Tsawwassen First Nation governance: an environmental justice case study

by

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RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF URBAN STUDIES

in the
Urban Studies Program
Faculty of Arts and Social Sciences

SIMON FRASER UNIVERSITY

Summer 2013

Approval

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Title of Thesis: ***Tsawwassen First Nation governance: an environmental justice case study***

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Abstract

This case study examines Tsawwassen First Nation's (TFN) governance transformation over the past twenty years as a claim for environmental justice, and whether the new regime provides opportunities to achieve environmental justice. The paper presents narrative evidence from interviews, media articles and government and legal documents describing TFN's transformation over into the first self-governing urban First Nation under a modern treaty agreement in British Columbia. Also key to this transformation was a 2004 benefits agreement with the port authority. The study contributes to a growing body of Canadian environmental justice scholarship using a framework that combines themes from existing literature with a specific definition generated from TFN interviewees. The paper finds that TFN's new governance regime gives members and their government a better opportunity to pursue procedural justice as a proxy for environmental justice. But, in the same way that forces of economic globalization and neo-liberalism influenced TFN's treaty agreement and port settlement deal, the powers of self-government will continue to be shaped by larger structural processes. The case study also reveals that considerations of environmental justice are necessary for achieving urban sustainability. The story highlights three elements for future sustainability efforts: transparent, accountable and democratic governance; Aboriginal/non-Aboriginal reconciliation; and a revision of how land is defined, valued and held.

Keywords: Tsawwassen First Nation; environmental justice; governance; urban sustainability

Dedication

This project is dedicated first to Jeremy, Henry and Leo for their patience and love. I could not have done it without Jeremy's partnership, unfailing support and incisive editing. Our two boys give us joy, hope and motivation.

In a more general sense, I dedicate this project to people everywhere who fight for environmental justice and just sustainability.

Acknowledgements

First I would like to acknowledge the generous people who agreed to be interviewed for this project. Their stories form its heart and soul.

Professor Peter V. Hall has been a kind, supportive and patient senior supervisor. Everything became much easier after I realized that he is always right. I also want to acknowledge Meg Holden, the second supervisor for this project, and all of the incredible professors that have enriched my time in the Urban Studies program: Karen Ferguson, Matt Hern, Frances Bula, and Anthony Perl. I want to thank the diverse, supportive and impressive classmates who made this program challenging, fascinating and fun.

Finally, I must acknowledge the people who cared for my children while I pursued my studies and finished this project: first and foremost my parents Neil and Diane Benson and my mother-in-law Carolyn Brown; the incomparable Krista Parham; and the caregivers of Les Petits, Skyfire and Los Niños at the SFU Childcare Society. Thank you for the gift of time.

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List of Acronyms

AGM	Annual General Meeting
ALC	Agricultural Land Commission
ALR	Agricultural Land Reserve
B.C.	British Columbia
BCTC	British Columbia Treaty Commission
CAO	Chief Administrative Officer
CP	Certificate of Possession
DFO	Department of Fisheries and Oceans (now known as Fisheries and Oceans Canada)
EHC	Environmental Health Coalition
EJ	Environmental Justice
FNS	First Nations Summit
GVRD	Greater Vancouver Regional District (now known as Metro Vancouver)
GVWD	Greater Vancouver Water District
INAC	Indian and Northern Affairs Canada
JVIF	Joint Venture Investment Fund
LMTAC	Lower Mainland Treaty Advisory Committee
LRSP	Livable Region Strategic Plan
MLA	Member of the Legislative Assembly
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MP	Member of Parliament
NDP	New Democratic Party (of B.C.)
OCP	Official Community Plan
ORE	Office of Research Ethics (at Simon Fraser University)
PMV	Port Metro Vancouver
SFPR	South Fraser Perimeter Road
SFU	Simon Fraser University
T2	Terminal Two (at Deltaport)
TEDC	Tsawwassen Economic Development Corporation
TFN	Tsawwassen First Nation

TFSI	Tsawwassen Fee Simple Interest
VPA	Vancouver Port Authority

Introduction

I would like to open this paper by acknowledging that it has been conceived, researched and written in the unceded territories of the Coast Salish people. I have attended countless meetings, events, protests, rallies and other gatherings of mostly non-Aboriginal, but left-of-center people in metro Vancouver that begin with similar statements. These assertions are undeniably true, and bear repetition lest we forget the history that defines this place. However, they have also come to annoy me. What I want to know is, what are we going to do about it? The gatherings opened by such statements rarely seem to address that more fundamental question.

Over the past two decades the Tsawwassen First Nation (TFN) has sought to do something about it. Although TFN never ceded its traditional territory, the Canadian government confined the Tsawwassen and most other First Nations in British Columbia (B.C.) to reserves in the 1870s. TFN's reserve was a summer village site located on between what are now called the mouth the Fraser River and Boundary Bay, on the shores of the Georgia Straight. Almost immediately the land and water around them where they had fished, hunted, gathered and otherwise subsisted for centuries were claimed, or "pre-empted" by colonial settlers and developed for fishing, farming and other colonial enterprises.

In the 1950s the character of settler development around TFN changed significantly to serve the growing urban metropolitan region. In 1958 the provincial government built a ferry terminal and causeway connected to a highway that cut through TFN's reserve and its coastal waters. The neighbouring farming and fishing villages of Ladner and, ironically, Tsawwassen began to transform into suburban communities. In 1969 the federal government built the Roberts Bank coal port in TFN's aquatic front yard attached to the mainland by another causeway at the northwestern edge of the reserve. TFN's lands and waters became effectively trapped between these two pieces of infrastructure; tidal flows were blocked and the natural ecosystem that had long provided

fish, shellfish and cultural activities essentially vanished. The economic benefit from these facilities passed through TFN to other parts of settler society, leaving behind a disproportionate share of pollution and degradation. TFN was neither consulted about these developments nor compensated for their impacts.

Throughout the twentieth century, most TFN members remained mired in poverty and the myriad socio-economic consequences that stem from discrimination and marginalization. When they were not being antagonistic, TFN's relatively prosperous non-Aboriginal neighbours treated band members as invisible. The Corporation of Delta entered into an agreement to provide water and sewer services for a tract of homes called Stahaken that TFN built in the late 1980s. After a policy shift in the early 1990s, these residents began to pay property taxes directly to the TFN band government. Although the residents did not seem to mind, Delta officials decried the move. When TFN developed its Tsatsu Shores condominium project in the 1990s, the municipality refused to contract for basic services amid protest from local conservationists about potential impacts to bird habitat.

TFN's story is, without a doubt, a story of environmental injustice in Canada. Over the years leaders and members sought various ways to do something about the question of their unceded territories and the consequences of dispossession. These efforts primarily met with dead ends and hostility. But over the course of the last two decades something truly transformative happened. Starting in 1992, TFN joined a treaty table under a new process mandated by decades of court rulings that increasingly legalized Aboriginal claims to rights and land title. In 2003 TFN, the province and the federal government signed an Agreement in Principle (AIP), and in 2007 ratified a final agreement—the first urban First Nation to achieve a modern-day treaty.

Meanwhile, during the 1990s the port brought the local effects of economic globalization home to TFN and Delta as Asia-Pacific trade increased rapidly. Over the course of the decade, the port had added two pods of container operations, officially turning the Roberts Bank terminal into Deltaport. Port officials continued to ignore TFN's attempts to address decades of negative impacts. In 2002, TFN launched a lawsuit against the port authority, ferry corporation and senior governments to redress the history of environmental and cultural damage that port and ferry developments had

wrought, and the governments' failure to consult with TFN in developing these projects. A few months later the Vancouver Port Authority (VPA) announced plans for two more rounds of terminal expansion to grow its container operations. In 2004 TFN's suit ended in a settlement with the port, giving TFN an economic stake in port activities. To settle its historical grievances, its land claims, and its desire for socio-economic equity with the rest of Canada, TFN had negotiated with the very governments and authorities that had perpetrated decades of injustice. In exchange, on April 3, 2009, TFN became a self-governing First Nation with over 700 hectares of its traditional territory now under its direct jurisdiction and a twenty-five-year benefits agreement with the port authority.

The neighbourly antagonism that TFN had faced for decades deepened over port-related land debates during its treaty process. A quiet deal between TFN and the provincial government in 1998 had guaranteed that Crown land surrounding the reserve would be made available for potential transfer to TFN in a final treaty agreement. Most of this land was agricultural, protected under the province's Agricultural Land Reserve (ALR). Much of it was land that the B.C. government had expropriated from farmers in the 1960s to be made available for port-related development that never happened. TFN insisted that the ALR designation be removed from the lands before settlement to ensure that its new government would have maximum jurisdiction and flexibility for future use. The Corporation of Delta, ALR supporters and environmentalists objected to any loss of land in the ALR. These same groups also increasingly opposed the expansion plans at Deltaport. While I found no evidence of outside support for TFN's lawsuit against VPA, many neighbours became solidly opposed to its treaty agreement after TFN settled the lawsuit and entered into the benefits agreement with VPA in 2004. Critics were convinced that the treaty agreement was simply meant to facilitate port expansion and make agricultural land available for industrial development. During the period of 2004-2007, community activists, city leaders and environmentalists fought not only the port's expansion project, but also the ratification of TFN's final agreement.

Indeed, the neo-liberal provincial government under Gordon Campbell and his B.C. Liberal party were motivated in treaty negotiations largely to stabilize the province's position in the global marketplace by providing certainty for investors and corporations. As discussed in chapter four, below, Campbell's abrupt turn-around from his vitriolic opposition to treaty negotiations, including a controversial referendum in 2001, to his

suggestion of a “new relationship” with First Nations in 2002 came largely because his supporters in the business world had realized they could no longer refuse to deal with First Nations. This allowed TFN and a handful of others to finally move towards final agreements. Boosting international trade through B.C.’s ports became a priority for the Liberals, particularly after launching the Gateway Program in 2003, so the province was undoubtedly motivated to reach an agreement with TFN that would facilitate port-related development and provide certainty in the market.

Internal and external critics believe these cynical motivations tainted TFN’s treaty process and the ultimate approval of the port settlement deal and the final agreement. But TFN members voted for the AIP, port settlement and final treaty agreements by large majorities—eighty-eight percent in the case of the VPA deal. These votes came after intensive consultation throughout the treaty process. This consultation continued as TFN, under a transition council, developed a new constitution, a foundational set of twenty-three laws, new membership and election codes, a long-range land use plan and a slew of other arrangements and policies to prepare for its treaty effective date in 2009. After the effective date, TFN elected a new twelve-member legislature and chief to pass laws and approve annual budgets. The chief and the four legislators who received the most votes in the election formed an executive committee that oversees the day-to-day work of governing.

Since the effective date TFN leaders and members have begun to experience the risks and rewards of self-government under the terms of its two agreements. While TFN is most often compared to a municipality, it is a comprehensive First Nations jurisdiction that holds certain powers beyond its municipal-like functions. It represents a new order of government that is often misunderstood by outsiders. Overwhelmingly, TFN members and leaders interviewed for this project agreed that this new government status is the primary achievement of the treaty agreement. TFN must be listened to, consulted and included in decision-making processes; it can form relationships and partnerships with other governments and in the marketplace; and it is directly accountable to its own members. The government’s most important powers, according to these interviewees, concern money and land. The ability to generate and manage its own funds provides the basis for all facets of self-government. But, although the treaty and port agreements contain multiple crucial and complex elements, it is land that has

been fundamental to those agreements, to the political and economic debates surrounding them, and to TFN's future as a self-governing First Nation. The overwhelming importance of land in this story has a lot to do with TFN's location in a major metropolitan region. This urban setting influenced experiences, decisions, major points of contention and opportunities throughout TFN's journey to self-government and will continue to do so into the future.

This story is about many things. It is about Aboriginal-settler relations; racism and neo-colonialism; the social conflicts that can arise around urban development and basic service provision; reconciliation and co-optation; how ports and other government agencies negotiate the demands of a global marketplace with their impacts on local communities; how local governments negotiate the forces of globalization and neo-liberalism with the needs and desires of their residents, and much, much more. But for me, it is most fundamentally about people: it is a story about the people of the Tsawwassen First Nation.

I chose environmental justice as the analytical framework for my project precisely because it places people at the center of the concept of environment, and focuses on the ways in which benefits and impacts of environmental change are shared and experienced in society. Environmental justice also requires that people be empowered to speak for themselves; specifically that the voices of the marginalized and disenfranchised people suffering environmental injustices be privileged in research and action. I chose environmental justice because it has defined my own worldview and values as a professional, a researcher and a citizen. But while environmental justice is a relatively known and understood concept in the U.S., where a specific environmental justice movement has grown out of grassroots anti-toxics organizing, civil rights movement action against environmental racism, and criticism of the mainstream environmental movement's failure to address social inequality, it has little currency and no related movement history in Canada.

A small but growing body of Canadian environmental justice literature has sketched some defining characteristics of how environmental justice is experienced, understood and negotiated in Canada. With this project I have told a story that embodies those characteristics and taken an environmental justice approach to research and

analysis. This is a quintessential Canadian environmental justice case study because I focus on a First Nations community that has pursued procedural strategies to negotiate both distributional and procedural injustices in a context of larger structural factors like globalization and neo-liberalism. While much of the Canadian environmental justice literature concerns rural First Nations, this project makes a unique contribution by focusing on an *urban* First Nation. An environmental justice methodology has allowed me not only to privilege the voices of those most directly affected by injustice, but more importantly to use their own expression of the concept of environmental justice. Based on a near consensus that true environmental justice is not achievable because it would mean a return to the intact culture and ecology of TFN's lands before the effects of modern development, most TFN leaders and members believed that procedural justice—having, gaining or regaining an equitable say over decision-making—served as a proxy for environmental justice in their circumstances. In this way, both the literature and the response from TFN interviewees reinforced my intention to focus on governance, the process by which decisions are made, as the major theme of my project.

My project asks: Has TFN's governance transformation over the past twenty years constituted a claim for environmental justice, and does the new regime provide opportunities to achieve environmental justice? Combining the environmental justice framework with a case study design and using a qualitative, mixed-method approach to data collection and analysis, I constructed a narrative to help me answer this question. My project tells the story of how TFN's new governance regime functions, and how decisions around the port expansion, treaty agreement, and port settlement deal led to its formation. I agree with Katherine Gordon, chief negotiator for the province of B.C. at the TFN table between 2000-2003, who said: "The structure and institutions of governance are unbelievably important, but the process by which they get created is just as important."[1] Both stories must be told together or neither will make sense. I focus

[1] Katherine Gordon (Chief Negotiator for British Columbia 2000-2003), interview with author, 28 March 2012.

most intensively on the period of 2002-2010, but include a chapter of crucial historical background. Because I conducted interviews in 2012, the paper contains some reflection on events up to that time, but I have chosen not to include any events after the conclusion of my interviews in April 2012. In the first chapter I tell the story of how I arrived at this topic and how I went about collecting and analyzing data. With a review of relevant literature, the second chapter tells the story of Canadian environmental justice and defines the conceptual framework used to understand the major narrative, which unfolds in chapters three through five. In chapter six I analyze these stories together in order to answer my central research question. In chapter seven I offer some concluding discussion that I hope will inspire future stories of a more just and sustainable city.

TFN's claim for procedural justice serves as environmental justice by proxy for this case. The new governance regime gives TFN members and their government better opportunities to achieve environmental justice. But global forces largely beyond the control of urban governments—capitalism and neo-liberalism—and the power and personal dynamics that influence inter-governmental relationships shape these opportunities. My conclusions are based on the stories and facts within the core narrative of this case study, and an in-depth examination of TFN's relationship with the port authority which considers whether its government and its members have greater power over decision-making, and to what extent larger processes of economic globalization and neo-liberalism affect that power.

While this study has provided an important perspective on Aboriginal/non-Aboriginal urban relations in the Lower Mainland, the conditional answer to my central research question is not entirely satisfactory. TFN might be sort of achieving environmental justice, but it might not. Time and further research would leave us better able to assess this question, but taking the environmental justice approach to this case study has also revealed some crucial insights for the future of urban sustainability in theory and in practice. In general an environmental justice analysis helps to illuminate the importance of incorporating social justice and human rights as we contemplate the real and intricate challenges of achieving sustainability in the post-modern city. More specifically, it has revealed what I argue are essential components of negotiating a future of *just* sustainability in the Lower Mainland: transparent, accountable and democratic governance, Aboriginal/non-Aboriginal reconciliation and a re-valuation of

land. Establishing and maintaining governance regimes to equitably negotiate the way land is valued, held and used in the urban spaces where Aboriginal and non-Aboriginal people coexist is the key to reconciliation and will determine our chances of surviving into a sustainable future.

This project is not participatory action research, but I hope that it might serve as research for action. The case study makes clear that the more comprehensive, 'bottom-up' approach of environmental justice is needed as the foundation of a better urban future. As an activist, citizen, parent and scholar I am most keenly concerned about the unjust and unsustainable outcomes of projects like the Alberta tar sands and their proposed bitumen pipelines, port expansions to accommodate fossil fuel exploitation and export, and the prospect of free trade zones at west coast ports. Confronting these and many other issues on the local to global scale will require intricate and difficult negotiated collaboration in urban communities where addressing racism, poverty, and Aboriginal sovereignty must be just as important as greenhouse gas emissions and migratory bird habitats.

Chapter 1.

Research Design

> "I cringe at the thought of how much analysis of our treaty is going on and people don't even come and talk to us." - Kim Baird

In March 2012, after I had asked TFN Chief Kim Baird a slew of wide-ranging questions for this study, she had two questions for me: How did this catch your attention? And, she added with a note of friendly incredulity, how are you going to make something of all this?[2]

Answering Baird's first question allowed me to synthesize, for the first time, the motivations and thought processes that have led to this study. Before moving to Canada in 2008 I had worked for an environmental justice organization in San Diego, California called Environmental Health Coalition (EHC). This was a "dream job" because it allowed me to be a professional activist fighting for the issues I was most passionate about—social justice and environmental sustainability—within a larger movement whose principles resonated with my own worldview. Robert Bullard, often recognized as the original and leading American environmental justice scholar, identifies two streams of grassroots organizing during the 1980s that eventually converged into the environmental justice movement. In the first stream, civil rights organizations incorporated environmental concerns into local activism based on external threats. The fight to keep a toxic sludge dump out of Warren County, North Carolina starting in 1982 is the most-cited early example. In the second stream, grassroots coalitions of environmentalists,

[2] Kim Baird (Chief of the Tsawwassen First Nation 1998-2012), interview with author, March 5, 2012.

unions and workers, and minority communities formed to fight exposure to toxics, such as the organizing in response to New York's Love Canal disaster of the late 1970s.[3] EHC, founded in 1980, was among the early instances of this second type of organization.[4]

I worked as a policy advocate and campaign director alongside community organizers and resident leaders in the low-income Latino community of Barrio Logan on issues of discriminatory land use, air pollution, truck traffic, affordable housing, and fair participation in decision-making processes. The neighbourhood is adjacent to San Diego's major port terminal and waterfront shipbuilding industry and has been fighting for years for the creation of an environmentally and socially just community plan to guide future land use decisions.

