibilities on In-SHUCK-ch traditional territory are only partially recognized under the status quo.

The definition of treaty rights creates binding obligations on the parties. For example, the definition of cultural rights (such as the right to harvest fish, plants, wildlife, and migratory birds) are enforceable rights across the entire traditional territory. As a result, the parties are required to negotiate harvest agreements. If negotiations fail, the treaty contains provisions for a range of dispute-resolution options. The protections in the treaty are not guaranteed to eliminate all conflict between the parties; rather, the treaty provides a set of clearly defined rights to enable administrative solutions to conflict instead of litigation between the parties.

Integrity of non-exclusive use lands under both options is influenced by the relationship between the administrative actors involved. Clearly defined rights remove the first hurdle to enforcing rights in court, which is proving that the right asserted exist. Relative to undefined rights, clearly defined rights are more easily enforced and respected. Under the status quo

Aboriginal rights are enforceable in court, but since they are undefined they must first be proven in court to exist if a disagreement between the parties arises. Under the treaty option, treaty rights are defined, which is intended to reduce conflict between the parties. In addition, the treaty provides for a range of remedies for disputes that may arise from time to time. The main difference between the two options in terms of territorial protection is the enforceability of rights and the starting point for resolving conflicts.

The following table summarizes the differences between the status quo and the treaty package in terms of In-SHUCK-ch authority over the traditional territory.

Table 4 Measures of Integrity of Non-Exclusive Use Lands

Indicator	Treaty Option	Status Quo Option
Stewardship Rights	<ul style="list-style-type: none"> • Direct voice in resource management. • Direct voice in land protection and planning. • Authority for conservation of In-SHUCK-ch Harvesting. 	<ul style="list-style-type: none"> • Indirect voice through regional, provincial and national Aboriginal groups. • No mechanism for conservation without accepting DFO and BC licenses.
Cultural Rights	<ul style="list-style-type: none"> • Rights defined but no change in scope. • Proactive harvest plans ensure rights are not infringed. • Proof of rights no longer required 	<ul style="list-style-type: none"> • Rights to practise language and culture including rights to fish, hunt wildlife and migratory birds, and gather resources from the land. • Reactive referrals process. • Proof of rights required

6.2 Integrity of Exclusive Use Lands

There are two kinds of exclusive use lands: treaty settlement lands and reserve lands. There are two indicators of integrity of exclusive use lands: area of land and jurisdictions in relation to land.

This section compares treaty settlement lands under the treaty options to reserve lands under the status quo.

Under the status quo, each In-SHUCK-ch first nation enjoys an unequal share of 1256 hectares of exclusive use lands set out in eighteen reserves. In terms of quantum, Skatin is assigned the most (676.6 ha.), Xa'xtsa is assigned the second most (432.3 ha.), and Samahquam is assigned the least (175 ha.) reserve land. According to INAC, there are 934 people registered to the three In-SHUCK-ch first nations. This means for the In-SHUCK-ch there is approximately 1.3 hectares of reserve land per registered member.

Under the treaty option, the three In-SHUCK-ch first nations will own their respective reserve lands and share ownership of an additional 15,072 hectares of exclusive use lands. The treaty option in terms of exclusive use lands is equal to 17.5 hectares of exclusive use lands per person. The treaty option implies an increase of 16.2 hectares of exclusive use lands per person. The following table illustrates the difference between the treaty and status quo options in terms of area of exclusive use lands.

Table 5 Area (ha) of Exclusive Use Lands: Treaty and Status Quo Options

Quantum	Treaty Option	Status Quo	Change
Exclusive Use Lands (hectares)	16,356	1,284	+15,072
Exclusive Use Lands (ha/per capita)	17.5	1.3	+16.2

Within the larger Stl'atl'imx cultural group, the exclusive use lands of the three In-SHUCK-ch first nations are below the average size under the status quo option but rise to the top under the treaty option. There are eleven first nations that make up the Stl'atl'imx cultural group. The range of the distribution of reserve lands among the 11 Stl'atl'imx first nations is represented

by the Bridge River First Nation with 417 members sharing the rights to 4699 hectares of reserve lands and the Samahquam Nation with 317 members sharing the rights to approximately 175 hectares of reserve land. On a per capita basis, reserve lands among the 11 Stl'atl'imx first nations range from 11.3 hectares of reserve land per person to .6 hectares of reserve land per person. The average per capita distribution of reserve land among Stl'atl'imx first nations is 3.3 hectares per person. All three In-SHUCK-ch first nations fall below the average amount of reserve land held by the Stl'atl'imx first nations. In terms of per capita distribution the Xa'xtsa First Nation leads the In-SHUCK-ch first nations with 1.9 hectares per person.