After moving to Burnaby with my family in 2008 I sought out the local environmental justice movement and looked for how environmental justice issues were playing out in my new home. What I found after a few years of living, observing, and studying was that no environmental justice movement existed as such. Certainly there are environmental justice issues and environmental justice work underway in Canada: the horrifying and disproportionate environmental, economic and health effects of tar sands extraction and transport on First Nations communities and vulnerable workers (not to mention the global climate); the case of the Sydney tar ponds in Nova Scotia where decades of toxic industrial waste were allowed to be dumped in a local waterway, befouling the ecosystem and sickening a whole town; 'Cancer Alley' (sometimes called Canada's Love Canal) near Sarnia in south-western Ontario where petrochemical facilities, industrial farming, and waste facilities are concentrated among a network of several First Nations reserves suffering disproportionately from unsafe drinking water,

[3] Bullard, *Dumping in Dixie*.
[4] For more information on EHC see www.environmentalhealth.org.

cancer and other environmental health problems.[5] But the only self-proclaimed environmental justice organization I found working locally was the cross-border (but U.S.-based) Indigenous Environmental Network, whose Canadian work focuses on opposing the tar sands and the proposed Enbridge bitumen pipeline in northern B.C.[6] First Nations seemed to be the most likely to experience environmental injustice, and to lead environmental justice struggles, but with the exception of Aboriginal people, who have clearly been victims of segregation and environmental racism, the general phenomenon of spatial and institutional racism—especially in cities—seemed much less apparent in Canada than in the United States.

Along with these observations I maintained my interest in ports, having worked in a port-adjacent community, and because I see ports as fascinating spaces where the local and the global come together in theoretical and physical ways. I was learning about the Gateway Program including the recent port expansion and grassroots opposition in Delta. So, as I told Baird, I started thinking 'what's happening in Delta? It seems like a weird place.' It appeared to be a community suffering from environmental injustices—port expansion, high voltage power lines, and trucking highways all proceeding despite local opposition—but did not fit the socio-economic or ethnic profiles I would have expected in the U.S. context. Except, of course, that the Tsawwassen First Nation reserve was actually closest to the port terminal. That seemed to explain why the port was there: it appeared to be a cut and dried case of historical environmental injustice. Then I began to hear stories from local environmentalists and activists opposed to the Gateway Program that TFN had recently "sold out" to the port in a special benefits deal that was somehow linked to its treaty negotiations. I was puzzled by TFN's actions and troubled by the seeming absence of solidarity between activists and First Nations in this case. The more I learned about the settlement agreement with the port authority, the treaty process, and the nature of the reactions among Deltans and other activists the

[5] Buzzelli, "Environmental Justice;" Ali, "Political Economy;" Deacon and Baxter, "Framing Environmental Inequity;" Mascarenhas "Where the Waters Divide;" Ecojustice "Healthy Communities."

[6] IEN, http://www.ienearth.org/, accessed October 2011.

more it seemed to me that this was a fascinating, challenging and extremely important example of what it really means to negotiate environmental justice in a post-modern city.

Approaching TFN's story as an environmental justice case study was a very personal choice. My interests, experiences and worldview shaped how I designed the research and how I interpreted my data as much as the environmental justice literature reviewed in the following chapter. I initially hoped that the project would not only contribute to academic inquiry but also inform real life practice. I still hold this hope, but the farther I got into the literature on environmental justice in Canada and interviews with TFN leaders and members the more I realized the best I can do is attempt to faithfully tell a story, with full disclosure of my own biases, and taking measures, in the spirit of the fundamental concepts of environmental justice, to privilege the voices of those directly experiencing injustice and negotiating change. My project is therefore designed as a narrative case study.

The case study form fits this project because it allows me to "focus on the specificities of the case, providing rich, detailed data."[7] While I have made clear that my own voice and the voices of my interviewees will predominate, the case study approach allows me to provide "space for the voice of the reader in deciding the meaning" of the story.[8] Since "good narratives typically approach the complexities and contradictions of real life," I chose to present the study in narrative form.[9] In the core chapters of the narrative I have tried to weave together data from various sources in a way that still leaves room for readers to draw their own conclusions, where multiple voices and interpretations coexist even in conflict. This is a consciously "understanding-oriented" and "action-oriented" approach because "it is often more important to clarify the deeper

[7] Babbie and Benaquisto, *Fundamentals*, 319.
[8] Flyvbjerg, *Making Social Science Matter*, 86.
[9] Ibid., 78, 84.

causes behind a given problem and its consequences than to describe the symptoms of the problem and how frequently they occur."[10]

Methodology

Because this project studies complex social phenomena it did not lend itself to empiricist social scientific methods. For this reason, my project was purely qualitative in its data collection and analysis. This kind of research requires a mixture of methods to provide richness and depth. I employed two methods to collect data—document review and semi-structured interviews. These comprise an intensive study of the same phenomenon and therefore constitute a strategy of "between-method triangulation."[11]

John Gaber and Sharon L. Gaber describe five purposes for mixed method research; my methods serve all of these purposes. Primary documents provided the narrative framework needed to describe the basic plot and timeline of the case. This, along with key concepts from the literature review, informed the themes and questions used in the semi-structured interviews, serving the purpose of development. Interviews provided narrative data to corroborate the document review, serving the purpose of convergence. However, this richer dataset also highlighted gaps in understanding, contradictions, and nuanced perspectives, thus serving the purpose of initiation. Indeed, the most important function of the interviews was to provide detailed insight into the timeline's events and decisions to uncover the deeper meaning of the case, thus serving the purposes of complementarity and expansion. While documents have been essential sources for this study the interviews have allowed me to incorporate multiple and diverse voices to approach a closer approximation of "the real story."

The documents I reviewed included media articles, websites, legal, port, and government documents. In the process I also reviewed a handful of visual material such

[10]Ibid.
[11] Gaber and Gaber, "Utilizing," 98.

as maps, photos and videos (Appendix F contains several relevant maps as noted below). I reviewed, re-organized and pre-coded documents I collected for previous research projects including term papers for courses in Urban Inequality and Urban Governance; and work undertaken as a research assistant on Peter V. Hall's project, Global gateway: local benefit?[12] These included hundreds of newspaper and magazine articles, dozens of TFN and other government documents and agreements, legal documents from TFN's lawsuit against the port authority and key websites such as TFN's, the British Columbia Treaty Commission's (BCTC) and the First Nation Summit's (FNS). Guy Gentner, Member of the Legislative Assembly (MLA) for Delta North until April 2013, also generously opened his personal files to me, providing a number of key historical sources. I have specifically indicated in the bibliography the documents Genter shared with me because in some cases they are not otherwise publicly available and citation information may be incomplete. It is also important to note that I have only cited sources in notes when directly quoting or drawing a specific fact or concept from that particular document. Especially in the case of media, I reviewed hundreds articles from the *Delta Optimist*, *Vancouver Sun*, *The Province*, *B.C. Business Magazine* and other local publications that are not directly cited in notes or the bibliography but have contributed to my understanding of this case. I would happily make full lists of references from previous research projects available upon request.

In keeping with the overall qualitative method I did not seek a statistically representative sample of interview participants. I used a purposive sampling technique to recruit major actors in the case's events and decisions,[13] primarily elected officials and people already identified in the public domain. I set out with categorized and quantified targets for interview participants because I wanted to be sure to include voices of all the major parties involved, and match up insider and outsider views. I hoped that this would

[12] "Global Gateway, Local Benefit?" SSHRC Standard Research Grant # 41020080829 (May 2008-April 2012). SFU Research Ethics Approval # 2011s0310. The purpose of this research is to understand how the strategies of employers, workers and intermediaries in the port-logistics sector affect the local distribution of the economic benefits of global trade gateway development.
[13] Babbie and Benaquisto, *Fundamentals*, 182-3; Valentine, "Tell Me About," 117-8.

allow a cross-checking of data to help avoid the error of skewing data towards one particular storyline. This is not to say that I believe I can (or would ever want to) provide a "balanced" accounting of "both sides of the story." In this case there are not only multiple sides of the story, but multiple reasons to give greater attention to the collection of data from TFN leaders and members. Especially considering the extent of historic and present-day colonialism that has coloured Aboriginal-settler relations (including in academia), it is imperative for TFN members to speak for themselves in telling these stories and defining environmental justice. In fact, as I will discuss in greater detail in the following chapter, this kind of situated definition and the privileging of voices from the marginalized groups experiencing injustice is central to the concept of environmental justice. It was therefore essential to interview primarily TFN leaders and members. I used publicly available e-mail addresses and/or phone numbers (from TFN's online staff directory, agency websites, or more general online directories using names gleaned from the document review) to request interviews with potential participants and set appointments in places of their choosing.

I conducted interviews as semi-structured, "guided conversations," dialogues rather than interrogations.[14] I used a set of SFU Office of Research Ethics (ORE)-approved question guidelines covering the topics I wished to discuss with each participant (see Appendix A). I asked each person to recount, from her or his perspective, the series of events that led to TFN's current governance system and how that system currently works. This included questions specific to the treaty process and TFN's lawsuit and settlement agreement with the port authority. In each interview I asked probing follow-up questions based on my evolving understanding of the story. Most importantly for the purposes of this study, I asked each participant for her or his own definition of environmental justice.

I followed my ORE-approved protocol with all participants to obtain their informed consent. With participant approval, I digitally recorded all but one interview for analysis. I

[14] Ibid., 343; Ibid., 111.

asked participants to pass contact and study information on to anyone else they thought might be interested in participating or to speak with potential contacts before putting us in touch with each other. I avoided the snowball approach in order to better protect the privacy of my interviewees. Selecting my own respondents for recruitment from publicly available sources has allowed me to avoid interviewing only participants that powerful actors identify or recommend. Recruiting interviewees in this way made it challenging to achieve my goals for interview diversity and depth, particularly among TFN dissenters. I was able to interview the one TFN member who has consistently and publicly aired her opposition to the new governance regime, but she was not able to connect me with anyone else who shares her views. Thanks to the direction of Urban Studies advisors, connections I made after attending a TFN legislature meeting in February 2012, and simply being present in the community for other interviews, I was able to broaden beyond my original target of elected officials to interview two TFN members not serving on the legislature. One was an elder who is very involved in the workings of the new government, and the other was a resident who does not participate much in decision-making processes.

In total, I conducted fifteen interviews (see a full list of interviewees in Appendix B). I sought to interview up to seven of the thirteen TFN executive and legislative council members; I have interviewed six, plus an important advisor to the leadership pre and post-treaty agreement. As I had hoped, this group included Chief Baird and two others involved in the leadership throughout the study period. After attending observing the mix of councillors at a legislature meeting, I also set out to interview two or three who were elected only to the post-treaty government. I have interviewed three, including two young members for a diverse age or generational perspective. I set out to interview proportionally more leaders because their statements are inherently public and because I expected them to have the most detailed and intricate knowledge of the events and decisions central to this case study. While I have found this to be true, it was also important to hear perhaps less detailed and precise perspectives from others that allow for a more nuanced understanding of how people have experienced TFN's transformation. For external perspectives from parties involved in the various events leading up to TFN's new governance structure, I have interviewed: Delta's two MLAs, a former port authority official involved in the lawsuit settlement deal, and the province's

chief negotiator at the treaty table between 2000 and 2003. I also conducted one anonymous informational interview with a knowledgeable source that has been a direct observer of events over the past two decades.

While my consent protocol clarified that I could not guarantee complete confidentiality given the nature of this case, four interviewees chose to remain anonymous. I have included their rich stories and perspectives while minimizing detail that might identify them personally. I have assigned pseudonyms for each of these interviewees for use in the narrative and analysis chapters (see also Appendix B). Because interviews have served as my primary data source, I have sought to avoid excessive citation. I include notes with full interview information at the first citation of each interviewee. In subsequent instances I only use note citations if the interviewee is not identified in the text. I also duly cite instances where an interviewee has otherwise authored or been quoted in a separate document.

Data Analysis

In keeping with the case study design, the overall approach to my data was a form of "narrative analysis." In Mike Crang's words, this is a way of "linking people, places and events into stories" based on the belief that "people tend to make sense of things as stories, comprising events, imputing motives, agency and roles, rather than in terms of static characteristics."[15] This narrative approach combined textual and historical methods of analysis. Historical analysis "is a systematic way to understand the changing context of organizations, communities, and policies" and therefore lends itself well to my topic and the research design.[16] Textual analysis emphasizes the search for deeper or latent meaning from sources, relies on the application of social theory, and examines the epistemology of the researcher. Historical and textual approaches create an excellent synergy in this project using documents and oral histories to reconstruct the central

[15] Crang, "Analysing Qualitative," 230.
[16] Abbot and Adler, "Historical Analysis," 472.

narrative, which is then analyzed using a theoretical framework that is deeply informed by my own views and experiences as a professional and researcher.

As noted above, data collection began with a term paper for URB 635, Urban Inequality, in the spring of 2010. This phase of document review lasted through the end of 2011 and included research for a second term paper on TFN governance and for Dr. Hall's port-logistics study. As I began focusing this preliminary document review phase specifically on this project in the fall of 2011, I developed a system of coding and memoing. The codes, informed by the initial document review and the literature review I undertook at this same time, are unique to the case and most are likely not replicable for other studies. I developed a codebook with two categories of coding: narrative and major concepts (see Appendix C). I expected some concepts, such as environmental or procedural justice, likely would be expressed with different language in sources and by interviewees. I developed lists in the codebook of proxy terms for which these codes were applied.

The codes include flags for evidence of such things as racism, co-optation, neo-liberalism, and colonialism, applying concepts from the literature review. These concepts and flags also played into the memoing process to help elaborate meanings and identify trends, tropes, and structural themes that other scholars have identified in similar cases. This process has been especially crucial to this case because settler-dominated scholarship, policy, and social relations around First Nations have been so deeply affected by stereotypes, fetishization, discrimination, and colonial racism. As this description suggests, my analysis conforms to a post-structuralist style of critically examining all sources for underlying socio-cultural symbols, metaphor, and (often obscured) inherent power relationships or institutionalized inequalities.

I conducted interviews in February through April of 2012. Immediately following each interview I digitally recorded two voice memos: one to capture the content of the interview based on memory, and a second to evaluate the conversation, compare it with other interview data and identify themes. The process of recording and transcribing these memos included considerations of motivations, influences, biases, and emotional responses, as well as new thoughts or linkages to other sources or threads of data. This led to a comprehensive memo which, taking into account the content and trajectory of

the interview data, solidified the direction and format of the case study and allowed me to quickly proceed to the narrative synthesis phase of analysis.

The narrative exercise constituted the synthesis phase of analysis. I began by piecing together a full draft of the core chapters covering the story of TFN's transformation using a timeline based on the initial document review and data from interview memos. I listened to recorded interviews and took detailed notes rather than transcribing each one verbatim. Then I incorporated interview data into the draft narrative. This allowed me to identify key points that required elaboration, confirmation or further evidence. A second stage of document review served to fill these data gaps and complete the core narrative.

Although my conceptual framework had informed the coding, memoing and narrative construction process, it was in this final analysis phase that I comprehensively applied the framework. I started by developing the first component—a participant-generated definition of environmental justice—extracting verbatim responses from interview data, then summarizing and synthesizing those answers (see Appendix D for an abbreviated version of the table I used for this process). Then, I applied the participant-derived definition along with the second component developed from the literature review—procedural justice and structural context—to the draft narrative in order to answer and go beyond the research question. Based on the ideas developed through the coding, memoing and drafting process I was able to identify larger themes and widen my argument, as discussed in the paper's conclusion.

The analysis process included sequencing and cross-checking of data sources and served as a guard against researcher and participant bias. Perhaps it is for this reason that Earl Babbie and Lucia Benaquisto argue that mixing methods is the best way to avoid errors of accuracy in data analysis. Inaccuracies and bias are inherent in all sources. Human recollection is particularly suspect, whether for reasons of basic cognition or politically or personally motivated representation. Seeking "replication," and

in the case of historical data, “corroboration” (when multiple sources lead to similar conclusions), has allowed me to avoid inadvertently skewed conclusions.[17] These measures of replication and corroboration helped me to determine when I had done enough analysis. During the narrative construction phase I asked myself questions such as: can I tell the story completely yet? Is my interview data replicating and corroborating the sources from the public domain? Are there major discrepancies that require new paths of analysis, point to important themes, or lead to vastly conflicting conclusions? The story of TFN’s Stahaken and Tsatsu Shorese residential developments in the 1980s and 1990s provides a good example of how deployed this process. Several interviewees mentioned the impacts these developments had on internal and external relations at TFN. It became clear that understanding their history was an important element of interpreting critiques and conflicts during and after the treaty process. I therefore sought sources specific to these developments during the final document review in order to describe events and their impacts on perceptions and motivations later in the story.

In fact, discrepancies or varied interpretations are particularly illuminating in this case. I have intentionally mixed voices to leave room for multiple or variegated understandings of TFN’s complex story of transformation. I rely more heavily on some interviews because each varied in length, depth and detail. I have also limited some of the detail from anonymous interviews in an attempt to preserve that anonymity. Some leaders, simply by virtue of their long histories and direct involvement in decisions and events, had more to share. I also chose to omit certain information from some interviews that I would characterize as rumour or innuendo. While these pieces likely point to deeper layers of the story that could have bearing on the meaning of this case, they could not be adequately investigated within the scope of this project. Making room for and finding meaning in this collection of voices required a strong conceptual framework.

[17] Babbie and Benaquisto, *Fundamentals*, 309.

Chapter 2.

Literature Review

I chose to pursue this research project as an environmental justice case study. While I have explained this choice above, it was essential to determine what I meant by "environmental justice" before proceeding with data collection, let alone analysis. Consistent with its grounding in localized, grassroots action, there is no "standard" or "authoritative" definition of environmental justice. Definitions are numerous, capacious, situated, contingent, and based on people and communities speaking for themselves.[18] As Anne-Marie Debbané and Roger Keil argue from a Canadian context, "environmental justice as a concept and practice is locally grounded" and defies universal definition.[19] People directly experiencing the various injustices are therefore the authorities on what environmental justice means to them. Although my study is informed, as all environmental justice scholarship is, by the movement's American origins, this case is situated in Canadian environmental justice literature, particularly the significant vein focusing on Aboriginal experiences. A review of the literature, paired with a participant-driven definition have led to a particular conceptualization of environmental justice for the purposes of this project's theoretical framework.

Although it has spread and broadened globally, the environmental justice concept was born in the United States. What would become known as the environmental justice movement took shape in the 1980s, and scholarship under this label began to appear in the early 1990s. The antecedents of this scholarship were studies revealing

[18] Agyeman et al., *Speaking for Ourselves*.
[19] Debbané and Keil, "Multiple Disconnections," 210.

the phenomenon of environmental racism: people and communities of colour have been disproportionately more likely to be burdened with pollution, exposure to toxics, and locally unwanted land uses. The most frequently cited example of such studies is the 1987 report from the United Church of Christ Commission for Racial Justice; Robert Bullard and Bunyan Bryant and Paul Mohai provide other significant instances of such findings.[20] Among the most likely groups to experience environmental injustices in the U.S. have been African-Americans, Latinos, and American Indians. The latter, as Tom B.K. Goldtooth points out, must negotiate these experiences in the context of contested native sovereignty.[21]

The landmark First National People of Color Leadership Summit in October 1991 solidified the movement and produced the "Principles of Environmental Justice." The Principles continue to form a foundation for environmental justice activism in the U.S. and elsewhere even after twenty years (Appendix E).[22] While academic and policy literature often reduce the meaning of environmental justice to the fair distribution of environmental 'bads', the Principles more effectively encompass the set of issues, rights, and claims that make up what Dorceta Taylor calls the environmental justice paradigm.[23] They demonstrate that environmental justice "is as much about civil rights, self-determination and power as it is about the questions of health and environmental quality."[24] Indeed, the Principles include the rights of all people to self-determination, to equal partnership in decision-making, to clean air, land, water and food, to freedom from discrimination, toxic exposure, and ecological destruction, to health care and reparations for past injustices, and to a safe and healthy work environment. Opposition to the production of toxics, to military occupation, and to the destructive practices of corporations are included, as are affirmations of the sovereignty and self-determination

[20] UCC Commission for Racial Justice, *Toxic Wastes*; Bullard, *Dumping in Dixie*; Bryant and Mohai, *Race and the Incidence*.

[21] Goldtooth, "Indigenous Nations."

[22] Available from Energy Justice Network, www.ejnet.org/ej.

[23] Taylor, "Environmental Justice Paradigm." Buzzelli uses this kind of simplistic definition in his 2008 study "Environmental Justice."

[24] Taylor as paraphrased in Mascarenhas, "Where the Waters Divide," 574.

of indigenous peoples in particular, of the need for urban and rural policies that clean up, rebuild, and provide equitable access to resources, and of the sacredness of Mother Earth.

Environmental Justice in Canada

Canadian environmental justice literature reflects many of the anecdotal observations I described in chapter one. Several scholars confirmed that racism and its spatial effects in cities are less pronounced and take different form in Canada as compared to the U.S.[25] Based on research in Toronto's inner suburbs, Cheryl Teelucksingh proposes a framework of environmental racialization (as opposed to the American trope of environmental racism) to describe how fluid communities of relatively marginalized people—including immigrants, "visible minorities," low-income people, and others—experience land use decisions and environmental impacts.[26] Studies that follow the more empirical, environmental health approach to environmental justice scholarship (comparing spatial and demographic variables) reinforce Teelucksingh's thesis. This data shows complex and nuanced relationships between indicators of social difference and the distribution of negative externalities like air pollution.[27] Roger Keil, Melissa Ollevier and Erica Tsang have found evidence that environmental justice issues and activism exist in Toronto, but are not recognized under the environmental justice label, or as a specific social movement.[28] Many others confirm the trio's findings that Canada has not seen a U.S.-style environmental justice movement develop.[29]

[25] See Teelucksingh, "Environmental Racialization;" Keil, Ollevier and Tsang, "Why is There;" Haluza-Delay, "Environmental Justice;" Debbane and Keil, "Multiple Disconnections;" Walks and Bourne, "Ghettos."

[26] Teelucksingh, "Environmental Racialization."

[27] Buzzelli "Environmental Justice;" Buzzelli et al., "Spatiotemporal Perspectives."

[28] Keil, Ollevier and Tsang, "Why is There."

[29] Agyeman et.al, *Speaking for Ourselves*; Haluza-Delay "Environmental Justice;" Teelucksingh, "Environmental Racialization;" Ali, "Political Economy;" Debbané and Keil, "Multiple Disconnections;" Mitchell and Draper, "Environmental Justice Considerations."

An environmental racism analysis does apply to Canadian First Nations, however. Colonial dispossession is arguably the original sin of environmental injustice in the Americas. Discrimination and violence against Aboriginal people is engrained in Canada's colonial past and present, its institutions, and society at large. First Nations reserves are so clear an instance of enforced racial segregation that scholars have compared them to South African apartheid.[30] The editors of *Speaking for Ourselves: Environmental Justice in Canada* declare:

> Aboriginal peoples are faced with systemic environmental injustice in terms of treaty and land claims processes; . . . air, water, and land pollution; . . . resource extraction by outsiders on unceded territories by government-sanctioned contracts . . . the lack of ready and affordable access to economic development where they live; poor quality of life conditions, including access to education and health care; the failure by the Canadian state to recognize underlying an unalienable Aboriginal title and rights; and the unwillingness of the Canadian state to right historical wrongs to First Peoples.[31]

The state, corporations, and settler society still keep open the wounds of colonialism and dispossession in Canada today. I agree with scholars who assert "there is no 'post' in post-colonial."[32] Mary Louise McAllister characterizes colonialism in Canada as an imposition of foreign administrative power "to advance British economic interests."[33] This system was only made possible by a regime of dispossession, robbing indigenous people of their land and resources, then dominating and marginalizing them through the workings of the state and a capitalist economy.[34] As leading Canadian environmental justice scholars Randolph Haluza-Delay, Pat O'Riley, Peter Cole and Julian Agyeman argue, colonialism characterizes Aboriginal/non-Aboriginal relations in Canada to this day because "the marginalization of First Nations is an effect of state and corporate . . .

[30] Debbané and Keil, "Multiple Disconnections."
[31] Agyman et al., *Speaking for Ourselves*, 12.
[32] Haluza-Delay et. al, "Introduction," 16.
[33] McAllister, *Governing Ourselves?*, 44.
[34] Blomley, *Unsettling*; Lutz, *Makúk.*

strategies for appropriating land and exploiting or diverting natural resources."[35] Thus, for the purposes of this paper, I understand colonialism as an ongoing process of dispossession, domination and marginalization to serve the socio-economic imperatives of a settler regime.

The challenge of getting to *post*-colonialism, Cole Harris holds, lies at the very heart of Canadian identity:

> The issues of Native title and sovereignty are particularly difficult for Canada, partly because of Quebec, partly because the very country, as it is increasingly understood, rests on the respectful appreciation of difference, and on bonds of common citizenship that do not derive from a hegemonic conception of a unitary identity, but from a realization that the defence of difference is a good part of what makes us an interesting and attractive society. From this Canadian perspective, therefore, it is exceedingly important to redress a relationship that has been drastically wrong, and exceedingly difficult to concede the sovereignty of its parts because, in a sense, Canada no longer exists without them.[36]

John Sutton Lutz agrees, arguing that "Aboriginal Peoples have been and continue to be at the centre of what it means to be Canadian," and that non-Aboriginal people "are haunted by the unfinished business of colonization and a collective guilt over historic injustices."[37] This unfinished business hangs over urban politics and will become increasingly destabilizing until resolved.[38] Harris argues that solutions must be negotiated through a "politics of difference," recognizing the distinctiveness of native people and returning land and resources to First Nations for their economic viability. As an example of the negotiated reconciliation of Aboriginal claims, which has hinged upon fundamental economic and environmental issues, TFN's story is important to the ongoing debates and conflicts over Aboriginal-settler relations.

[35] Haluza-Delay et. al, "Introduction," 16; see also Blomley, *Unsettling* and Ominayak and Thomas, "Lubicon Lands."

[36] Harris, *Making Native Space*, 322.

[37] Lutz, *Makúk*, 297, 296.

[38] Blomley, *Unsettling*, 108-09.

Indeed, the fundamental element of Aboriginal/non-Aboriginal relations sets Canadian environmental justice apart from American environmental justice. As Haluza-Delay asserts, "the relative position of First Nations both politically and culturally . . . should inform approaches to justice and the environment that are more useful for this country."[39] Canadian academics and scholars of Canada have recently begun to define a distinctly Canadian channel of environmental justice scholarship. In particular, *Speaking for Ourselves* in 2009, and a special issue of the journal *Local Environment* in December 2007 (volume 12, issue 6) have helped to define this channel. But environmental justice frameworks and the principle of placing the experience of First Nations at the centre of environmental justice scholarship has been reflected in Canadian research, particularly case studies, since the 1990s.[40] My project seeks to contribute to this body of work. The Tsawwassen people have clearly been victims of environmental injustice from the time of first contact. Over the last two decades, TFN found a process of resolution in the context of land claims and treaty rights, but also negotiated a benefits deal with the port authority. Hence, the case is representative of questions that are distinctive to the Canadian understanding of environmental justice, and rest at the core of the origins of environmental justice, but that also "challenge the predominant tradition of environmental justice scholarship."[41]

[39] Haluza-Delay, "Environmental Justice," 557. Haluza-Delay and fellow editors reiterate this point in *Speaking for Ourselves*.

[40] For example, Dalby and Mackenzie, "Reconceptualising;" Westra, "Environmental Racism;" Mitchell and Draper, "Environmental Justice Considerations;" Larsen, "Promoting Aboriginal Teritoriality;" Page, "Salmon Farming;" Mascarenhas, "Where the Waters Divide;" Lovelace, "Notes from Prison;" Ominayak and Thomas, "Lubicon Lands;" Place and Hanlon, "Kill the Lake?"

[41] Ishiyama, "Environmental Justice," 120.

Procedural and Distributional Justice

American and Canadian scholars alike describe environmental justice concerns as matters of procedural and distributional justice.[42] That is, environmental justice activists and scholars seek to reveal and redress both the inequitable and discriminatory distribution of environmental 'goods' and 'bads' and the power imbalances and inequitable access to decision-making processes that lead to this distribution. As Noriko Ishiyama and others point out, both environmental justice literature and grassroots action have tended to focus more on distributional justice. My study shall be part of a general shift in scholarship, particularly evident in Canada, away "from documenting the distributional injustices of unequal exposure toward demonstration of procedural injustices of uneven democratic participation and ecological citizenship."[43] I have chosen to focus on governance in this case study as a proxy for procedural justice. I employ a working definition from a TFN annual report: "[g]overnance refers to the process of making decisions and the process by which those decisions are implemented."[44] Governance is the most fundamental element of TFN's transformation. It encompasses and links together other crucial elements. As Gordon told me, it was difficult to separate governance from all the other aspects of TFN's treaty negotiations. "If you're going to acquire land how are you going to use it, how will it be managed, what codes do you want to apply?" she said. "Same with cash—where will it go, how's it going to be managed?" Although I focus on questions of land throughout this paper—to the exclusion of many other important issues negotiated in the treaty process in particular—it is the element of governance that is most crucial to understanding TFN's story as a claim for environmental justice.

[42] Ibid.; Agyeman et al., *Speaking for Ourselves*; Agyeman, Bullard and Evans, "Exploring the Nexus;" Rahder, "Invisible Sisters." Others have used slightly different terms for the same concepts: procedural and outcome equity in Deacon and Baxter, "Framing Environmental Inequity;" substantive and procedural rights in Mitchell and Draper, "Environmental Justice Considerations."

[43] Haluza-Delay, "Environmental Justice," 559.

[44] TFN, *Annual report 2009-2010,* 12.

Given environmental justice's emphasis on grassroots action and affected groups "speaking for themselves," it is ironic and problematic that I am imposing an analytical concept to this case that comes not from TFN itself, but out of my own passions and experiences. I have therefore attempted to balance my academic imposition by privileging the words and ideas of TFN members and leaders in the conceptualization of environmental justice for the purposes of this project. My interviews were not only the most important sources of data for this case study, but also the source of the most important element of my conceptual framework. Through the analysis process described in the previous chapter I arrived at the following conceptualization of environmental justice.

Several responses to my interview questions about environmental justice reflected the notion that people—and therefore cultural and socioeconomic issues—cannot be considered as separate from the environment. There was an obvious and stark contrast between this notion and the ideas expressed by TFN's non-Aboriginal critics. Gentner and fellow Delta MLA Vicki Huntington both saw environmental justice as a protection of the non-human, natural environment or ecosystem above all else.[45] TFN interviewees' definitions reflect a critique that has been at the heart of the environmental justice paradigm: that the more traditional, largely white, middle-class environmental movement often ignores and even demonizes people; and that it often fails to address the distributional and procedural injustices of environmental change and development brought on by colonialism, racism, poverty and inequality.

In this context, true environmental justice for many TFN interviewees would be a return to a traditional way of life unaffected by colonialism and modern development. This would require a restoration of the water, land and resources that sustained Tsawwassen physically and culturally before being decimated by the impacts of development. Because this is unattainable, any attempt to address these injustices is a

[45] Vicki Huntington (Independent MLA for Delta South and former Delta municipal councillor), interview with author, 8 February 2012; Guy Gentner (NDP MLA for Delta North and former Delta municipal councillor), interview with author, 17 February 2012.

necessarily incomplete proxy for, or an approximation of, environmental justice. From a perspective of distributional justice, the impacts cannot be undone and the development cannot be removed. So environmental justice by proxy primarily means seeking procedural justice—power, control, having a say, participating, being consulted—in the decisions that affect the lives of TFN members, TFN as a community, and the environment both locally and globally. All but one of the TFN interviewees cited elements of procedural justice as fundamental to working towards environmental justice by proxy. This reinforces the validity of focusing on governance as the central theme of my case study. Although many used other terms (control, participation, action, having a say), for the purposes of analysis I have focused on whether TFN's governance transformation was a claim for greater *power* over decision-making, and whether the new regime has indeed given members and leaders more power over the decisions that affect their lives?

I argue that treaty and port negotiations were claims for procedural justice and, overall, under self-government TFN and its members now have a better opportunity to affect decisions. But this power is contested and subject to larger influences. While most of the TFN leaders and members interviewed believe that they have made some gains, critics are sceptical. Critiques highlight some key structural processes and forces that must be considered in a thorough assessment of environmental justice. I will follow a scholarly trend of broadening environmental justice analyses to encompass larger sociohistorical processes that shape procedural and distributional outcomes. S. Harris Ali argues that "[w]ithout this analytical reorientation toward a more critical understanding of structural inequality, the literature that supports the environmental justice movement will continue to have a limited theoretical perspective that leads to description rather than explanation."[46] TFN's location in the global supply chain and the neo-liberal motivations of senior governments deeply affected the creation and functioning of the new governance regime. Globalization encompasses an array of international flows—of capital, goods, property, communications and transport, among others—in the service of

[46] Ali, "Political Economy," 97.

capitalist accumulation.[47] For the purposes of this case study my discussions of globalization are focused on the flows associated with international trade activity through and around Port Metro Vancouver, Deltaport in particular.

Neo-liberalism, a political process inextricably linked to economic globalization, involves the practice and ideology of privatizing public goods, services and functions—e.g. the dismantling of the welfare state, or gutting of environmental regulations and assessment processes—in order to facilitate the 'free-market' economy, individualism and entrepreneurialism.[48] Haluza-Delay finds that analyzing local environmental justice issues and grassroots action as responses to neo-liberalism appears to be a trend in Canadian scholarship.[49] Debbané and Keil go so far as to argue that Canadian "EJ claims" have arisen largely in reaction to "attempted neo-liberal replacements of welfare state securities" rather than community-based socio-environmental struggles.[50] As Michael Mascarenhas shows, this does not accurately describe many First Nations experiences, where neo-liberal policies have exacerbated long-standing and historical environmental injustices.[51] This has certainly been the case in B.C. where, particularly over the last two decades, provincial government actions, including Aboriginal relations and the approach to treaty-making, have been motivated by neo-liberal aims to facilitate and create certainty for the purposes of international trade, development, investment and resource extraction while eliminating social welfare programs or downloading public responsibilities to municipalities, individuals and the private sector.[52] Meanwhile, these initiatives and similar federal moves in areas from Indian policy to port development served only to exacerbate historical inequality and marginalization for members of TFN. In this context it is crucial to assess not only the extent of TFN's new decision-making power, but also how larger processes of neo-liberalism and globalization affected the

[47] Mitchell, "Annihilation;" Castells, "Local and Global."

[48] Blomley, *Unsettling*; MacDonald, "Indigenous Peoples;" Ali, "Political Economy;" Haluza-Delay et. al, "Introduction."

[49] Haluza-Delay, "Environmental Justice."

[50] Debbané and Keil, "Multiple Disconnections," 218.

[51] Mascarenhas, "Where the Waters Divide."

[52] Rossiter and Wood, "Fantastic Topographies;" McAllister, *Governing Ourselves?*.

establishment of TFN's new regime, and continue to shape its powers of self-government.

Co-Optation?

In exploring this question of larger influences, I will examine the suggestion implicit in many critiques that TFN has been co-opted. Particularly in a case of Aboriginal/non-Aboriginal relations this argument is highly charged and must be considered carefully. In some ways, the negotiation and settlement of native land claims, particularly in B.C., can be seen as a new phase in a historical pattern of state co-optation of First Nations' organizing and advocacy efforts. After the controversies surrounding Canadian assimilation policies in the late 1960s, Noel Dyck argues, the state initiated a process of co-optation with new channels of federal funding for band-generated initiatives and programs. Writing in 1997, Dyck noted that while this process addressed some issues of fundamental services, "other issues, such as the resolution of long-standing aboriginal land claims and the provision of sufficient resources to facilitate successful economic development programmes at the reserve level, tended to be dealt with far more reluctantly and cautiously by state elites."[53] Both sets of issues became entwined with neo-liberalism as it unfolded across Canada in the 1990s and the early twenty-first century.