Table 6 Exclusive use lands among Stl'atl'imx First Nations

Exclusive Use Lands (hectares)	Treaty Option	Status Quo
Total Exclusive Use Lands, all Stl'atl'imx First Nations	32,595	17,523
Exclusive Use Lands per person, all Stl'atl'imx First Nations	5.1	3.3
Exclusive Use Lands per person, In-SHUCK-ch First Nations	17.5	1.3

The following graph compares the two options in terms of surface area of the exclusive use lands to a sample of local government jurisdictions in the surrounding region. The surface area of the exclusive use lands under the status quo option is similar to the surface area of New Westminster, BC. The surface area of the exclusive use lands under the treaty option is equal to approximately half the surface area of Abbotsford, the municipality with the largest surface area in the region.

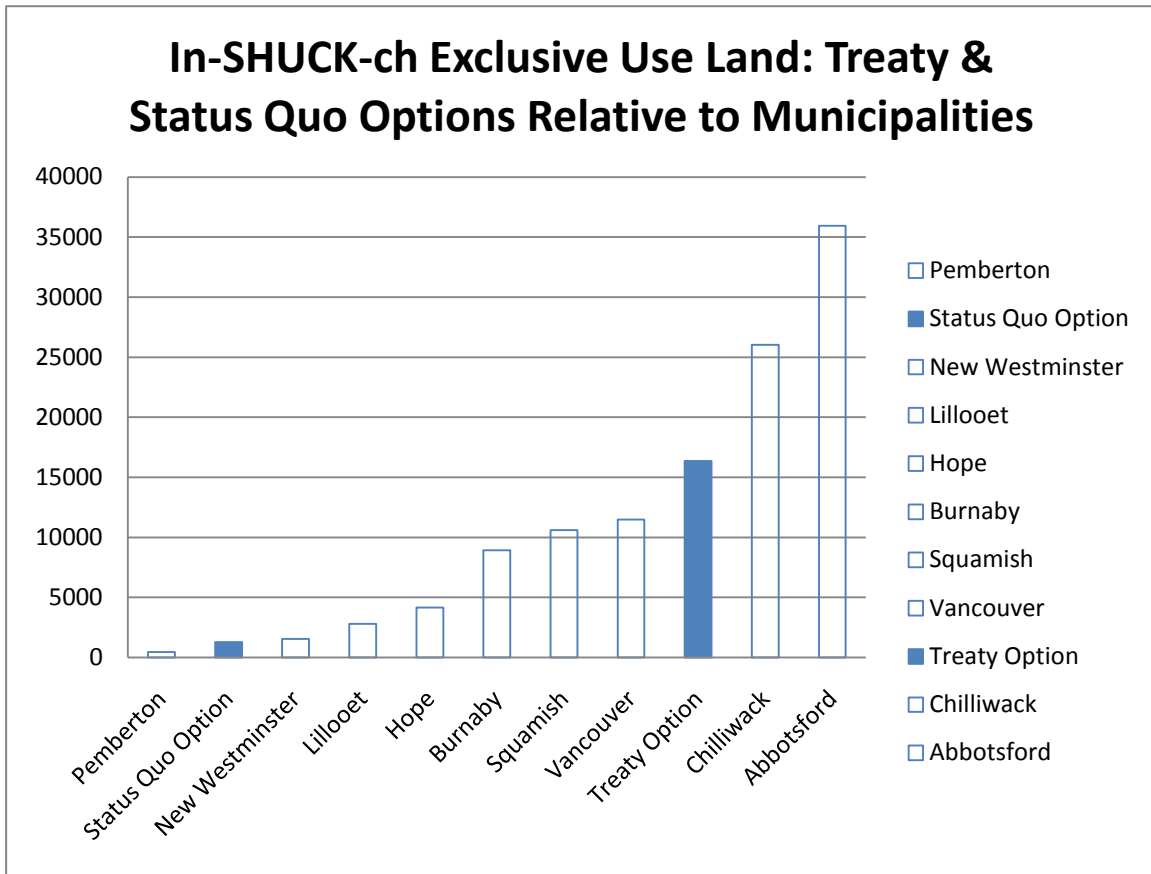


Figure 5 In-SHUCK-ch Exclusive Use Land Compared to Municipalities (hectares)

Jurisdiction in relation to land means the authority to manage land. Jurisdiction is measured by the scope of authority in relation to exclusive use lands. The scope of authority may include: ownership rights, creating interests in land, disposing of land, expropriating land, escheatment interest, land-use zoning, and land-use planning.

The land management jurisdiction is narrow in scope on In-SHUCK-ch reserve lands compared with the land management jurisdiction on In-SHUCK Nation exclusive use lands under the treaty option. Land management on reserve is set out in sections (53) to (60) of *the Indian Act*. Administration and control of In-SHUCK-ch reserve lands rests with the federal government under the status quo option – provincial legislation in relation to land does not apply to In-

SHUCK-ch reserve lands. Subject to a number of conditions, laws made in relation to the use, disposition, expropriation, management, planning, zoning, and development of In-SHUCK-ch exclusive use lands under the treaty option prevail over federal or provincial laws. The conditions limiting In-SHUCK-ch law-making relate to 1) the division of matrimonial real property; 2) subsurface resources; 3) designated agricultural land added to exclusive use lands after the effective date; and, 4) parcels of land subject to the provincial *Land Title Act*. Aside from these four conditions, In-SHUCK-ch law in relation to land-use is paramount to both federal and provincial law.

Under the treaty option, In-SHUCK-ch law can define traditional and modern property interests. In-SHUCK-ch law may provide for the creation of land interests not recognized under federal or provincial law. This gives the In-SHUCK-ch Nation jurisdiction to accommodate traditional land interests. Further, an In-SHUCK-ch law may create a type of interest in land that is recognized by a federal or provincial law. The federal or provincial government will recognize property interests created under In-SHUCK-ch law to the extent that the establishing In-SHUCK-ch law is consistent with the applicable federal or provincial law. Under the treaty option In-SHUCK-ch Nation law determines how the exclusive use lands are controlled and administered. Under the status quo the minister grants ownership-like rights to aid in the use and benefit of reserve lands by those for whom the lands are reserved. The scope of authority in relation to exclusive use lands under the treaty option is greater relative to the scope of authority in relation to exclusive use lands under the status quo option.

The largest difference between the two options is In-SHUCK-ch property rights. Under the status quo, the Queen in right of Canada owns the lands and resources. They are reserved for the use and benefit, but not ownership, of the first nations. Under the *Indian Act* there are several restrictions on using reserve lands as collateral for economic development. For example, reserve

land cannot transfer to an individual not on the band list unless the land in question is alienated and sold, or turned into a leasehold. Both require a referendum of eligible band members and approval of the minister. The restrictions on property rights on-reserve means that individuals on-reserve face significant challenges accessing finance capital for building a house or starting a business.

Under the treaty option, land title and resources on or under In-SHUCK-ch exclusive use lands are owned by the In-SHUCK-ch Nation, instead of the Queen. The In-SHUCK-ch Nation owns exclusive use lands as fee-simple lands. In addition to surface title ownership, the Nation owns the subsurface resources, which may or may not be registered with surface title. As a result, the In-SHUCK-ch can access finance on terms equal to private property owners in British Columbia. Ownership of lands and resources is a significant difference between the treaty option and the status quo. Under the treaty option, In-SHUCK-ch fee-simple title includes an escheatment interest, which means if a parcel of In-SHUCK-ch land is ownerless and ends up in the hands of the Crown then the parcel will be transferred to the In-SHUCK-ch Nation.

Under the status quo, accessing finance in land based on the assertion of Aboriginal title is limited to economic rent in the form of negotiated impact benefit agreements or participation agreements. Impact benefit agreements and participation agreements are negotiated between developers and Aboriginal groups to resolve the infringement development projects such as mines, oil wells, and dams have on Aboriginal rights. The assertion of rights may be sufficient to extract benefits from third party developers. However, the assertion of Aboriginal rights is not

sufficient for financing development. Accessing finance in Aboriginal title to its full extent requires that ownership be proven in court or defined in a treaty⁴.

Table 7 Measures of Integrity of Exclusive Use Lands: Treaty and Status Quo Options

Indicator	Treaty Option	Status Quo
Quantum Exclusive Use Lands (hectares)	16,356	1,284
Authority in relation to exclusive use land	In-SHUCK-ch Nation	Federal Government

6.3 Governance

There are two indicators of governance: autonomy and accountability of the decision making body. Autonomy means the scope and depth of decision making authority. Scope and depth of authority is measured by the type of law making instrument, breadth of law making authorities, and depth of law making authorities. Accountability is measured by the mechanisms for holding the decision making body accountable for decisions made.