Fiona MacDonald shows that what Dyck identified as evidence of co-optation was part of a larger neo-liberal initiative to download state responsibilities for service provision to local governments without necessary funding and capacity-building efforts. MacDonald interrogates the apparent synergy between First Nations' claims for self-determination and neo-liberal policies of privatization, warning against the co-optation of scholarly arguments promoting native autonomy. She finds that while the neo-liberal turn has provided opportunities for some groups, it has primarily allowed the state to appear

[53] Dyck, "Tutelage," 338.

responsive to native demands while obscuring its failure to provide the necessary resources and decision-making power that would enable First Nations to exercise full autonomy.[54]

MacDonald uses B.C. Liberal Premier Gordon Campbell's referendum on treaty negotiations as a prime example of this kind of move, underscoring David Rossiter and Patricia Wood's findings of 2005. They explored the referendum in depth as a neo-liberal response to Aboriginal land claims. Although the provincial government was required by Supreme Court rulings to recognize Aboriginal title and engage in treaty negotiations, not much came of the process in the 1990s. The uncertainty of land claims was affecting corporate development and investment activities, leading then opposition leader Campbell to call for a public referendum on negotiations. Campbell made good on his promise in 2001 after the Liberals came to power. The results drastically limited the province's mandate at the treaty table. The mandate enshrined neo-liberal principles, ensuring that any resulting settlements would protect settler private property rights and make territory safe for business investment. Citing AIPs reached by the time of writing, including TFN's, Rossiter and Wood worried that "[r]ather than reflecting a new attitude towards Native land claims . . . this progress seems to highlight a renewed strategy for achieving economic certainty."[55]

In light of the government's motivations, the very fact that TFN participated in the treaty process may be seen as a sign of co-optation. Taken out of context, TFN's deal with the port authority could easily fit Dyck's definition of co-optation—"the process of getting an opponent to join one's side and accept one's position as his or her own."[56] Many of the decisions and compromises TFN made appear to fit the language of Patrick B. Coy and Timothy Hedeen's stage model of co-optation: appropriation via inclusion and participation, assimilation of leaders, transformation of goals, regulation and

[54] MacDonald, "Indigenous Peoples."
[55] Rossiter and Wood, "Fantastic topographies," 363.
[56] Dyck, "Tutelage," 342.

response.[57] However, as Dyck points out, it is generally "partisans" who can find "clear-cut evidence of co-optation," and "focusing upon the perceived motivations and actions of those who are said to have been co-opted is likely to prompt them to dispute that the interests of "their side" have in any way been jeopardized or compromised." It is therefore more appropriate to examine "state elites' interests, actions and involvement in practices of co-optation rather than those of the aboriginal movements and leaders, whose compliance is sought by the state."[58]

While an understanding of processes of co-optation will help me to analyze the actions of settler society elites in this case, the overarching environmental justice approach allows for a more equitable, complex and accurate interpretation of events and their potential consequences. Within this framework, Lutz has provided perhaps the most useful conceptual tool for understanding TFN's story. His book is titled *Makúk*, a Chinook jargon word describing multiple acts of exchange. The Chinook language was itself created by and for the processes of Aboriginal/non-Aboriginal exchange, a way to communicate that was neither fully European nor fully Aboriginal. Lutz argues that Aboriginal and non-Aboriginal people have engaged in makúk since the time of first contact, but have often assigned quite different meanings and interpretations to these exchanges, leaving a history of ongoing misunderstanding.

Examples of makúk can be found in other environmental justice case studies of Canadian First Nations. In some ways, these cases also describe what could be seen as alternative strategies TFN might have considered for pursuing distributional and procedural justice goals. These include: negotiating land claims through existing processes like environmental assessment; deploying a "four-pronged strategy of research, community education, legal action, and direct action" to block resource development plans; using legal mechanisms, media attention, and grassroots action through allied environmental organizations to fill the "regulatory gap" that leaves First Nations out of land use decisions within their claimed territories; or forging alliances with

[57] Coy and Hedeen, "Stage Model," 409.
[58] Dyck, "Tutelage," 342.

non-Aboriginal residents to fend off unwanted development and create economic sustainability strategies for mutual local benefit.[59] One fundamental difference in these cases is that all took place in rural settings. For the purposes of this project I consider everything within the bounds of metropolitan Vancouver (map one, Appendix F) to be urban space, situating this as an urban case study.[60] TFN's urban location uniquely affected its opportunities and challenges in ways that are directly related to the influences of globalization and neo-liberalism.

Globalization, Neo-liberalism and Urban Governance

Literature on First Nations and urban governance both explore these influences. In a paper for the National Centre for First Nations Governance, for example, Tim Raybould builds on a common assertion that economic development is a required foundation for Aboriginal self-government and social well-being.[61] Admitting that not all First Nations want to follow it, he argues in favour of the capitalist path, and advises on how local Aboriginal governments can turn assets into capital by attracting investment.[62] Raybould's argument that local native governments must create a legal and policy regime to make the community attractive to investors goes to the heart of the challenges currently facing most, if not all, municipalities.[63] McAllister shows that the structure of Canadian municipalities is a vestige of capitalist colonialism, designed to maintain order and maximize economic production of wealth on behalf of a more senior authority. This legacy means cities are strapped with limited powers and constrained revenues. McAllister shows how these structural challenges have intensified in recent decades

[59] Place and Hanlon, "Kill the Lake?;" Lovelace, "Notes from Prison;" Ominayak and Thomas "Lubicon Lands;" Larsen "Promoting Aboriginal teritoriality;" Dalby and Mackenzie, "Reconceptualising."

[60] In addition, as will become ever more apparent in the following chapters, TFN leaders specifically identify Tsawwassen as an urban First Nation.

[61] For example, Cradock, *First Nations'*.

[62] Raybould, "Economics."

[63] Blomley, *Unsettling*.

under the neo-colonial influences of neo-liberalism and economic globalization. Just as Raybould argues in the case of First Nations, McAllister suggests that cities now must choose whether and how to enter the arena of global competition in order to fund their basic services and governing functions.[64] At TFN, as in local communities across Canada, this structural context affects how and whether people are able to govern themselves.

As the following chapters will show, TFN's story of transformation contains the fundamental characteristics of Canadian environmental justice: the centrality of First Nations' experiences, a definition of environmental justice conceptualized by those directly experiencing injustice, the prevailing importance of procedural justice over distributional justice, and the inexorable influence of larger structural factors in negotiating environmental justice. But the story does more than just prove a point; it reveals larger critical implications for the prospects of sustainable urban life in the Lower Mainland.

Just Sustainability

Nathan Cardinal reminds us that Aboriginal land claims and treaty negotiations "will ultimately affect the future development, ownership, and subsequently, the sustainability of the [metropolitan] region."[65] Nicholas Blomley echoes Cardinal in suggesting that postcolonial negotiations are especially important in cities, where dispossession was particularly intense, but where places are still "physically, symbolically and politically" native.[66] For Vancouver, the language and politics of sustainability and "greenness" have become central to urban identity and the practices of city-building, but by and large have not addressed issues of justice specific to First Nations and Aboriginal people. Sustainability, as many have argued, is not only

[64] McAllister, *Governing Ourselves?*.
[65] Cardinal, "Exclusive City," 218.
[66] Blomley, *Unsettling*, 109.

undesirable without social justice, it is likely unachievable.[67] Vancouver's sustainability goals will be illusory without environmental justice. TFN's story is indicative of the interconnected issues and multi-layered influences that must be negotiated if we are serious about achieving sustainability. In particular, I find that transparent, democratic and accountable governance, Aboriginal/non-Aboriginal reconciliation and an expansive redefinition of the value of land must be negotiated to achieve urban justice and sustainability.

Julian Agyeman has gone so far as to advocate a merging of environmental justice and sustainability goals under a "just sustainability paradigm."[68] The focus of sustainability efforts, he argues along with Robert Bullard and Bob Evans, "should be to ensure a better quality of life for all and that this should be done in a just and equitable manner, whilst living within the limits of supporting ecosystems."[69] Although there are inherent similarities in the goals of the environmental justice and sustainable development movements, friction rather than collaboration has often characterized their relationship. Environmental justice and other social justice advocates have criticized sustainability proponents for privileging ecological concerns over social inequities. This stems from a fundamental environmental justice critique of the environmental movement's failure to address inequality and racism in its work and among its ranks.[70] Interviewees conceptions of environmental justice, and tensions between TFN and environmentalists revealed in this case study shows that these criticisms are still relevant in Vancouver. In fact, Beenash Jafri, in a study of Toronto environmental organizations and their multicultural outreach efforts, suggests that such criticisms are likely relevant throughout Canada. Not only were project staff at surveyed organizations overwhelmingly white, they took a top-down approach to impress certain Canadian

[67] Anand and Sen "Human Development;" Haughton cited in Agyeman, Bullard and Evans, "Exploring the Nexus."

[68] Agyeman, *Sustainable Communities*.

[69] Agyeman, Bullard and Evans, "Exploring the Nexus," 78.

[70] Bullard, *Dumping in Dixie*; Agyeman, *Sustainable Communities*.

environmental values and practices on new immigrant communities.[71] The sustainability movement in general "can be understood as a more exclusive, 'top-down' phenomenon," whereas environmental justice "can be understood as a grassroots or 'bottom-up' political movement."[72] A just sustainability paradigm would re-orient the trajectory of sustainability efforts.

Attempting to use a bottom-up environmental justice approach in telling TFN's story allows for a critique of the sustainability discourse that Vancouver has embraced in its urban politics and city-building exercises. In particular, it highlights the importance of negotiating governance, reconciliation and the definition of land value in achieving sustainable development. With these preliminary observations, my case study provides fodder for further contemplation and praxis towards just sustainability in an urban context.

[71] Jafri, "Rethinking."
[72] Agyeman, Bullard and Evans, "Exploring the Nexus," 88.

Chapter 3.

Setting the Scene

"Margaret" remembered spending a lot of family weekends at the beach when she was young. The elders and parents would teach the children how to catch crabs. As she remembered it, you would put on an old pair of sneakers, no laces, and find yourself a nice long stick. You had to make sure the tide was right—about a foot deep—and then wade out into the waters and simply look down to find the crabs hiding in the seaweed right at your feet. When you saw the seaweed moving in a certain way the trick was to put the stick on the back of the crab, and bend down to pick it up from behind then drop it in a potato sack. The children, she said, would catch crabs until there was enough to feed everyone gathered. Someone would start a bonfire and fetch a big can and pot to fill with saltwater. Margaret's family and anyone else who joined them cooked and ate crabs together right there on the beach.[73]

By this time B.C. had built its ferry terminal to connect Vancouver Island and the Lower Mainland, severing the reserve, its beach, and its waters with a highway and causeway. The first anyone at TFN had heard of the plans was a day in 1958 when the Tsawwassen chief found a provincial contractor at his door asking where the construction crew should park its trucks. The crew proceeded to tear down the Tsawwassen longhouse; it was in the path of the new highway.[74] Within a year, the B.C.

[73] Anonymous interviewee 1, interview with author, March 9, 2012. I have given anonymous interviewees pseudonyms for ease of use in the text. I use quotes for each pseudonym's first appearance, but not in subsequent usage.

[74] Gordon and several others mentioned this story in interviews. Gordon also includes it in her *Canadian Geographic* story, "No Reservations."

Electric Company had finished building its controversial network of transmission lines through the First Nation and neighbouring farmland in Delta.[75]

Even after the federal government built the Roberts Bank port terminal in 1969, the beach days continued for a time. Its causeway extended into the ocean from the reserve's northwestern edge to a man-made island (a so-called "pod") built right in the middle of Tsawwassen's canoe passage to islands within TFN's traditional territory. This cultural impact hit as soon as the pod was built, but it took a while before the stagnating effects of blocked tidal flows fully took over, clogging the former beach with debris, eelgrass, and silt, almost deadening the waters. Now, says TFN member "Kermit," "it's a disgusting disgrace."[76] Where there used to be waters rich with shellfish, one could now practically walk from TFN's foreshore across to the Deltaport pods on the collected sludge.[77] Except that the sludge is not firm, as the beach used to be, it is "all slimy and yucky and there's a lot of red tides." People can't really walk on the beach anymore, so the beach gatherings "have lost their appeal" and for walks people stick to the dykes.[78]

Although the port terminal was built atop prime moulting grounds, the crab hung on for a while too. TFN members still harvest some crab when possible, but they must have vessels and go further out to sea to find them—certainly nothing like the access people used to enjoy. Sometimes the crabs that still do come out of the waters are infused with black coal dust that comes off the piles waiting for shipment to foreign

[75] Doug McArthur (TFN special advisor and professor of Public Policy, SFU), interview with author, 3 April 2012; "History Repeating," Delta Optimist, 23.

[76] Anonymous interviewee 3, interview with author, March 9, 2012.

[77] Nearly every TFN leader and member interviewed for this study mentioned the causeways' impact on the foreshore, including: Sheila Williams (member of TFN legislative council), interview with author, 21 March 2012; Anonymous interviewee 4, interview with author, 4 April 2012; Anonymous interviewee 2, Bak, Baird, Adams. This process, called eutrophication, has been noted in the environmental studies for subsequent port expansion projects. One Environment Canada report on the Deltaport third berth project in 2005 predicted that the project would "result in such massive environmental change between the causeways that there would be public outrage as well as agency embarrassment on an international scale." Quoted in Iversen, "Backgrounder," 2. Copy supplied to author during an interview for Dr. Hall's "Global Gateway" research project.

[78] Anonymous interviewee 1.

markets on Deltaport's pods. The clams, oysters and cockles Tsawwassen traditionally harvested are simply gone. Settler development had blocked access to traditional pathways for land-based resources like cedar and game, and to traditional salmon fishing grounds at the mouth of the Fraser River. Then the port causeway severed TFN's water access to the Fraser, making members' participation in commercial fisheries all but impossible.[79]

The mud fights ended too. Margaret and her cousins discovered one day that the mud on the beach where TFN's drainage canal empties into the foreshore was soft and good for lobbing at each other. But when they returned home, "Mom said 'what in the heck were you doing and why does the mud smell so bad?' She told us 'you stay away from there when you go down to the beach stay on the other side; don't swim at the end of the slough.'" Margaret described the smell as "vicious" and TFN elder Ruth Adams described the water in the canal as brown and frothy. Years later, after testing, TFN confirmed that untreated sewage had been flowing into its Eagle Drive drainage ditch and poisoning their already stagnating waters and beaches for decades. TFN now treats that sewage at its own plant, built in the 1990s as a result of years of battling with the Corporation of Delta and the regional government over servicing agreements.[80]

Aside from walks on the dykes, members can cross the highway and access a bit of sand where Tsawwassen Beach meets the southern edge of the ferry causeway. On foot there is the highway crossing to contend with—which at least now has a signal for basic safety. For decades pedestrians or cyclists had to dart across lanes of speeding traffic to get across. One member, who was hit by a car as a child, suffered life-altering brain damage.[81] Until the light was installed, even going by car was a gamble; if it was a busy time before or after a ferry sailing, members could be trapped waiting for a break in

[79] Anonymous interviewee 2, interview with author, March 5, 2012.
[80] TFN, "Who We Are;" Ries, "Time to Stop."
[81] Gordon, "No Reservations."

traffic for up to an hour. Now, thanks to the fringe benefits of entering treaty negotiations, residents have a pressure-triggered stop light in their favour.[82]

TFN and Canadian Colonialism

A series of colonial and Canadian acts during the 1850s and 60s established reserves, invented Indian status and created the enduring paternalistic federal government relationship with Aboriginal people. The area that became the Tsawwassen reserve in 1871 was, of course, only a fraction of TFN's traditional territory. It constituted merely a small summer village site within the large swath of territory that TFN had used for subsistence—hunting, fishing, gathering and small-scale cultivation.[83] This use-based mode of land claim defies the mapping and bounding techniques of settler society. Upon entering the treaty process in the 1990s, TFN was asked to put a line around its traditional territory. TFN was not comfortable with the exercise because it did not reflect the way its people had originally lived on the land. Instead the band submitted a map with a series of arrows to indicate patterns of traditional use, but this proved unacceptable to the treaty commission and TFN reluctantly drew a boundary to approximate its territory around a swath of land extending from the Gulf Islands to Port Moody (map two, Appendix F).[84] The original Tsawwassen First Nation reserve included much of what is now called English Bluff down to Pt. Roberts. Harris estimates that it consisted of about 400 acres.[85] Restricted land bases, as Harris and Lutz have shown, hobbled many if not most B.C. First Nations. They were not enough to sustain traditional economies, and restricted the ability of individual Aboriginal people or native villages to

[82] Gordon, interview. TFN had lobbied the provincial transportation ministry for years to address the dangers of this intersection, with no luck. As a show of goodwill during treaty negotiations, and in the face of so many unmitigable impacts to TFN's culture and environment, Gordon called the minister at the time and got a commitment for the pressure-triggered stoplight to be installed. One call from her was all it took.

[83] TFN, "Who We Are."

[84] Baird, interview.

[85] Harris, *Making Native Space*, Appendix.

participate in the settler economy. The first appearance of Aboriginal people on the verge of starvation and indigence came in the decades following the imposition of reserves.[86]

The first so-called Indian Act to consolidate native policy was established in 1876. From its inception, the goal of the act was to assimilate Aboriginal people into settler society and a European way of life. The act simultaneously tied official Indian identity to residence on reserve lands and denied any official recognition of Aboriginal land title or ownership. Although it has been amended and even overhauled several times in the many decades since, its essential paternalistic elements have remained intact. The act defines Indians as wards of the state and reserves as Crown land held for the benefit of First Nations bands; curtail bands' ability to self-govern, borrow, or develop lands and resources; and establishes Indian status as a means of eventual assimilation into settler society.

Despite their tiny base of land and living under the Indian Act, the Tsawwassen did not assimilate or disappear. They suffered, but they endured, and, when possible, took advantage of strategic moments to redress historic injustices, seek autonomy and power over decisions that affected their lives, and provide means of economic opportunity and cultural survival.[87] In 1914, Chief Harry Joe made an impassioned petition to the federal government's McKenna-McBride commission, which had been established to examine B.C.'s reserve system. The Tsawwassen once owned land as far as they could see in all directions, but the reserve lands they had been allotted in 1871 were not sufficient for subsistence. Indians were barred from "pre-empting" land for ownership outside the reserve in the same way non-Aboriginal settlers could—land Joe claimed was full of potential but going fallow. But, as TFN legislator and bureaucrat Andrew Bak explains, at that time, and through the rest of the twentieth century, there

[86] Harris, *Making Native Space*, chapters 7 & 9. Lutz, *Makuk*.