The type of law-making authority depends on its source. Authority under the treaty option falls under both section 91(24) and Section 35 of the Constitution Act, 1982. As a result, In-SHUCK-ch law-making authority has constitutional status, which is implemented by provincial and federal statutes that give legal recognition of In-SHUCK-ch jurisdictions extending beyond matters strictly internal to In-SHUCK-ch. Law-making authority under the treaty option is

⁴ Calvin Helin has found investors to set up a fund to help Aboriginal groups secure financing for mining projects on their territory and thus become partners in development not participants (<http://www.upherebusiness.ca/node/400>).

exercised as the In-SHUCK-ch inherent right to self-government. For example, In-SHUCK-ch citizenship law is not derived from federal authority. Under the status quo option, the In-SHUCK-ch first nation exercises by-law making authority, an authority delegated by the *Indian Act*.

Table 8 Source and Type of Authority for the Treaty and Status Quo Options

Indicator	Treaty Option	Status Quo Option
Source and Type of Authority	Sec 91(24) and Sec 35 of Constitution Act, 1982 Constitutional law-making	<i>Indian Act</i> under Sec 91(24) of Constitution Act, 1982 Delegated by-law-making

The scope of authority is measured by the scope of recognized subject matters. The following table shows the list of the 32 law-making authorities set out in the Agreement and the more limited 16 by-law making authorities under the *Indian Act*.

Table 9 Depth of Authority: Treaty and Status Quo Options

Treaty Option		Status Quo Option	
Aboriginal Healers	In-SHUCK-ch Nation Government	Animal Control	Apiary & Aviary regulation
Adoptions	In-SHUCK-ch Mountain	Band Assets	Band Building Code
Buildings and Structures	Land Use	Band Property Rights	Wildlife Conservation
Child Care	Law Enforcement	Land-use zoning	Local works
Child Custody	Liquor Control	Peacekeeping	Public & Private Health

Treaty Option		Status Quo Option	
Child Protection Services	Migratory Birds	Regulation of Salespeople	Sport, Recreation & Leisure
Culture & Heritage	Public Access	Traffic Control	Trespass
Devolution of Cultural Property	Public Order Peace and Safety	Water Control	Weed Control
Education	Public Works		
Emergency Preparedness	Regulation of Business		
Environmental Assessment	Social and Family Services		
Environmental Protection	Solemnization of Marriages		
Gathering	Taxation		
Health	Traffic, Parking, Transportation and Highways		
In-SHUCK-ch Nation Assets	Water		
In-SHUCK-ch Nation Citizenship	Wildlife		

The depth of authority is measured by the authority under the sole jurisdiction of the In-SHUCK-ch Nation. Under the status quo option, all 16 specific by-law making powers are subject to the power of disallowance by the minister responsible. Under the treaty option, 26 of the 71 (37%) specific law-making authorities are paramount to the federal and provincial law. The depth of authority is greater under the treaty option than the status quo.

Table 10 Measures of Autonomy: Treaty and Status Quo Options

Indicator	Treaty Option	Status Quo Option
Scope of Authority	32 Broad Authorities	16 Broad Authorities
Depth of Authority	37% of law making powers are paramount to provincial or federal law.	100% of by-laws may be disallowed by minister.

Accountability means the range of accountability mechanisms available to the people of the collective. There are eight accountability mechanisms negotiated into the governance chapter of the Agreement. Under the status quo these mechanisms may or may not exist. Table 10 below illustrates the democratic accountability mechanisms in the Agreement compared to the status quo option.

Under the Agreement, governments must be democratically elected under In-SHUCK-ch Nation law. Elections are not mandatory under the status quo. Conflict of interest rules ensure that elected decision makers know what a real versus a perceived conflict of interests is under In-SHUCK-ch law. Due process is required for passing an In-SHUCK-ch Nation law, which ensures In-SHUCK-ch citizens may participate in the legislative process. Laws must be published. Rules for adjudicating laws and regulations are required under treaty option. Individual rights are recognized within the In-SHUCK-ch Nation including the right to access to information and the right to administrative review of any administrative decision. The following table illustrates the difference between the treaty option and the status quo option in terms of accountability.

Table 11 Range of Mechanisms Supporting Accountability

Mechanism	Treaty Option	Status Quo Option
Elected Government	Mandatory	Optional
Conflict of Interest Rules	Mandatory	Optional
Due process for making rules	Mandatory	Optional
Recognition of Individual Rights	Mandatory	Optional
Adjudication of rules	Mandatory	Optional
Appeal and review of administrative decisions	Mandatory	Optional
Publish rules	Mandatory	Optional
Access to Information	Mandatory	Optional

6.4 Financial Sustainability

Financial sustainability means the ability to finance services necessary for meeting nation-building goals. The indicators of financial sustainability are adequacy of annual operating and capital revenues, and financial accountability. The following table illustrates the differences between the treaty option and the status quo in terms of annual operating revenue.

Table 12 Annual Operating Revenue: Treaty and Status Quo Options

Indicator	Treaty Option	Status Quo Option
Operating Revenue	Estimated Annual Revenue Year 1 \$7.56 million Year 2 \$4.35 million Year 3 \$4.49 million Year 4 \$4.63 million Year 5 \$4.77 million Re-negotiated every five years.	Estimated Annual Revenue \$2.6 million Annual adjustments vary in accordance with INAC policy.
Annual Adjustment	+3.11%	Subject to Federal Program and Service Policy
Reporting Requirements	Outcome based reporting	Input-based reporting

The treaty option provides for five-year funding agreements. The funding amount of the base year is adjusted by 3.11% each year. Over time, as the In-SHUCK-ch Nation earns additional revenue, it will begin to be self-financing. When this occurs, there will be a downward adjustment on the funding agreement. There is also a reduction in the reporting requirements to Canada because reporting shifts to outcome-based reporting instead of input-based reporting. The status quo annual funding is based on the federal policy.

Taxation is a future revenue source. Twelve years after the Effective Date of the In-SHUCK-ch treaty, the *Indian Act* tax exemptions are phased out. Transaction and income taxes will be applied on In-SHUCK-ch exclusive use lands. The In-SHUCK-ch Nation will receive revenue from that taxation. From prior commissioned studies, it is estimated that In-SHUCK-ch will accept federal and provincial taxes. In exchange, In-SHUCK-ch will receive the tax revenue levied on In-SHUCK-ch land and In-SHUCK-ch citizens. Federal and provincial tax administrators will retain the cost of administering the tax and the residual revenue will go to In-SHUCK-ch. For example, based on data from the commissioned study, it is estimated that 70% of transaction taxes and 95% of federal income taxes collected from the In-SHUCK-ch Nation will be added to In-SHUCK-ch Nation's own source revenue (PricewaterhouseCoopers, 2009). This is one way that In-SHUCK-ch Nation will begin to pay for In-SHUCK-ch government programs. In addition, In-SHUCK-ch has the power of direct taxation.

The following table illustrates the difference between the treaty option and the status quo in terms of capital revenues available to the In-SHUCK-ch. Under the treaty option In-SHUCK-ch is the owner of 16,356 hectares of land. In addition to the capital in owned land, the treaty option includes a \$34.7 million cash transfer, which is subject to the negotiating loan payback provisions. Another source of capital under the treaty option is the offer of continued access to Indian and Northern Affairs Canada's (INAC) on-reserve capital spending program. The offer is for access to \$10 million dollars over five years subject to INAC policy and continued access to the capital program. Under the status quo option the main source of capital project financing is this INAC on-reserve capital spending program. According to INAC estimates, the average annual capital spending (2003-2008) of the three In-SHUCK-ch first nations was roughly \$1.3 million. In addition, each first nation has the ability to borrow against land as collateral. The

process for accessing capital in reserve land is uncertain and time consuming. There is less access to capital under the status quo option compared to the treaty option.

Table 13 Capital: Treaty and Status Quo Options

Indicator	Treaty Option	Status Quo Option
Land	16,356 hectares of exclusive use lands	1284 hectares of exclusive use lands
Cash Transfer	\$34.7 million less negotiating loan	n/a
INAC Capital Program	\$10 million over 5 years with continued access.	\$1.3 million/year (estimate of amount received by the three first nations over 2003-2008)

Financial accountability under the treaty option is stipulated in the terms of the Agreement. The Agreement requires that the In-SHUCK-ch Nation constitution provides “for a system of financial administration with standards comparable to those generally accepted for governments in Canada, through which In-SHUCK-ch Nation Government will be financially accountable to In-SHUCK-ch Nation Citizens”(18.3.1(c)). Since all laws must be consistent with the In-SHUCK-ch Nation constitution, and all activities must be authorized by law to be funded, all activities funded by the In-SHUCK-ch Nation are subject to financial accountability requirements. The following table illustrates the difference between the treaty option and the status quo option in terms of financial accountability.

Table 14 Financial Accountability: Treaty and Status Quo Options

Indicator	Treaty Option	Status Quo
Requirement for Financial Accountability	...standards comparable to those generally accepted for governments in Canada...	No formal provisions. Enforced through funding agreements.

6.5 Economic Development Potential

Economic development potential means the potential that is a direct result of the treaty package. It is admittedly difficult to isolate the economic development potential of each option. Therefore, the measure is incremental to the status quo.