[87] Andrew Bak (TFN Government Services Technician and member of the Legislative Council), interview with author, 17 February, 2012; Adams, interview; Baird, interview. Huntington believed leaders likely saw that, barring a treaty agreement, TFN would be swallowed up by the development happening around it with no control (interview).

was little or no effective communication—let alone real consultation—between local First Nations and the federal and provincial governments. Joe's plea for a larger land base fell on deaf ears. According to Adams, TFN staff working on research for the treaty table found that Chief Joe, a farmer and fisher himself, had also petitioned senior governments for the kind of subsidies and assistance for farming equipment and agricultural production that Delta residents were getting and was turned down again.[88]

In fact, the reserve system that had encapsulated the Tsawwassen and their Coast Salish neighbours had made European settlement possible. William and Thomas Ladner pre-empted land at the mouth of the Fraser River in 1868. This move, followed by the creation of TFN's reserve, turned Tsawwassen traditional territory into settler property. A decade later, when part of the Ladner's property was sold, a fishing and farming village began to develop and took the name of its colonial owners. Ladner, became the administrative centre of the municipality of Delta, incorporated in 1879. The land along what is now the Point Roberts peninsula required more clearing of native forests to become farmland, but was settled into a similar village by the turn of the twentieth century. Ironically, and almost insultingly, this village took the name Tsawwassen. Celebrated now in idyllic bouts of nostalgia, Ladner and "Tsawwassen's" non-Aboriginal farmers and fishers developed land for crop production with the government help that would be denied their native neighbours.[89]

TFN and Modern Development

During the twentieth century a great deal of infrastructure and urban development occurred throughout the Lower Mainland, mostly without so much as notice to the original inhabitants of the land, let alone consultation, participation, or shared benefit.[90] It was the transportation infrastructure of the late 1950s that accelerated

[88] See also: TFN, "Who We Are;" Glavin, "Treaty Rights;" FNS, "Background."
[89] Szychter, *Chewassen*; Corporation of Delta, "Brief History."
[90] Many interviewees emphasized this point including Adams, Bak, McArthur, Williams.

Delta's conversion to a suburban-agrarian hybrid. Highway 17 and the ferry terminal were linked to the rest of greater Vancouver in 1959 with the opening of the Massey Tunnel. Suddenly it became possible to live in Delta and commute to jobs in Vancouver or its more urbanized ring suburbs. Over the course of the 1960s and 70s, residential developers turned Ladner and the neighbourhood of Tsawwassen into bedroom communities.[91]

Meanwhile, residents of the TFN reserve were being left behind. In the 1950s, TFN's chief sold most of the reserve's bluff lands. In a 2004 media interview long-time Conservative Member-of-Parliament (MP) John Cummins argued that this move proved that TFN did not need the land it was claiming through the modern treaty process.[92] Adams tells a different story: the chief was forced to sell because members were starving and the band had no means to provide for them. "[H]ere's all the fishers and farmers around, and [the Tsawwassen] were still starving! Why? Because we were second-class citizens."[93] Under the Indian Act bands had little ability to develop or improve housing because their land tenure blocked access to credit and the federal government lagged decades behind in providing basic services like running water and indoor bathrooms. Moreover, according to Adams, members of First Nations received less in the way of social services—welfare payments, healthcare—than their non-Aboriginal counterparts right next door.

The port terminal that wiped out crucial crab habitat represented a local point of entry for global capitalism from its very beginning. In 1968, based on a contract between a B.C. mining company and California-based Kaiser Resources to supply Japan's Mitsubishi company with coal, the federal government began building the Roberts Bank port terminal.[94] According to Gentner, the government originally contemplated building at Kitsilano, but chose Roberts Bank because of its deeper berth for large ships. Jim Cox, a

[91] TFN, "Who We Are;" Iversen, "Backgrounder;" Gyarmati, "Looking Back", 22.
[92] Gulyas, "Q&A," 12.
[93] Adams, interview.
[94] Iversen, "Backgrounder."

port official between 2001-2007, agreed, saying that the siting of the port terminal next to TFN's reserve was purely coincidental and based on the particular features needed for shipping.[95] But "Darwin" could clearly imagine attitudes of port and ferry decision-makers at the time being "oh, just throw those [terminals] in front of the reserve; who cares about them?"[96] A policy report for Delta councillors states that the federal government selected the Roberts Bank location based on its unique physical features—deep water for navigation, rail and sea channel access—but also because of "large areas of undeveloped land onshore," and its "remoteness from densely populated areas."[97]

Of course, the Tsawwassen lived onshore, as they had for centuries, but this perception of emptiness has persisted. Adams remembers a public meeting in Delta where residents expressed concern about port impacts on herons and other wildlife. 'What about us,' thought Adams, 'we're the people.' Then someone noted that 'there aren't any people down there.' Dismayed to find that she and her immediate neighbours were apparently invisible to the outside world, Adams began actively identifying herself as a member of TFN everywhere she went.

In the late 1960s, the provincial government of Premier W.A.C. Bennett certainly was not considering TFN when it expropriated several parcels of land from farmers in the Brunswick Point area southwest of Ladner and adjacent to the port causeway and rail line. Bennett hoped to cash in on some port-related development. The expropriated parcels became known as the port "backup lands," but were never used for industrial development. Instead, despite the petitions of former owners, the province held onto the Crown land but leased it back to farmers. After the completion of the original coal terminal and causeway in 1970 operations continued to expand under the Vancouver Port Corporation. Although a federal review panel rejected a proposal for large grain terminal in 1979 because of its potential impacts on the Fraser River Estuary, a smaller-

[95] Jim Cox (Vice President of Infrastructure Development at VPA 2001-2007), interview with author, 12 March 2012.

[96] Anonymous interviewee 4.

[97] Iversen, "Backgrounder," 3.

scale project added four bulk cargo "pods" in the early 1980s. By then TFN residents looking out to sea saw a hulking industrial port.[98] As Bak pointed out, Deltaport is "not in Delta's backyard, it's in Tsawwassen's front yard."

In the late 1980s, under Chief Tony Jacobs, the band finally found a way to build on its remaining bluff land. TFN developed a small suburban residential tract of luxury homes and called the development Stahaken, which means "top of the bluff" in the Hun'qum'i'num language. The new households physically and culturally belong in the Delta neighbourhood of Tsawwassen, a largely white, middle-class suburban community. They also, through a servicing agreement between TFN and the corporation of Delta, hooked into existing municipal services. TFN benefited from lease revenues but leases were effectively sold to new homeowners for a ninety-nine-year term. These factors made the development possible; elsewhere on Tsawwassen land there was no access to the water and sewer networks required to service new developments.[99]

TFN and Aboriginal Rights in the 1980s and 1990s

Some remember the reserve before these developments fondly as a time when it was a small, rural community of a few close-knit families who helped each other out as a matter of course.[100] But growing up in the 1990s Sheila Williams remembers a sparsely populated community with very few buildings, a gravel road and not much going on. Stahaken was separated by elevation, roadways and socio-economic difference from the core reserve community, but members benefited by way of dividends paid from lease proceeds. Membership had been dwindling for decades in significant part because of a provision in the Indian Act that stripped Indian status from Aboriginal women who married non-Aboriginal men. Their children were also denied status. This changed just as TFN was building Stahaken. In 1985, after a long period of legal battles and

[98] Iversen "Backgrounder;" Gyarmati, "Looking Back."
[99] Balcom, "Stahaken;" "Behind Rhetoric," Delta Optimist; Baird, interview.
[100] Anonymous interviewee 5, interview with author, 4 April 2012.

campaigning, the Canadian Parliament passed Bill C-31 restoring status to these women and their children.[101] Suddenly a band that was down to less than 100 people had an influx of dozens of new members.[102]

Among those newly-restored members were Margaret, Kim Baird and their siblings and mothers. Baird's mother was Tsawwassen, but her father was not Indian. Her mother had brought the family back to live on the reserve after her father died in the mid-1980s.[103] At the urging of Margaret's grandfather, her mother had held off marrying her non-Aboriginal father for many years in order to avoid losing her status and her land. On the reserve, families held certificates of possession (CP) giving them interest in portions of reserve land that could be passed down to family members. When Margaret's grandfather died her mother decided to finally marry her partner, forfeiting status along with her land interest. Margaret's mother received a small sum of money as compensation and the family moved into Delta. Nonetheless, as her stories of the beach can attest, Margaret's family still spent much of their time in their native community. In adulthood, after their status was restored, many of the siblings decided to return to TFN.

While Bill C-31 helped to reconcile a historical injustice, it also created an administrative challenge for many bands that saw their membership grow substantially without corresponding support from the federal government. At TFN, this would play out over the question of Stahaken. Bill C-31 members were not eligible for lease dividends, but they were eligible for other benefits. Margaret eventually exercised her renewed status to access band grants for her college and university education. Her mother, however, never reclaimed her share of her family's land interest. But when Margaret moved back home in the mid-2000s her uncles gave her a portion of the family land to build a house. Like some of her other siblings, Margaret found a job with the band government.

[101] Anonymous interviewee 1.
[102] Glavin, "Treaty Rights."
[103] Ibid.

During these years of change and development at TFN Baird was a college student learning about Aboriginal rights and title, as well as the federal comprehensive claims process under which the Nisga'a First Nation of northern B.C. was negotiating a treaty. In 1973, after decades of legal battles, Nisga'a won its case at the Supreme Court of Canada, establishing Aboriginal rights to traditional territory and requiring the federal and provincial governments to negotiate modern treaties. In 1990 Baird approached Chief Jacobs offering to help, even as a volunteer, if Tsawwassen ever decided to pursue a land claim. He created a research department and hired Baird to start looking into the archives.[104]

The undertaking seemed doomed at the beginning. Only one First Nation from each province was allowed to engage in the federal comprehensive claim process at a time, and the Nisga'a, which had been in negotiations for nearly twenty years, still had not reached an agreement. Baird figured at the time that Tsawwassen would be about tenth in line if it filed a claim, making it unlikely that the band would see an agreement within a century. The year Baird started her work the provincial government finally agreed to participate in the ongoing Nisga'a negotiations and joined with First Nations and the federal government in a task force to establish a process for modern treaty-making. In 1992, based on task force recommendations, the three parties set up the BCTC to oversee a voluntary, six-stage process for all First Nations without pre-existing treaties.[105] Baird, who was motivated primarily by the disparity between Tsawwassen's socioeconomic conditions and the conditions of "everybody else," thought the treaty process had the potential to provide land and cash for economic development. She urged the band leadership to enter the treaty process and submitted TFN's letter of intent to the commission on the first possible day of its operation in 1992. That same year, Baird was elected to the band council.[106]

[104] Baird, interview.
[105] FNS, "Background;" BCTC, "About Us."
[106] Gordon, "No Reservations."

In 1993 TFN joined a handful of other Coast Salish bands in claiming the proceeds from property taxes paid on reserve lands. Stahaken lessees had previously paid Delta. Under this arrangement, TFN contracted with the municipality to provide the same services as before under the same tax rates, but lessees no longer had the right to vote in the jurisdiction that charged them taxes. While the taxpayers did not seem too concerned, leaders in Delta were not so enthusiastic.[107] This seems to be the spark that flared into a major local conflict, including litigation, after TFN moved to develop another revenue-generating residential lease project, the beach-side condo complex called Tsatsu Shores. Environmentalists and other Delta activists objected to the development, even staging protests on the reserve. Delta refused to enter servicing agreements with TFN for the complex. TFN ultimately built its own small sewage treatment plant to facilitate the development. But, at the behest of the municipality and local environmental activists, the federal Department of Fisheries and Oceans (DFO) filed a lawsuit against TFN regarding the plant's effluent. The suit was eventually thrown out of court. This heady jurisdictional debate over basic services has continued to sour relations between TFN and the Corporation of Delta into the present.[108]

TFN Treaty Negotiations: Early Stages

Meanwhile, TFN's treaty negotiations were proceeding slowly. It took a great deal of research and emotional internal debate to decide what Tsawwassen was really negotiating for and how to compensate for injustices that could not be undone even with all the money in the world.[109] By 1995, a number of studies were underway and the parties had established an Openess Protocol for providing treaty table information to the

[107] Odam, "Homeowners," B1; "Tsawwassen," *Vancouver Sun,* B2.

[108] Anonymous informational interview with author, February 24, 2012; Baird, interview; TFN, "Who We Are"; Ries, 2002; Gordon, "No Reservations;" Glavin, "Treaty Rights." As Gentner and Huntington noted in interviews, Delta, TFN, Metro Vancouver and the province are still negotiating over responsibility for sewage infrastructure that will be needed to accommodate the mixed-use development now planned for TFN's lands.

[109] Baird, interview. Gordon confirmed the extent of work needed in this phase (interview).

public. TFN struck an advisory committee of members to guide negotiators in their mandate that included hunters, fishers, elders, members living off-reserve, CP-holders and others.[110] "Lucille," who had been living elsewhere in BC for many years, served on the committee as a representative of TFN's off-reserve members.[111] Externally, Delta designated councillor Huntington to the Lower Mainland Treaty Advisory Committee (LMTAC). She served as the committee's representative on the provincial negotiating team, but was bound by the confidentiality restrictions laid out in the 1995 protocol which required LMTAC reports to municipal councils to be held in camera.[112] In 1997 the parties reached stage three of treaty negotiations with a Framework Agreement between the parties to establish procedural rules and key issues to be negotiated.[113] Late that same year the Supreme Court of Canada issued its landmark ruling in the Delgamuukw v. British Columbia case. The ruling bolstered Aboriginal title claims as no case had done before. In the words of the FNS, Delgamuukw "clearly acknowledged that First Nations have aboriginal title, which is a legal interest in land and a right to land itself."[114] Put another way—by the BCTC, for a "lay" audience—the ruling established Aboriginal title as "a property right that goes much further than aboriginal rights of usage." It is a constitutionally guaranteed, collective form of ownership that cannot be exercised in a way that undermines the fundamental relationship between Aboriginal people and the land they own.[115]

Although the legality of its Aboriginal title was ever more clearly established, TFN's urban location presented some unique challenges and opportunities at the negotiating table. While the urban context would likely provide options for future economic development, there was relatively limited Crown land available for potential

[110] Baird, interview.
[111] Anonymous interviewee 2.
[112]TFN, Canada and B.C., *Openness Protocol*.
[113] TFN, Canada and BC, *Framework Agreement*.
[114] FNS, "Delgamuukw Statement."
[115] BCTC, "Lay Person's," 1.

transfer within Tsawwassen's traditional territory.[116] In the wake of Delgamuukw, the FNS called for a freeze on any further alienation of Crown land in B.C. until tripartite interim agreements could be reached with First Nations concerning Aboriginal title claims, including the treaty process.[117] TFN followed suit, asking the provincial government to retain "title to sufficient lands for the purpose of future discussions and negotiations," including the controversial backup lands for port development.[118] But Corky Evans, the New Democratic Party's (NDP) minister of agriculture and a major proponent of the Agricultural Land Reserve (ALR), had made returning land to farmers one of his priorities.[119]

In August 1998, the two parties reached an agreement that provided a compromise: TFN allowed Evans and his government to sell back a large portion of the backup lands to previous farm owners (see category C lands, map three, Appendix F). The province agreed to hold onto several parcels immediately surrounding the reserve, allowing only brief leases in the short term (see category A lands on map three). Another large set of parcels making up what is known as Brunswick Point was also to be held as Crown land, but would be available for longer leases with fewer restrictions on the province (category B lands on map three). To account for the lands made available for disposal, the province compensated TFN with $1 million.[120] This kind of deal, according to Baird, was unheard of at the time. She described it as "a big coup" for TFN, which allowed for "the prospects of a treaty to work." The province kept the agreement under the radar, a decision that would come back to haunt both parties later in the treaty process.

[116] Canada and B.C., "Speaking Notes."
[117] FNS, "Delgamuukw Statement."
[118] TFN and B.C., *Protocol Agreement*, 1.
[119] Gulyas, "Rail Yard," 1; Gulyas "Tsawwassen," B2.
[120] TFN and B.C., *Protocol Agreement*, 3-4.

Soon after TFN signed this important agreement, voters elected Baird as band chief and she also became chief negotiator at the treaty table.[121] The band government now needed more help in the treaty department, so Lucille decided to move back home to work on treaty negotiations full time. With a new team and sufficient land on offer, TFN was able to make a major presentation of its interests to the treaty main table in July 1999. TFN was seeking "a fair and just treaty which will give us the land, resources, self government and cash settlement which we need to build a positive, viable, and sustainable social, economic, and cultural future for present and future generations of Tsawwassen people."[122] Council and community members had spent a long time considering how much land, cash and jurisdiction would be enough to create a self-sustaining community over the next 100 years. This question was further complicated by TFN's urban context where land was scarce, encumbered with development and use regulations, and politically contested. Based on these considerations, TFN decided that 462 acres—about one percent of its traditional territory, four times the size of its reserve, and largely encompassing the retained backup lands—would be enough to meet its goals. But, as Baird explained in a speech several months later:

> We believe to reach self-sufficiency we will need the lands to be unencumbered with any designations. We will need the flexibility to do what we need to with lands in our settlement area while continuing to be strong stewards of the land. We refuse to bear the brunt of having to ensure that there is enough park and recreation land or agricultural land in the lower mainland at our cultural and economic expense. At one point all of Richmond and Delta were productive farmland, now some of our neighbors are suggesting that we should forsake our legal aboriginal rights and title because of urban growth. This is simply unacceptable to our community.[123]

The other negotiators responded by the fall. The provincial government, in an overall commitment to avoid making general policy subject to negotiation at treaty tables,

[121] Gordon, "No Reservations."
[122] Baird, "Speaking Notes."
[123] Ibid., 15.5.

took the position that the ALR designation and other provincial jurisdiction over land use should remain on settlement lands.[124] Negotiators found several areas that needed significant work to further specify TFN's interest, particularly in the area of governance. But they agreed that there was enough "common ground" to proceed to stage four of treaty negotiations, developing an AIP.[125] Gordon, who had signed on as the province's chief negotiator in early 2000, and Baird both cited the immense amount of research and other work that was necessary to put negotiators on equal footing and get to this point of common ground. But Baird also acknowledged that the process was quite politically volatile. The prevailing power imbalance between TFN and the other institutions at the table continually hung over negotiations. Also, the regular workings of Canadian government—provincial and federal elections, referenda—slowed the pace of negotiations.

TFN Treaty Negotiations in Context: Politics and the Global Economy

Locally and provincially the political climate around the turn of the century was heating up. Although it would take several more years than TFN had hoped to reach an AIP, by 2000 a treaty agreement started to seem more like a reality to TFN's neighbours. The municipality of Delta began raising objections to the proposals on the table, particularly in reference to the backup lands. Community leaders and municipal officials did not want the province to consider transferring the lands to TFN.[126] The province faced heavy lobbying from ALR proponents and conservation groups dedicated to protecting the Pacific bird flyway to maintain this position, and these groups became strenuous critics of the Tsawwassen treaty as a whole for this reason.[127]

[124] Gordon, interview.
[125] Canada and B.C., "Speaking Notes."
[126] Jackson, Letter to Bell. Bell, Letter to Jackson.
[127] Gordon, interview. Huntington, interview; Gentner interview.

Meanwhile, the forces of economic globalization that were increasingly reshaping the world were also leaving an ever-expanding mark on TFN and its neighbours. Port development continued over the course of the 1990s in response to growing Asia-Pacific trade. As Bak pointed out, business at Deltaport represents a significant contribution to the Canadian economy, but it is not Canada that bears the brunt of the impacts associated with that economic contribution, it is Tsawwassen. A port long-range plan first called for container capacity development in 1992. One of the existing pods was converted to a container berth in 1997 and container operations took over pod three in 2000. With the crossover to container operations, the Roberts Bank terminal officially became Deltaport, governed by the Vancouver Port Authority (VPA).[128]

As the port grew, TFN continued to be left out of decision-making processes and the associated economic benefits—job opportunities, investment and development—even as the band pursued its treaty negotiations. In fact, TFN negotiators asked to include issues related to the port in treaty negotiations, but the federal and provincial governments rebuffed them. Container capacity development only deepened TFN's decades-old grievances against the port, but the band had to find channels outside the treaty process to address them.[129] According to Baird, the band was reluctant to escalate its grievances to direct action and instead looked for administrative and legal channels to exploit, despite its limited resources. For example, TFN pushed for a more comprehensive and rigorous cumulative impacts assessment process for port development that would include impacts on TFN's Aboriginal rights and title claims. Instead, Baird said, VPA produced its own cumulative impacts assessment with findings that the environment was actually better off with the existence of Deltaport. TFN residents found this conclusion "a little bit hard to fathom." TFN's efforts met with little success other than offers from VPA to donate used computers to the band.

[128] Gyarmati, "Looking Back," 22-3; Iversen "Backgrounder." During this time the Vancouver Port Corporation became the Vancouver Port Authority. VPA held jurisdiction over Deltaport until the region's port authorities amalgamated into Port Metro Vancouver in 2008.

[129] Bak, interview; Gordon, interview; Baird interview.

The port's reactions to TFN's attempts to address the impacts of globalization were indicative of the neo-liberal turn governments were increasingly taking to accommodate global economic interests from the local to national levels. Critics of the provincial government under the NDP, particularly in publications for the business world, blamed the New Democrats for what many considered the slow pace of treaty negotiations during the 1990s. According to these critics, the province was sticking to a "treaty or nothing" strategy when First Nations were involved in economic development plans. That is, the government did not permit bands and corporations to negotiate direct deals for investment. It wanted treaties settled first, and not undermined by the influence of business and industry.[130]

The NDP had good reason to be concerned about this kind of influence on First Nations and intergovernmental relations. The legal victories over the course of the 1980s and 90s that had legitimized Aboriginal land claims had provoked a wave of fear and uncertainty among major business interests in B.C. At least to hear them tell it, companies looking to invest in the province, particularly in the all-important resource sector, were holding off until there was some assurance about who owned the land they wanted to get their hands on. After the demise of the Social Credit party in the early 1990s, the B.C. Liberal party increasingly represented these neo-liberal business interests. These economic and political powers largely opposed the notion of Aboriginal title and sought to stall the treaty process. As opposition leader during the reign of the NDP, Gordon Campbell was a fiery critic of negotiations under the BCTC.[131] At the turn of the century, the NDP government was in crisis and soon facing Campbell and the B.C. Liberals in a dramatic provincial election.

Despite the pall cast by these high-stakes political games, TFN was still making some progress at the table and the province's negotiator, at least, was committed to addressing TFN's claims. In addition to the weightier provisions under consideration for the AIP, Gordon worked to find other ways to "get to justice," particularly when so many

[130] Howard, Berfitt and Eaton, "Shape Shifters;" Cradock *First Nations'*.
[131] Craddock, *First Nations'*, 84-86; Rose, "Deliverance," 95.

wrongs could never be righted. Senior governments could not go back in time to restore the longhouse destroyed for ferry terminal construction, but Gordon could secure a commitment for a traffic light at TFN's Highway 17 intersection. The province and Canada could not restore the elements of Tsawwassen culture destroyed under colonialism, but they could and did gather and use cultural archival material for the band.

Various interviewees described TFN negotiators as staunchly determined, deeply committed, extremely professional, relentless, realistic and reasonable at the treaty table. They may have been ever sceptical, but negotiators were willing to do their homework and to consider significant compromises in order to accomplish a final agreement.[132] According to Gordon, the government wanted to honour TFN's commitment with a respectful offer as the basis for an AIP. In an unprecedented move, the federal government agreed to allow the provincial negotiators to present a proposal jointly to federal ministers and TFN negotiators. Essentially, instead of B.C. and Canada working together to hash out an offer ministers at both levels approved, the federal team deferred to the province. In addition, each of the chief negotiators agreed on the need for an AIP with real "meat and potatoes" in order to make the effort worthwhile. In this context, the government negotiators carefully considered how to make an offer that would inspire TFN to proceed with the rest of the treaty process while ensuring that the province and federal government would still have resources available to solve any future sticking points or disagreements. As provincial negotiator, Gordon worked with cabinet to determine substantial offers on major components such as land and cash, but the negotiators also worked closely with their TFN counterparts to ensure that nothing in the offer, once made, would shock or horrify them. In January 2001 the province, with Canada's backing, presented a comprehensive land settlement offer.

Anxiety among critics increased with this concrete offer on the table. As the treaty work progressed, researchers had unearthed many hurtful stories about past relations between Delta's non-Aboriginal residents and Tsawwassen Indians. But the

[132] Bak, interview; Gordon, interview; Huntington, interview; Baird, interview.

reactions from TFN's contemporary neighbours to treaty negotiations were even worse."During the treaty," Adams said, "the farmers and fishermen all hated us—I do mean hated us." She made a point of attending public meetings in Delta throughout the treaty process and heard a lot of ugly things said about the Tsawwassen.[133] Meanwhile, leading up to provincial elections in May 2001, Campbell had made a campaign promise to hold a public referendum on the treaty process to redefine the provincial government's mandate at the table. After the B.C. Liberals resoundingly defeated the NDP, Campbell had to make good on his referendum promise, but, by this time, something of a split had occurred among business interests. Some realized the inevitability of native claims and the potential for new investment opportunities in Aboriginal communities. So there was a competing and growing pressure on the government to successfully complete a treaty in a manner that satisfied the neo-liberal desire for economic "certainty." Either way, it was clear that Campbell and the Liberals were not concerned about ensuring that the rights and interests of First Nations were protected in fair deals.[134]

Although the federal government had taken a back seat in negotiations with TFN, it would soon become increasingly clear that certain federal interests were watching the process closely and had a keen interest in the land at play. Many believe that global trade and port-industrial interests and their allies in government had a decades-long vision to expand the Roberts Bank terminal into a superport and convert surrounding agricultural land into a major industrial area.[135]

These forces would soon combine to make 2002 a particularly dramatic year for TFN and its members. Throughout the twentieth century, culminating in the treaty process, TFN had sought ways to reclaim power over the decisions that affected their

[133] In addition to comments referenced elsewhere that implied that TFN residents were invisible, were not people, mattered less than birds and other wildlife, were greedy or were being duped by larger powers, Adams also heard TFN blamed for one fisher's alcoholism: his father, one Delta resident claimed, used to go to the reserve to "drink with the Indians."

[134] Rose, "Deliverance"; Maudie, "Investment Fund;" Craddock, *First Nations'*, 84-86; Howard, Berfitt and Eaton "Shape Shifters," 73-77; Rossiter and Wood, "Fantastic Topography."

[135] Gentner, interview; Huntington, interview.

lives and to reconcile with settler society in general, and its immediate neighbours in particular, so that TFN members could have an equal opportunity at economic prosperity and social wellbeing rather than disproportionately suffering the impacts of modern development. As became abundantly clear in the lead-up to an AIP, these aspirations centered on TFN's claim to land within its traditional territory. Several TFN leaders insist that they were never certain at any point that treaty negotiations would be successful in meeting these aspirations for land, self-government and equity. Considering the wild and ever-changing forces with which the band had to negotiate, it is not hard to understand why. In the meantime leaders pursued any other avenue that became available.

Chapter 4.

Negotiating Change

In hindsight, 2002 was a watershed year in TFN's journey to self-government, but it likely did not seem so at the time. While a significant court victory for Aboriginal rights and new initiatives in federal Indian policy opened new opportunities for TFN, the contentious politics surrounding Campbell's treaty referendum and its implications threatened the future of TFN's progress towards a final agreement. Moreover, external pressures from ongoing local conflict with the municipality of Delta, the neo-liberal priorities of the provincial government and the global ambitions of the VPA, would profoundly shape the trajectory of TFN's story. The pursuit of reconciliation continued to be influenced by land conflicts and the complex political economy of governance in the metro Vancouver.

Taking the Port to Court

In February 2002 the Haida First Nation won an important appeal further bolstering the legal duty of governments and corporations to consult First Nations about projects on lands to which they claim Aboriginal rights and title.[136] Within a month TFN filed a lawsuit against the provincial and federal governments, port authority, B.C. Rail, B.C. Ferries, and B.C. Transportation and Financing Authority. The suit cited the Roberts Bank port terminal and the ferry terminal as "continuing nuisance[s]," representing an "interference with [TFN] riparian or littoral rights," and claimed that the government of

[136] *Haida Nation v. B.C. and Weyerhaeuser*, CA027999 (BCCA 2002).

Canada had breached its fiduciary duty to protect TFN lands from harm and economic devaluation, including the failure to conduct environmental impact assessments for the construction of port and ferry terminals.[137] While TFN hoped that the suit's claims against the federal and provincial governments might be negotiated at the treaty table, "[i]n respect to the port," said Bak, "the court system was really the only way to settle our differences." Baird confirmed that this "aggressive legal action" was seen as an escalation of TFN's longstanding campaign to address port impacts.

Around this same time, the band government hired Simon Fraser University (SFU) Public Policy professor Doug McArthur to conduct research and analysis for the treaty process and advise Baird, the chief negotiator.[138] Hoping that they would eventually reach a final agreement and become a self-governing First Nation, McArthur said TFN "wanted someone who could speak to the issue of self-sufficiency and help them look at and analyze the conditions and requirements to achieve it." Baird described McArthur as "one of the few people I know who could tell me what I needed to do to create a nation." He also became involved in TFN's lawsuit and, eventually, the band's negotiations with VPA.

In interviews McArthur, Bak and Cox all described the goal of the suit as not the removal of the port or ferry terminals, but as a tactical move to motivate real negotiations. Bak describes the suit as a claim for TFN's right to be involved in every stage of port development from inception all the way through to operation and the monitoring, and to receive ongoing compensation for bearing the brunt of the terminal's impacts—environmentally and culturally. Today's tactical explanation may be coloured somewhat by how events later unfolded, but is consistent with TFN's overall approach to hedge its negotiations strategies with other options for change and to act pragmatically. Although McArthur believes the band would have pursued the suit and at least

[137] *TFN v. VPA*, S021209 (BCSC 2003), 2-4.

[138] McArthur's previous work at the ministry level in B.C., Saskatchewan and the Yukon territories for aboriginal affairs and land claims, among other issues, led to his academic focus on aboriginal and resource policy. SFU Public Policy Program, "Doug McArthur," http://www.sfu.ca/mpp-old/01about_us/mcarthur.html, accessed March 11, 2013.

significantly obstructed and delayed VPA's development plans, TFN was presenting the impacts it suffered—the ruination of its foreshore, deadening of coastal waters, elimination of shellfish populations and access to fisheries, blockage of the traditional canoe passage, air polluted with coal dust, lands severed by an impassable highway—as a "backdrop" for negotiations. The goal, said McArthur, was not to prevent the port authority from "modernizing" its facilities, but to find accommodation and reconciliation. And reconciliation, as McArthur saw it, was "about learning to live together."

According to Cox, who was Vice President of Infrastructure Development for VPA at the time, port officials believed the lawsuit's claims were unfounded and would not prevail in court. The port authority had superior legal capacity and ample funds to fight and win such as suit. McArthur confirmed that initially VPA indicated it had neither an obligation nor any interest in negotiating a settlement. But the port was also scrambling to compete for a piece of what seemed like perpetual growth in global trade. Internally, plans were well under way for a new phase of container terminal expansion at Deltaport and, as Cox explains, the port was in a hurry. Many interviewees believed the publicizing of port expansion plans triggered TFN's legal action.[139] Based on the public record, it would seem that few outside of port circles knew of VPA's plans until August of 2002, five months after TFN filed its suit. That month Huntington leaked to the local press what she had learned from port officials at a closed-door meeting. She was a sharp critic of port expansion from the beginning, and even urged the municipality to either join TFN's lawsuit or file one of its own against the port. Fellow civic leaders did not take up this idea; in fact, much of the initial reaction in Delta focused on how the port would mitigate its impacts on the municipality, especially the negative effects of truck traffic.[140]

[139] These included Cox, McArthur, Huntington and Gentner. Huntington even had the impression that the suit predated treaty negotiations, which may indicate the extent to which the narrative of port interests driving TFN's treaty negotiations has overtaken the actual historical record in the minds of TFN critics.

[140] Cox, interview. Research I conducted for Hall's "Global Gateway, local benefit?" project confirms this assessment.

Provincial Treaty Politics, Local Land Debates and Port Expansion

Meanwhile, Gordon Campbell was gearing up for his treaty referendum. Surprisingly, none of the people interviewed for this study mentioned this as a major factor or event affecting TFN's negotiations. When asked specifically, many suggested that it had little effect. This seemed surprising considering the public profile of the referendum campaign. Campbell and the B.C. Liberal government faced vocal and growing opposition from First Nations, Aboriginal groups, environmentalists, churches and labour unions who condemned the referendum as a racist violation of Aboriginal rights—a deceptively worded and illegitimate mockery of democracy. The mail-in ballots asked voters to vote yes or no on eight principles proposed as guidelines for provincial negotiations with First Nations. Opponents called for a boycott of the referendum and only about a third of voters returned their ballots. This action skewed the results of the referendum, which won 80 percent support for each of the questions.[141]

In October 2002 VPA officially announced its $1 billion port expansion plans, including the addition of a third container berth at Deltaport followed by construction of a second container terminal (T2).[142] Internally, Cox said he was helping to coax port officials into seeing a negotiation of the suit as an opportunity for mutual benefit. Coming from a background in land use planning, he believed the VPA's traditional approach—"this is in the national interest of Canada and we're not going to let anybody get in our way"—was outdated and ineffective. Cox believed the port needed to listen to neighbours' concerns and try to deal with them. He and others at the port knew and liked Baird and felt they got along fairly well with her and McArthur, and he sensed there was an opportunity to build a relationship that could be good for both sides.

[141] "B.C. Treaty," CBC News Online; Rossiter and Wood, "Fantastic Topographies;" Howard, Berfitt and Eaton, "Shape Shifters," 73-77.

[142] Daniels, "Port Will," D1.

These opportunities became clearer after TFN hired consultants to develop a preliminary land use and planning study based on the provincial treaty settlement offer. TFN was still at an impasse with the province over its demand that ALR designation be removed from settlement lands, but after a December 2001 meeting the parties agreed to the study as an exploration of "what could be accommodated" on those lands if restrictive designations were removed. The consultants set out to assess "how the Tsawwassen First Nation's vision for the future of their community might apply" to the lands.[143] Released in November 2002, the study detailed potential uses: twenty-one hectares of "intensive agriculture;" four hectares set aside for parks and seventy-nine for "environmental/ cultural use;" yet another sixty-five hectares for "drainage/irrigation protected areas;" ten hectares for community facilities; seventy-nine hectares for community housing; eighteen hectares for office/commercial; and thirty-nine hectares for industrial use along the Deltaport causeway (map four, Appendix F).[144]

The ALR designation and access to basic services had become major sticking points in this phase of treaty negotiations. TFN needed "long-standing servicing issues to be resolved so that [it] could have access to water like other municipalities can in the Lower Mainland;" and it needed assurance that the ALR designation would be removed from its transfer lands.[145] Notes from the main table negotiations in December acknowledged that the question of the ALR designation on settlement lands was still unresolved and proposed meeting with the Agricultural Land Commission (ALC) to discuss options.[146] Nonetheless, TFN's preliminary land use document probably helped put the band on a path to negotiations with VPA and likely exacerbated the ongoing conflict between the Corporation of Delta and TFN. Leaders in Delta complained that they might be forced to provide services to TFN's future developments after losing land from its own municipal tax base. They contended that this was not only unfair, but was being negotiated at the treaty table without the proper consultation of municipalities. As

[143] CitySpaces and Fletcher & Co., *TFN Community Planning*, ES i.
[144] Ibid., ES iv.
[145] Baird, interview.
[146] TFN, Canada and B.C. Chief Negotiators, *Negotiations Update and Report*.

Gentner said, “our voice didn’t have any weight” because the LMTAC was purely advisory. After a series of contentious exchanges with TFN, the province and LMTAC over servicing and taxation issues and the fate of the Brunswick Point lands, Delta council voted to remove its representative from the LMTAC in February 2003.[147]

As TFN had laid out in its expression of interest several years before, the transfer of land without strings attached had both practical and symbolic implications. It would acknowledge TFN’s Aboriginal title and its right to self-government. But it would also provide more flexible development potential and therefore higher monetary value. These considerations likely did not escape the other parties at the table who needed to present an offer valuable enough to make settlement possible. Indeed, in deciding to pursue treaty negotiations, Baird had adopted the forward-looking philosophy of former Squamish Chief Joe Mathias, who “used to say that there wasn’t enough money in the world to compensate Aboriginal people for the injustices they’ve faced.” Whether at the treaty table or by other means it was therefore the job of current leaders to look forward and find a means to sustain a viable community into the future. Under this approach, land value and use in the marketplace of settler society were of primary importance.[148]

But the major roadblock to reaching an AIP was the provincial government’s insistence that self-government was to be negotiated in side agreements separate from the treaty table. First Nations were not willing to settle treaties without self-government provisions. Suddenly, less than a year after the vitriolic rhetoric of his referendum campaign, Campbell surprised almost everyone—his own caucus, the public, industry and First Nations—in his February 2003 Throne Speech. In what seemed like a “180-degree position change” he apologized to First Nations for all past injustices and announced that his government would encourage economic development deals

[147] Baird, Gordon and Dodson to editors, 2003; Corporation of Delta, *Council Report*, F.06; Bohn “Delta Exits,” B8; Gulyas “Second Treaty,” 1.

[148] Baird interview; McArthur, interview; Baird, *Making History*; Baird, “Speaking Notes;” TFN, *Fact Book*.

regardless of the status of treaty processes.[149] Many, like Huntington, believed that these moves were consistent with the neo-liberal imperative to provide stability in the resource sector, a reaction to the reported shift among business interests that had found the results of the confrontational referendum counterproductive and wanted to get on with settling investment-friendly deals with First Nations.