The following table illustrates the potential opportunities for economic development available under the treaty option compared to the status quo option. Property ownership includes a substantial commitment from BC and Canada to survey the border of In-SHUCK-ch Nation lands and all interests on existing In-SHUCK-ch community lands. In addition, all interest holders will be provided at no cost a title certificate. In-SHUCK-ch Nation will have the right to register parcels of land for indefeasible title. In-SHUCK-ch Nation is also permitted to add to its exclusive land holdings in the In-SHUCK-ch Nation traditional territory. Challetkohum and Spring Creek Dry Land Sort will be provided to In-SHUCK-ch Nation at no cost. Property ownership is not available under the status quo. Under the treaty option, the ownership of forest and range resources and subsurface resources is an economic development opportunity not available under the status quo. Under the treaty option the In-SHUCK-ch Nation will have a substantial water reservation and a water reservation for developing independent power projects.

Table 15 Economic Opportunities Incremental to the Status Quo

Economic Benefit	Descriptions
Property Ownership	<ul style="list-style-type: none"> • Land surveying (3.16.1.5). • No cost to interest holders (Band lands, CPs etc.) for State of Title Certificate (4.3.1). • Ownership of Tsek (3.1.2(d)), a sacred place and destination hot springs (DL 1747), estimated value of \$2.1 million. • May register parcels for indefeasible title (4.2.3).
Further Land Acquisitions	<ul style="list-style-type: none"> • Opportunity to increase the area of exclusive use lands in traditional territory (3.15). • No cost acquisition of Spring Creek Dry Land Sort. (3.15.2) • No cost acquisition of Challetkohum (3.15.3).
Resource ownership	<ul style="list-style-type: none"> • Ownership of forest and range resource (8.1.1). • Ownership of subsurface resources (3.9.1).
Independent Power Development	<ul style="list-style-type: none"> • Water reservations on specific streams (15.7.1).
Water Reservation	<ul style="list-style-type: none"> • 50 billion litres of water per year for domestic, agricultural, and industrial uses (15.3.1).
Forest Service Road Upgrade	<ul style="list-style-type: none"> • Two lane all season gravel road. • \$30 million commitment from BC and Canada.
Area Based Forest Tenure	<ul style="list-style-type: none"> • FRA volume and volume of In-SHUCK-ch owned license.

Adventure Tourism Tenure	<ul style="list-style-type: none"> • 90 hectare adventure tourism tenure (5.10.1)
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One of the largest economic benefits is the road upgrade to the main Forest Service Roads through the In-SHUCK-ch Valley. The road benefits all users not just In-SHUCK-ch road users. The road will lower transportation costs for industrial users, and for residents – particularly of the two Xa’xtsa communities who currently must drive 80 km on logging road to get to Mt. Currie and Pemberton, the nearest service centres. With the treaty, In-SHUCK-ch Nation will become a presence in the local forest industry; road upgrades will improve profitability of In-SHUCK-ch harvesting operations. Road upgrades will bring in recreational users providing an opportunity for developing the adventure tourism tenure provided to In-SHUCK-ch Nation. Road upgrades will increase the ability of In-SHUCK-ch to focus on all season tourism operations on the \$2.1 million dollar property that includes a hot spring that is integral to In-SHUCK-ch culture. The road upgrade will not occur under the status quo option.

6.6 Analysis: Ranking the Options

Each indicator is scored zero or one. If there is no clear advantage between the two options for a particular indicator, then it is given a score of one for both. If the indicator favours one option over the other, then the indicator is scored one for the relevant option and zero for the other.

Integrity of non-exclusive use lands is ranked by the stewardship roles and cultural rights recognized under each option. Cultural rights do not change in practice but the definition of cultural rights has the potential to improve relations between In-SHUCK-ch people harvesting resources from Crown land and other users of Crown land. Stewardship roles increase because

some stewardship roles in the treaty are not currently recognized. In terms of stewardship roles the treaty option provides a clear advantage relative to the status quo.

Recognition of cultural rights is equal in both options but defined cultural rights hold the potential to improve relationships relative to undefined cultural rights. There is no clear advantage between the treaty and status quo in terms of cultural rights.

Table 16 Ranking Options by Integrity of Non-Exclusive Use Land

Indicator	Treaty Option	Status Quo
Stewardship roles	1	0
Cultural rights	1	1
Total, Integrity of non-Exclusive Use Lands	2	1

Integrity of exclusive use lands is ranked in terms of quantum and jurisdiction under each option. The size of exclusive use lands under the treaty option is significantly larger than the size of exclusive use lands under the status quo. The jurisdiction of exclusive use lands under the treaty option is significantly stronger relative to the status quo. The *Indian Act* does not apply to the treaty option exclusive use lands because they are not reserve lands. Both indicators of exclusive use lands under the treaty option provide a clear advantage over the status quo option.