TFN and a coalition of other First Nations already at the treaty table saw this neo-liberal pirouette as an opportunity to "break the log-jam" that was holding up their negotiations. Because she was the only chief among them, Baird led a delegation of treaty negotiators that included the Maa-Nuulth, Lheidli T'enneh, Sliammon, Yale, and Yekooche First Nations to meet with the premier. The group outlined key policy issues that they all believed had to change before First Nations could reach agreements—most especially the inclusion of self-government at the treaty table. Campbell assented to the changes leading to AIPs for the Tsawwassen, Maa-Nuulth and Lheidli T'enneh within three weeks of each other.

TFN announced its AIP in July 2003 with the release of a document summarizing its land, cash, resources, culture and governance provisions. In addition to the changes cited above, Gordon credited the success of the AIP stage to the negotiators' collaborative working relationship. She said each was like-minded, shared a sense of humour and respected each other, which allowed each party to accept when there was something on which another just could not budge. The AIP had solidified the settlement lands on offer: fifty hectares more than the 2001 offer for a total of 427 hectares to be under TFN jurisdiction, and rights of refusal over the remaining Crown land at Brunswick Point (see map five, Appendix F). But it did not resolve two of the major points on which TFN would not budge. The agreement stated only that parties would explore issues around membership in the Greater Vancouver Regional District (GVRD) for TFN as a

[149] Baird, interview. See also Howard, Berfitt and Eaton, "Shape Shifters."

way to provide access to services and that they would discuss post-treaty ALR exclusions with the ALC ahead of a final agreement.[150]

TFN Strategies During the Agreement in Principle Stage

In order to proceed, TFN negotiators needed members to validate the AIP. Leaders had emphasized community consultation at this stage and throughout the treaty process.[151] "It was probably the most important step," according to Bak, who was heavily involved in this aspect. Without close consultation, whatever leaders and lawyers negotiated at the table would be illegitimate. Lucille, who had also been elected to the band council during this time, described the period leading up to the AIP as a time of many sleepless nights. She, too, was working closely with members in the consultation process and worried that members might not accept the compromises negotiators had reached. As Baird acknowledged, for TFN members the AIP represented a "huge, huge" compromise made up of many bitter concessions. But having consistently checked in with her community, with frequent meetings and key votes along the way, Baird was able to feel confident that these were sacrifices they could accept. Lucille thought in the end most members saw that losses in some areas were balanced by gains in others. For example, she said, the fisheries agreement was disappointing but gaining new lands and the power to undertake industrial and commercial development helped to ameliorate the limited access to a declining fishery.

TFN's commitment to detailed and frequent consultation met with struggle at the treaty table—the federal and provincial governments were reluctant to spend the time, money and expertise required to adequately educate and involve TFN members both on and off-reserve.[152] Gordon remembers making several visits to TFN in 2002-03 to

[150] TFN, Canada and B.C., *Summary of Agreement-in-Principle*.

[151] Many interviewees, both TFN insiders and outsiders, confirmed this commitment to internal consultation, including: Adams, Baird, Williams, Bak, Gordon, Huntington and McArthur.

[152] Bak, interview.

discuss and explain the provisions of the proposed AIP. She believed that this model of decision-making was perhaps the most significant factor that led to the eventual success of TFN's final agreement because it ensured a necessary level of legitimacy and accountability while laying the groundwork for TFN's future form of self-governance.[153] In December 2003, 74 percent (100) of the TFN voters who cast ballots approved the AIP. Parties officially signed the agreement on March 15, 2004.[154]

Before 2003 only status Indians on-reserve had the right to vote in TFN elections. But before the regular band election in March of that year, TFN had amended its election code to allow off-reserve members to vote, reportedly adding fifty to sixty non-residents to its voting rolls.[155] While this furthered the recognition of people who had been alienated from their Tsawwassen identity in many ways—moving away for economic or family reasons, or by the policies that preceded Bill C-31—some lifelong TFN-resident Indians began to see a worrisome imbalance. In a 2009 interview for *Vancouver Magazine*, Bertha Williams described the 2003 votes as the first of many in which people who she considered essentially outsiders and johnnies-come-lately may have "swamped" the democratic process and skewed future decision-making.[156] Her concerns deepened when, according to a recounting MP Cummins offered in 2007, the band government committed to pay lease dividends plus interest to a group of over 100 post-C31 members called the Stahaken claimants. This commitment amounted to a $3.5 million internal debt.[157]

This was not the only debt raising concerns at the time. Political detractors and the treaty parties themselves had started to worry about the loans BCTC had been advancing to First Nations. Recognizing the immense imbalance in power between the

[153] Gordon, interview.

[154] TFN, "Tsawwassen First Nation Approves;" Gordon "No Reservations."

[155] Gulyas, "Baird Facing," 3.

[156] Glavin, "Treaty Rights."

[157] Parliament of Canada 142:097 (2008) (statement of John Cummins). TFN's annual report for 2008-09, page two, confirms the existence of this agreement, made in February 2003, but does not go into detail.

parties, the BCTC was set up to provide "negotiation support funding to First Nations so that they can prepare for and carry out negotiations on a more even footing with the governments of Canada and BC." Up to eighty percent of this funding, however, is in the form of loans that are to be repaid once negotiations are complete.[158] Even with this provision, First Nations leaders believed tables were always tilted in the governments' favour because, unlike bands, they could afford to stall and weather the resulting delays. Just weeks after the approval of TFN's AIP Baird said she believed the repayment of their loan was still negotiable, and this had helped her convince members to stay at the treaty table.[159]

Meanwhile, TFN continued to pursue alternative avenues toward self-government and economic development. In the same month that they approved the AIP, TFN members also ratified the Tsawwassen Land Code under a new federal program. With the establishment of the code, the band gained greater control over land transfers.[160] But while the program has allowed some First Nations to pursue development, TFN still could not access municipal water infrastructure, making it nearly impossible to mount projects.[161] On the legal front, TFN continued to fight off legal manoeuvres in its case against VPA. In September the judge in the case denied Canada's demand for further particulars and scheduled a trial date in early 2005.[162] TFN and dozens of other First Nations filed writs with BC Supreme Court ahead of a December deadline to protect title claims in keeping with 1997's Delgamuukw.[163] Among these strategies for the future that had occurred over the course of 2003, Baird had also given birth to a daughter, the first of her "treaty milestone babies."

[158] BCTC, "Funding."
[159]Carmichael "Loans to Natives;" Howard, Berfitt and Eaton, "Shape Shifters."
[160] "TFN Members," Delta Optimist, 14.
[161] Baird, interview.
[162] *TFN v. VPA*, S021209 (BCSC 2003); *TFN v. VPA*, S021209 (BCSC 2004).
[163] Gulyas, "TFN Files," 5.

With their win in 2001 the B.C. Liberals had firmly established a neo-liberal government in the province. Within this approach, establishing B.C. in the global marketplace was a top priority. While pressure from certain business interests had motivated a change in the approach to treaty negotiations, advocacy from port-industrial interests led the B.C. Liberal government to become a port-booster. Although the federal and provincial governments had been investing in port infrastructure since the 1960s, Cox said this was a novelty that port interests were not used to. He surmised that it was leadership from Campbell provincially and a counterpart at a key federal ministry that made these changes possible. In 2003, the B.C. government also moved to cap port property tax rates, to the chagrin of municipal leaders like Delta's Jackson. The following year the provincial government officially initiated the Gateway Program, a string of infrastructure and subsidy provisions to promote international trade and make Vancouver Canada's trade "gateway" to the Asia-Pacific region. The federal government would soon follow with its own investments in port logistics.[164]

TFN Negotiates with the Port

While TFN had been barred from resolving port issues at the treaty table, the AIP specified that the pending lawsuit against VPA and others had to be resolved in order to reach a final agreement that could settle Aboriginal title claims. In December 2003, the counsel for the province convinced other defendants to support a request for a delay of the trial date. Describing the suit as "something less than a full claim for aboriginal rights and title, but something more than the nuisance claim of a non-aboriginal landowner," Justice Victoria Gray denied the adjournment request in April 2004. She found that a delay would "prejudice" TFN in its ability to affect port expansion plans, continue treaty negotiations and reach a final agreement. There were clear signals in the text of the

[164] The province officially announced its Gateway Program in 2004, and the federal government followed up with its Pacific Gateway Strategy in 2006. For a compelling examination of how port-industrial interests influenced Gateway and other government infrastructure projects see Clark, *Spaces of Engagement*.

ruling that TFN was willing to negotiate a settlement of the lawsuit if it could help the band move towards a final agreement.[165]

With the approval of the AIP, a setback in fighting TFN's lawsuit, and the prospect of removing the agricultural designation on the former backup lands, port officials began to consider Cox's advice to negotiate in earnest. Port officials were now beginning to see that TFN had a good chance of settling its treaty and acquiring the backup lands.[166] Those lands, as Baird put it, were of "strategic significance" to Deltaport's container operations. While Huntington believed the port authority could not afford to have the suit be successful, Cox contended it simply wanted to avoid delay. Baird offered a similar explanation: port officials realized they would have to "deal with" TFN if they wanted to proceed with expansion plans. Most agreed that without the pressure of the expansion project and the enticement of potential land for development the port authority never would have backed down. Regardless of the motivations, TFN leaders entered negotiations hopeful that they would lead the port to concede compensation for past wrongs—something that had to be addressed, said Baird, in order to move forward—mitigate ongoing impacts, provide future benefit-sharing and give TFN a seat at the decision-making table.

Although he did not recall the exact figures debated, Cox remembered the TFN-VPA deal-making process as something like this: the port offered several million dollars to settle the suit; TFN wanted more than ten times that amount. Cox thought that was impossible for the port, but in talking with McArthur it was clear that TFN did not want a cheque, it wanted benefits. So the parties looked for ways that a $5 or $10 million investment, for example, might turn into $90 million in the future. McArthur and Baird both described negotiations as tough and sometimes discouraging. But Cox remembered them as "respectful and straightforward." Either way, the talks were largely secret until Fraser River port officials revealed VPA's plans to develop on the proposed treaty settlement lands causing ALR founder and Richmond councillor Harold Steves to

[165] *TFN v. VPA*, S021209 (BC Supreme Court 2004); "Judge refuses," *Vancouver Sun,* B2.
[166] Cox, interview; McArthur, interview.

conclude that “the Vancouver Port Authority is using the Tsawwassen First Nation’s treaty negotiations to help facilitate expansion plans.”[167] In September 2004 Steves resigned from the LMTAC in protest.[168] News of Steves’s move prompted a VPA spokesperson to acknowledge "the VPA are meeting with TFN on our relationship issues."[169]

Publicly, the provincial government had held to a position that it would not agree to the removal of the ALR designation from settlement lands, but during this period the parties were meeting with the chair of the ALC in an attempt to resolve the impasse. According to Gordon, the chair was willing think flexibly about options such as swapping ALR-designated transfer lands for agricultural protection on former reserve lands. Gordon believed these discussions marked a turning point in thinking among TFN negotiators about the power of land ownership under its own jurisdiction. A treaty agreement meant TFN could control its own destiny, or, as she put it, do its own “wheeling and dealing.” When an October negotiation report revealed that these ALC meetings had taken place, outside critics did not focus on TFN’s prospects for self-determination.[170] Instead the report fuelled the belief that TFN’s treaty was part of a government conspiracy working in favour of port interests.

In November 2004 TFN and VPA announced that they had successfully negotiated a deal to settle TFN’s lawsuit. The parties shared major details of the deal with the media and other governments, but the legal documents—the settlement agreement and a related Memorandum of Agreement (MOA)—were not made fully public until 2007. Covered by local media outlets and the business press, the deal was generally described as a benefits and compensation package with an estimated value of $47 million over twenty-five years. VPA would pay $8 million up front to mitigate past impacts and injustices cited in the suit, while also committing to various provisions giving

[167] Gulyas, “Second Treaty,” 1.
[168] Ibid.; Richmond News, “Steves quits,” 4.
[169] Patrick McLaughlin quoted in Gulyas, “Second Treaty.”
[170] TFN Main Table Working Group, *Report on Negotiations*.

TFN an economic stake in port operations. This included a job-training fund; $4 million worth of guaranteed contracts and employment; $10 million worth of leases for container handling operations; and a $10 million loan to establish a joint venture investment fund (JVIF) for equity sharing in future port-related business projects.[171] In addition to dropping the claims in its suit, it appeared TFN would be setting aside treaty settlement land for port uses, and the band agreed to cede claim over "12 square kilometres of underwater land."[172] Cox believed the parties reached this deal by selling "two completely different stories that were linked." TFN talked to its members about benefits and Cox talked to his superiors about costs. He "was able to convince them that we could do this transaction and we could do it for an amount of money we could live with."

According to Baird it was the JVIF that sealed the deal for TFN.[173] More than anything, this provision opened the opportunity that Cox had been hoping for—to turn a smaller settlement into and investment towards larger future payoffs in the form of shared profits. According to Bak, this deal also satisfied TFN's original goals in filing the suit to have a say in port development, an opportunity to cooperate and partner with its industrial neighbours. Although there are some cultural and environmental impacts that could never be mitigated, lives would be improved by some of the economic benefits. That, says Bak, was "the compromise that we have to make because, again, undoing Deltaport is simply not on the table." While some outside TFN seemed to think the compensation offered was generous, Baird saw it as almost token. But as she told an Aboriginal newspaper at the time, "a return to the pristine coastline conditions that existed before the arrival of the port was not a realistic expectation."[174]

Within the TFN community the settlement deal with the port, like all other major decisions, was subject to consultation in advance of a vote of final approval. Leaders

[171] Harris, "VPA Deal," 6; Mah "Tsawwassen Pact," 1; "Deal Paves," *Daily Commercial News and Construction Record*, 3; "Tsawwassen settlement," *Vancouver Sun*, C6; Simpson "Tsawwassen Band's," D2; Jang, "Native Deal," B14.

[172] "Deal Paves," *Daily Commercial News and Construction Record*, 3.

[173] Maudie, "Investment Fund."

[174] Quoted in Maudie, "Investment Fund," 11.

discussed its implications at length with members and considered whether it was good enough to make up for what TFN would lose. Members still worried about the port's ongoing environmental and health impacts at the time of interviews for this project. Kermit would prefer that the natural environment be restored. He worried that the air pollution from coal export and rail operations would eventually "choke us out" if something was not done soon to reduce it. But he said he did not know whether removal of the port and restoration would be possible. On the day of our interview, Margaret woke up at five in the morning thinking about the ruined foreshore and wondering whether it would be possible to bridge the causeways to re-establish tidal flows. Darwin mentioned this idea as well. The more Margaret thought about it, though, considering the extent of the rail and road infrastructure on the Deltaport causeway, she realized the benefits likely would not justify the costs for the port. She figured TFN has to focus on how to otherwise compensate for what is really unmitigable.

Some members believed their leaders had not gone far enough in the port settlement, that the benefits components could not make up for the loss of livelihood, environmental and cultural health, and self-determination for which the port and senior governments had been responsible. But most of those interviewed for this paper agreed with Lucille that it made sense to negotiate with VPA because the terminal was not going away. What they had to consider more intensely were the implications of VPA's expansion plans, particularly the prospect of T2, which many believed was almost inevitable. In the end most members, considering the grim reality that Deltaport could not be removed, and that the prevailing paradigm of cost-benefit analysis was not in their favour, decided they could live with port expansion under the terms VPA was offering for economic benefits, mitigation, and compensation, even if it meant giving up the right to oppose future projects. According to Bak, they went to a vote with "both eyes wide open." On November 30, 2004 TFN voters approved the deal by eighty-eight percent.[175]

[175] "TFN Ratifies," Canada NewsWire, 1.

Port and Land Politics Inflame TFN's Neighbours

Delta residents and community leaders increasingly critical of port expansion plans were not so enthusiastic. The news prompted a wave of opposition to TFN's AIP and the side-deal with the port. This is when Gentner became more involved in local relations with TFN because he was concerned about port interests driving the treaty settlement and he did not have his hands on the MOA and settlement documents to understand the details of the deal. Although the documents are now publicly available on TFN's website Huntington maintained that both parties still will not say much about the details of the deal. Her interpretation was that, in exchange for $10 million from the port for "development purposes," TFN dropped demands for cumulative impact assessments and agreed not to speak in favour of a wildlife management area. Steves, fresh off his dramatic departure from the LMTAC, railed against the province's attorney general at the time, saying that the treaty's land deal was "too rich" and set a dangerous precedent for other First Nations that could result in the City of Richmond losing large amounts of property within its jurisdiction.[176]

These kinds of perceptions fuelled pre-existing sentiments against TFN's treaty negotiations. In December 2004 the municipality of Delta launched a suit in the BC Supreme Court to block the provincial government from signing the TFN treaty on the grounds that local government had not been properly consulted about the loss of land in its tax base. Mayor Jackson asked the Metro Vancouver board to pass a resolution supporting Delta's objection over municipal consultation in treaty-making. The resolution passed narrowly after a contentious debate among the leaders on the board.[177] Then, on the heels of its deal with TFN, VPA made a fateful move that would permanently damage the legitimacy of the port expansion process and politically affect TFN's pursuit of self-governance. Instead of filing its anticipated environmental assessment application for Deltaport's third berth and T2, VPA announced that it was uncertain whether T2 was

[176] Edmonds, "Land Claims," 3.
[177] Bohn and Beatty, "A-G Slams," B1.

viable and was moving forward with an application for only the Deltaport third berth project.[178]

The tide of public opinion in Delta had turned firmly against VPA's expansion plans by the time comment began on the environmental application in the spring of 2005. For better or for worse, TFN had set forth and then settled its port grievances in the lawsuit. But its neighbours' efforts to secure traffic and other mitigations had met with little success and senior governments were not heeding local ideas and demands. Looking back, Cox concluded that the political leadership in Delta simply had never liked the port being part of the community and was never supportive of its expansion no matter what VPA did to help with traffic mitigation measures. These issues became engrained into local politics as Huntington took a run at Delta-South's MLA seat and Genter won as an NDP candidate in Delta-North. His priorities in running for the seat were to protect the ALR, to give municipalities a larger voice in decision-making and to promote environmental stewardship.