Table 17 Ranking Options by Integrity of Exclusive Use Land

Indicator	Treaty Option	Status Quo
Quantum (hectares)	1	0
Jurisdiction	1	0
Total Integrity of Exclusive Use Lands	2	0

Governance is ranked in terms of autonomy and accountability under each option.

Autonomy under the treaty option provides a clear advantage in both scope and depth of authority. Under the status quo the *Indian Act* affords the minister significant discretionary authority. The minister holds authority to the extent that there is not sufficient reason to provide for good governance in terms of accountability for band councils and band council administrations. The treaty option provides a clear advantage in terms of autonomy and accountability relative to the status quo.

Table 18 Ranking Options by Governance

Indicator	Treaty Option	Status Quo
Autonomy	1	0
Accountability	1	0
Total Governance	2	0

Financial sustainability is ranked in terms of operating revenue, capital revenue, and financial accountability. Operating revenue increases under the treaty option but there are increased In-SHUCK-ch responsibilities accompanying the increase; thus no clear advantage

between the options is evident. Capital revenue significantly increases; however, over time access to the on-reserve capital program may not be available under the treaty option. Capital in terms of land ownership significantly increases; however, economic rent-seeking from asserting Aboriginal title on future projects in the traditional territory is not available. Instead, revenue sharing is taken in one lump sum and the fee-simple title of treaty settlement lands provides In- SHUCK-ch bargaining power equal to a private property owner. Estimating the value of 16,356 hectares of land in terms of dollars requires more space than available here. As a result, there is not a clear advantage in terms of operating or capital revenue without assessing the land value. However, there is a profound advantage under the treaty option in terms of financial accountability. The treaty option provides for financial accountability, whereas, the *Indian Act* is silent on financial accountability.

Table 19 Ranking Indicators of Financial Sustainability: Treaty and Status Quo Options

Indicator	Treaty Option	Status Quo
Operating Revenue	1	1
Capital Revenue	1	1
Financial Accountability	1	0
Total Financial Sustainability	3	2

Economic development potential is ranked in terms of incremental opportunities only available with the treaty option. The largest impact is the forest service road upgrades. Instead of relying on industrial use to keep the Forest Service Roads open, the main Forest Service Roads

will be upgraded to all season two lane roads and transferred to the BC Ministry of Transportation and Highways for upkeep. Reducing travel cost is a far-reaching benefit because it reduces the cost of a wide variety of activities such as going for groceries and hauling timber from In-SHUCK-ch logging operations. All other economic development opportunities are available under both options aside from asserting Aboriginal rights for economic rent in development projects. Under the treaty option, any economic development opportunity requiring the use of In-SHUCK-ch Nation land requires In-SHUCK-ch Nation approval.

Ranking the options gives a clear advantage to the treaty relative to the status quo. The treaty option provides a clear advantage in all criteria except integrity of non-exclusive use lands and financial sustainability. There is an advantage in terms of stewardship roles but not cultural rights because there is no absolute increase in cultural rights. The benefit to defined cultural rights is the potential for a proactive relationship with BC and other forest users. The operating revenue increases under the treaty option but so does responsibility, which is an unknown cost. There are benefits in terms of reduced reporting requirements and financial stability but a clear advantage is not evident because of the unknown costs of new In-SHUCK-ch responsibilities. With the information available it is conclusive that the treaty option improves upon the status quo.

Table 20 Ranking the Options: Summary Matrix

Criteria	Indicators	Treaty Option	Status Quo
Integrity of Non-Exclusive Use Land	Stewardship Rights	1	0
	Cultural Rights	1	1
<i>SubTotal</i>		2	1
Integrity of Exclusive Use Land	Area	1	0
	Scope of Jurisdiction	1	0
<i>SubTotal</i>		2	0
Governance	Scope & Depth of Authority	1	0
	Accountability	1	0
<i>SubTotal</i>		2	0
Financial Sustainability	Operating Revenue	1	1
	Capital Revenue	1	1
	Financial Accountability	1	0
<i>SubTotal</i>		3	2
Economic Development Potential	Economic Benefit	1	0
<i>SubTotal</i>		1	0
<u>Overall Ranking</u>		<u>10</u>	<u>3</u>

7: Conclusion

The treaty option and the status quo option have been compared using five criteria. Three of the five criteria indicate the treaty option is better than the status quo option in terms of achieving In-SHUCK-ch nation building goals. Two of the five criteria indicate no clear advantage between the options. Based on the five criteria, the treaty option has a clear advantage over the status quo option.

First, exclusive use lands in terms of area and scope of jurisdiction favour the treaty option. Exclusive use lands are 16,356 hectares under the treaty option and 1284 hectares under the status quo option. With the treaty option, In-SHUCK-ch jurisdiction on exclusive use is exercised as an inherent right under Section 35 of the Constitution Act, 1982. With the status quo option In-SHUCK-ch jurisdiction on exclusive use lands is limited to narrowly defined by-law making powers delegated from *the Indian Act*. Second, governance in terms of scope and depth of law making authority and accountability favours the treaty option. For example, the treaty option recognizes In-SHUCK-ch legislative authority and sets out its relationship with federal and provincial law. In-SHUCK-ch law is paramount to federal and provincial law in 26 specific instances whereas, under the status quo option, In-SHUCK-ch authority is recognized in terms of individual first nations and is narrowly defined by the *Indian Act*, thus subject to the minister's authority. Third, the economic development potential in terms of incremental benefits favours the treaty option. All five indicators of exclusive use lands, governance, and economic development potential favour the treaty option over the status quo option.

Two of the criteria indicate a mix of support for the treaty option relative to the status quo. First, the integrity of In-SHUCK-ch non-exclusive use lands in terms of stewardship rights favours the treaty option because it offers roles and responsibilities in managing In-SHUCK-ch territory not available under the status quo. However, in terms of cultural rights such as hunting and fishing very little changes between the options. The In-SHUCK-ch Aboriginal right to hunt under the status quo option is the same as the In-SHUCK-ch treaty right to hunt under the treaty option. As a result, there is not a clear advantage for the treaty option. Second, the operating and capital revenue indicators of the criterion financial sustainability do not show a clear advantage for the treaty option. Operating revenue does increase but so do the activities that must be financed every year. This study does not attempt to ascertain land values for either option. Nor does this study investigate the potential for capturing economic rent from asserting Aboriginal rights under the status quo option. There is a clear advantage for the treaty option in terms of financial accountability. However, due to the lack of a clear advantage evident under the cultural rights, capital revenue and operating revenue indicators, the non-exclusive use lands and financial sustainability indicate a mix of support for the treaty option.

In summary, the treaty option outranks the status quo option. Thus, the In-SHUCK-ch Nation Final Agreement is worth initialling. By initialling, further analysis of the In-SHUCK-ch Nation Final Agreement will be conducted. Further analysis is required to compare the treaty option to scenarios other than the status quo option. The results of the study appear valid with the exception of financial sustainability. There are many ways to value land thus the ranking of land value may change upon further analysis. However, adjusting the ranking will not affect the overall conclusion because it will take more than land, regardless of its value, to bring In-SHUCK-ch people home.

Appendix A

Table 21 Stl'atl'imx Reserve Land and Population Data (INAC August, 2010)

First Nation	Reserves	Surface Area (Hectares)	Population	Reserve Land per registered member
Bridge River	3	4699.4	417	11.3
Ts'kw'aylaxw First Nation	8	2127	526	4.0
T'it'q'et	7	1497.8	377	4.0
Cayoose Creek	3	720.1	192	3.8
Seton Lake	8	1878.9	637	2.9
N'Quatqua	6	804.3	306	2.6
<i>Douglas</i>	3	432.3	233	1.9
<i>Skatin Nations</i>	10	676.6	384	1.8
Xaxli'p	17	1581.6	960	1.6
Mount Currie	10	2929.6	2032	1.4
<i>Samahquam</i>	5	175	317	0.6
<u>Total</u>	<u>80</u>	<u>17522.6</u>	<u>6381</u>	<u>n/a</u>
Average	7.3	1593.0	580.1	3.3

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- First Nations Tax Commission <http://www.fntc.ca/>
- First Peoples Language Map of BC <http://maps.fphlcc.ca/>

Harvard Project on American Indian Economic Development <http://hpaied.org/>

Indian and Northern Affairs Canada <http://www.ainc-inac.gc.ca/index-eng.asp>

In-SHUCK-ch Nation <http://inshuckch.com/>

Institute on Governance <http://iog.ca/>

Lil'wat Nation <http://www.lilwat.ca/>

Lower Stl'atl'imx Tribal Council <http://www.lstc.ca/>

Nation Centre for First Nations Governance <http://www.fngovernance.org/>

St'at'imc <http://www.statimc.net/>

Union of BC Indian Chiefs <http://www.ubcic.bc.ca/>

University of Victoria Indigenous Governance <http://web.uvic.ca/igov/>