In June 2005 local reporters acquired and published a set of internal communications that had taken place between DFO, VPA and Environment Canada during the autumn of 2004. The exchanges revealed that DFO officials had advised VPA to separate the third berth and T2 assessment applications to increase the likelihood of approval. Environment Canada officials had expressed grave concerns about the impacts of the project and objected to DFO's move, but never went public and eventually accepted VPA's application.[179] The environmental assessment process was delayed until December 2005, but the newspaper exposé proved to opponents that senior governments were conspiring with port interests to push the project through regardless of local and ecological concerns. In June, opponents organized and founded a grassroots group to fight the project called Against Port Expansion (APE). Building on previous critiques from Jackson, Steves and others, APE leaders began lumping the TFN treaty in as part of the port expansion agenda to which they were adamantly

[178] Gulyas, "Civic Staff," 6.
[179] Hume, "Bigger Port," S1; Gulyas, "Port Impacts," 1; Gyarmati, "Delta Wants," 15.

opposed.[180] Despite APE's grassroots efforts over the course of the next 18 months, the provincial and federal governments approved the Deltaport third berth project in the fall of 2006.

Reaching a Final Treaty Agreement

Even with the AIP under its belt, and negotiations continuing, TFN still never took for granted that it would reach a final agreement. In late 2004, negotiations had stalled over the fisheries component. Several key chapters that were not included in the AIP still had to be drafted to complete a final agreement.[181] The band continued to pursue, in Baird's words, "projects that would help us with or without the treaty process." One of these, starting in 2005, was a community-based effort to develop a new constitution. A twelve-person committee met biweekly over the course of the next two years to grapple with some heady and sometimes sensitive issues. Who would be entitled to Tsawwassen citizenship? Did TFN want a modern, traditional or some hybrid form of government? The community had been subsumed and subjugated by settler society for decades. The official numbers of Tsawwassen people had dwindled under Indian Act policies. In contrast to the women and children who lost status prior to Bill C-31, the Indian Act had allowed for any woman marrying an Aboriginal man to acquire Indian status. Regardless, only some status Indians can pass on status to their children. This difficult and arcane system of identifying Aboriginal people is meant as a form of planned obsolescence. According to Margaret, had TFN remained with this system of membership the Tsawwassen probably would have died out.

By rights TFN could have built utterly separate systems of government, land title and other important institutions based upon its own history, traditions and cultures. For example, not only did pre-contact governance function on consensus, according to Adams, it was organized by women. Women directed the men's hunting activities and

[180] For example, Gough, "Letter," 9.
[181] McNeil and Gauci, *First Nations*.

supervised the use and distribution of meat and other necessities. In Adams's words, colonizers had "separated the man and the woman," imposing their system of patriarchy and "treating women like garbage." Knowing this about their cultural history, TFN leaders and members could have chosen to design a consensus-based system of governance controlled by women, for example. But having long lived with settler society, most realized that their government would have to fit with the rest of the contemporary system, as Bak said, "because ultimately our membership will have to interact with the larger world." TFN does not exist in isolation from other communities, and is in a much better position to provide for its members if it has mutually respectful relationships with other governments.[182] Through the process of treaty-making and contingency strategies such as the settlement agreement with the port authority, Baird, as chief, had been "dragged kicking and screaming" into an approach that sought integration into settler systems of government. Even so, she said it was very difficult for her to accept that just because TFN could do everything separately and differently did not mean that it should. Her goals, she reminded herself, were to improve socio-economic conditions and create a sustainable economy for her community, so she decided "we can integrate, as long as certain aspects of our culture and our identity are protected. We're not assimilated." For not only has TFN faced criticism from the non-Aboriginal outside world, it has also faced closer criticism from fellow First Nations that feel integrating into institutions of settler society is akin to assimilation.

Meanwhile, although the B.C. Liberals were likely distracted by the election in the spring of 2005, the provincial government was under ever-increasing pressure to prove that the treaty process could provide the certainty that business and investors needed to pursue resource, port and other development projects.[183] In August 2006 the Lheidli T'enneh First Nation was the first to initial a final agreement with senior governments.[184] By the summer of 2006 it looked as if TFN was on the same track because parties

[182] Gordon, interview; McArthur, interview.

[183] These motivations were discussed in several interviews: Gordon, Gentner, Huntington, Anonymous interviewee 5.

[184] BCTC, *Lheidli T'enneh*.

officially asked for Delta's assent to the proposed land transfers. TFN, of course, was steadfast in its commitment to reach an agreement, but took nothing for granted. Perhaps that is why Baird contended that "[n]o one was as surprised as me when we reached a handshake agreement" in October. The parties announced and initialled the final agreement in December, three days after the birth of Baird's second daughter.

Although the existence of an initialled final agreement seemed momentous, it still had to be officially ratified by each party to take effect. Negotiators had bargained with the other parties for everything they thought they could feasibly get, but it was up to TFN members to decide if what they were gaining was enough, and whether they were giving up too much. Gordon summarized the major compromises reached: TFN had agreed to settle for less land than originally demanded, including only first right of refusal over the remaining Crown land at Brunswick Point (see map six, Appendix F); senior governments had reluctantly agreed to a constitutional guarantee of TFN's self-government provisions; the province had agreed to a larger cash component and the removal of the ALR designation on settlement lands. The parties had decided that TFN would join Metro Vancouver (the GVRD) in order to negotiate its servicing needs.[185] Leaders brought the proposed agreement back to TFN members and pored over every chapter in advance of a ratification vote.[186]

According to a member survey commissioned by the BCTC after the vote, TFN pursued an intense array of consultations between February and July of 2007. In addition to the ongoing meetings of the Constitution committee, TFN held biweekly community meetings on major treaty topics including membership, resources, economics, fiscal and tax issues, and lands. The treaty team held several family meetings and off-reserve meetings in Bellingham, Vernon and Seattle, Washington. TFN sponsored special workshops for youth and CP holders, a treaty information fair, an annual general meeting and a land tour. A group of members and leaders made a special trip to Nisga'a territory to see a post-treaty government in action. Members

[185] Gordon, "No Reservations"; TFN, Canada and B.C., *Final Agreement*.
[186] Bak, interview.

opposed to the treaty prepared a formal critique and the band held a public debate between opponents and proponents.[187]

Treaty Opposition and Ratification

It appears that about thirty to sixty TFN members (out of 218 eligible voters) were opposed to the treaty.[188] The BCTC survey found that those who opposed treaty ratification thought the band was not capable of taking on self-government responsibilities, did not want to lose their tax status and other Indian Act benefits, and/or thought the land and cash settlement was not enough. According to a letter that Bertha Williams sent on the eve of the treaty vote to the UN Commission on Human Rights and copied to the prime minister and premier, her critique went farther: she believed the extinguishment of TFN's Aboriginal title claims under the agreement would further impoverish her people and amounted to assimilation. Furthermore, she considered the process leading to the ratification vote to be tainted. The letter detailed special provincial government funds that paid for a promotional package titled "Survival Guide to the Tsawwassen Final Agreement 2007." Among other things, the guide promised that, upon ratification, TFN elders would receive $15,000 each from treaty transfer payments, and each TFN member would receive $1,000. Treaty proponents saw these efforts as fairly standard elements of a democratic process, and Baird explained that the payments to elders were conceived as a way to compensate members who had suffered longest under the Indian Act, but were less likely to enjoy the full scale of the treaty as benefits unfolded into the future. Williams saw the move as vote-buying.[189]

Williams had been worried about the influence of money in the treaty process since the late 1990s. TFN still had an outstanding obligation to the Stahaken claimants

[187] Mitchell, *Communications Analysis*.

[188] In "No Reservations" Gordon cites 30 members as treaty opponents, but the final vote results showed 57 votes against ratification.

[189] Williams, B., Letter to Stavenhagen; "Funds Flow," *The Province*; "Tsawwassen Incentives," *Vancouver Sun*.

that it had to find a way to pay. And although Baird had considered treaty debt obligations up for negotiation back in 2003, TFN ultimately agreed to repay a sizable debt in its final agreement. According to a schedule included in the initialled version of the agreement, TFN was on the hook for at least $5.6 million in treaty loans, which it would repay over the course of ten years. Apart from several funds the governments would set up for specific uses, the cash component of the treaty would be paid out on a similar schedule to TFN, totalling over $12 million.[190] In a 2009 interview with *Vancouver Magazine*, Williams worried that repaying the debt had become part of the motivation for reaching a final agreement.[191]

As TFN debated the final agreement internally, the treaty was still unpopular with its neighbours. In January 2007, local MP Cummins fed the flames of conspiracy theory when he reported to Delta council that the province, through B.C. Rail, had plans to buy up farmland near the Roberts Bank causeway in order to expand the port railyard. The parcels in question were immediately adjacent to treaty settlement lands.[192] Convinced that the treaty agreement was "all about port development," APE activists submitted a Freedom of Information request to obtain the TFN-VPA MOA, which had never been fully public. TFN subsequently made copies of the two agreements public on its website, one of the few First Nations to share the details of its benefits agreements, according to McArthur. But at the time, APE leaders saw the MOA as one of the many "secret deals" that had made the port expansion possible. While most of this information was more generally disclosed when the deal was announced in 2004, local port opponents found the phasing of economic benefit provisions particularly galling given VPA's most recent moves. Portions of the benefits, including mitigation and compensation funds, employment guarantees and contracting opportunities, were specifically tied to the approval and construction of T2.[193] Just after the port authority had signed off on this settlement agreement it had suddenly removed plans for T2 from its environmental

[190] TFN, Canada and B.C., *Final Agreement*,169 and 172.
[191] Glavin, "Treaty Rights."
[192] Gulyas, "TFN Treaty," B2; Gulyas, "Rail Yard," 1.
[193] TFN and VPA, *Settlement Agreement*.

assessment application, saying the viability of the larger terminal was uncertain and that they were unsure when or whether those plans would proceed. In February 2007, only a month after the work on the third berth was underway, VPA had announced it was moving forward with T2 plans. After the revelations of VPA's secret dealings with DFO, the terms of TFN's MOA seemed further proof that the port authority had been duplicitous in its environmental assessment process. The specific commitment in the MOA that VPA would guarantee leases on future settlement lands that TFN would set aside for a container handling facility added flames to the prevailing analysis that TFN's impending treaty agreement was just another port development conspiracy. The parties had even agreed to work together to remove the ALR designation from the lands in question if TFN was not able to settle their final treaty agreement by the end of 2004.[194]

But Delta's port drama may have been least among TFN leaders' concerns at the time. They were also grappling with criticism and opposition from other First Nations and the failure of B.C.'s first treaty ratification vote.[195] In March 2007 the Lheidli T'enneh membership voted to reject the final agreement that had been initialled in 2006.[196] Both TFN and senior governments now felt intensified pressure for a win. Meanwhile, forty-five other First Nations were still slogging through the early negotiation stages, while about a third of all B.C. First Nations, represented in part by the Union of B.C. Indian Chiefs, had rejected the legitimacy of the process altogether. They objected to the restrictions on the provincial government's negotiating mandate after Campbell's 2002 referendum, and to specific measures such as the phase out of tax exemptions for Aboriginals and the extinguishment of Aboriginal title over portions of traditional territories. Many First Nations leaders criticized TFN for accepting the tax exemption phase-out and accepting the legitimacy of senior governments. While the restricted mandate had not stopped TFN from proceeding with negotiations, Brian Thom, a negotiator for the Hul'qumi'num Treaty Group on Vancouver Island, believed it had

[194] TFN and VPA, *MOA*.
[195] Hunter, "Native Communities," S1.
[196] BCTC, *Lheidli T'enneh*, 3.

negatively affected other negotiations, particularly with larger First Nations. He argued that smaller communities like TFN had been able to find common ground on land, fish allocation, jurisdiction and taxation that senior governments were unwilling to scale up for larger First Nations.[197] In June the Semiahmoo band and a Vancouver Island group of First Nations whose traditional territories overlapped with TFN's settlement lands launched a BC Supreme Court case seeking to block ratification of the treaty until those competing claims were settled.[198]

Despite the lawsuit and continued objections from Delta, the ratification process moved forward. In July TFN asked its members to vote on the treaty and the new Constitution that had been under development since 2005. Both were approved: seventy-two percent voted in favour of the Constitution while sixty-nine and one half percent voted to ratify the treaty. With a turnout of 187 voters, 130 had voted for the treaty. It appeared that most members agreed with the pragmatic approach of their treaty negotiators—despite the compromises, it would be better to be free of the Indian Act and take a stab at governing themselves.[199]

After TFN's vote there remained only assent from the province and government of Canada. Although, according to Gentner, the vote was largely a rubber stamp because legislators do not have an official say over treaties of any sort, the issue was politically very significant. While some members of the B.C. Liberal caucus opposed TFN's treaty on principle, the ruling party by and large followed Premier Campbell in championing the agreement.[200] Among the official opposition, the vote exposed a damaging internal rift. Although a defender of Aboriginal rights, the NDP also held a fierce dedication to the ALR. Many opposition MLAs were strongly opposed to the loss of ALR designation on settlement lands. In October, with debate set to begin in the

[197] Cited in Joyce, "Progress Slow," S2.
[198] Gordon, "No Reservations," 58.
[199] TFN, "Makes BC History;" TFN, *Constitution Act*, 3; Mitchell, *Communications Analysis*, 5.
[200] Gentner, interview. According to Gentner, four Liberal MLAs voted against treaty ratification entirely.

provincial legislature, the NDP caucus under Carole James announced it would support the treaty agreement, with noted objections about ALR exemption and an official plea for efforts to redress the loss of agricultural land that would result from treaty implementation. MLA Michael Sather (Maple Ridge-Pitt Meadows) publicly vowed to vote against ratification and was suspended from the NDP caucus. Corky Evans, one of the fathers of the ALR, and the author of the 1998 protocol agreement that had allowed the province to hold the backup lands for TFN's negotiations, abstained from the vote.[201] Gentner supported the treaty but voted against the section of the agreement that provided for the ALR exemptions.[202]

Nursing her second daughter, Baird attended every reading of the treaty vote and participated in the debate. In a historic speech to the legislature—the first time a leader other than an MLA had addressed the body—she described what the treaty represented for the Tsawwassen people:

> Today we have a tiny postage stamp of a reserve, a small fraction of a percentage of our traditional territory fronting a dead body of water, trapped between two massive industrial operations. Our land and aquatic ecosystems have been fouled beyond human comprehension. The ferry causeway, with its millions of cars and trucks, dissects our reserve to the south. And, Deltaport with its 24/7 coal and container traffic coats our houses with diesel particulates; and trains keep us awake at night.[203]

Considering this reality and the deep wounds of the past that had created it, TFN had made many bitter compromises in its quest for self-government and socio-economic equity with other British Columbians. Chief among those compromises was the decision to accept the legitimacy, authority and partnership of colonial governments. But having

[201] Hunter, "NDP Divisions," S1; "Chief Urges," S1; "NDP Torn," S1.
[202] Both Baird and Gentner included a version of this NDP crisis story in their interviews.
[203] Baird, *Making History*, 7.

made those compromises knowingly and received concessions in return, Baird believed the treaty agreement achieved "true reconciliation."[204]

The B.C. legislature voted to ratify the treaty on November 7, just days after the BC Supreme Court ruled against the Semiahmoo, et al. challenge from June. On November 22 the agreement received "Royal Assent" from the government of Canada. On December 6, 2007 negotiators attended the official signing ceremony in Ottawa. Thus began an intense eighteen-month transition period to reach the treaty effective date, April 3, 2009, the day a completely new order of government would be born. TFN was about to embark on an experiment in governance and reconciliation based on the power and potential of urban land. But, just as larger forces of economic globalization and neo-liberalism had influenced TFN's journey to self-government, these forces would also affect the exercise of self-government and TFN's ability achieve environmental justice.

[204] Ibid., 2-7.

Chapter 5.

The Experiment

After spending most of her adult life doggedly pursuing a treaty as the best hope for her community's future, Baird found herself "completely adrift" once the final agreement was complete. Luckily, she said, she had good advisors who quickly got her and TFN's leadership on track to form a new government. Baird and the sitting band council became a transitional government and interim legislature working to prepare TFN for a post-treaty existence. As she describes it, leaders had to figure out what to do with their new jurisdiction and how "to breathe life into the constitution." She and the council made a "conscientious decision" to pursue an aggressive, transformative agenda towards the effective date, rather than a slow, incremental approach.[205] In the three years from 2008-2010 TFN went through a remarkable transition, establishing a new governance structure and beginning in earnest an experiment in self-government.

Transitioning to Self-Government

McArthur called the work of this period a "massive undertaking." According to TFN's first annual report for 2008-09, the transitional government ploughed through an astounding list of accomplishments leading up to April 3, 2009: establishing new membership eligibility rules and an enrolment process to define TFN citizenship; drafting a suite of twenty-three laws to serve as TFN's legal framework; developing a land use plan; establishing agreements to participate in Metro Vancouver (GVRD) and for water

[205] Bak and McArthur also confirmed this approach.

servicing with the GVWD (Greater Vancouver Water District); undertaking a land title transfer process to turn CP holders into Tsawwassen fee simple interest (TFSI) property owners; developing a capital plan; setting up a Judicial Council with five appointed members and an office of the prosecutor for offences tried in B.C. provincial court; establishing an administrative complaints process; developing a structure for an Economic Development Corporoation (TEDC); settling what the government called "shared territories issues," with other First Nations; convincing Translink to set up a shuttle bus service to the community; and crafting a referendum to choose a form of government.[206]

Enrolling members under the new form of government was more than just a bureaucratic exercise. Adams cites this as one of the most important aspects of reaching a treaty agreement: the new government would now formally recognize all Tsawwassen people, regardless of where they lived, or their status under the Indian Act. A new membership code had been considered and ratified along with the constitution and treaty agreement in 2007. People who could show proof that they were members of the TFN band before the final agreement, were of Tsawwassen ancestry, or were descendents or adopted children of such people became TFN citizens. By 2012, TFN had 435 members. Approximately 260 members were eligible voters. In 2010, residents made up forty-seven percent of the membership while fifty-three percent lived elsewhere.[207] So, while nearly sixty percent of members are registered voters, less than half of all members live on Tsawwassen lands. A significant portion of TFN's electorate are, effectively, absentee voters. Critics such as Gentner and Huntington questioned how TFN identifies itself as a community and whether decisions could be skewed by non-resident members who may be more interested in the dividends of development than its local impacts. Cummins cited Bertha Williams' concerns in his comments in parliament leading up to federal ratification of TFN's final agreement. He interpreted the internal debt to the Stahaken claimants—per the band agreement in 2003 and then

[206] TFN, *Annual Report 2008-09*.
[207] Anonymous interviewee 1; Hagar, "New Tsawwassen;" TFN, *Annual Report 2009-2010*, iv.

renewed in 2006—as a motivating factor in pursuing the treaty and port settlement agreement. Indeed, under the transition government, TFN made its final payment of over $1.5 million to the Stahaken claimants, borrowing from the $1 million port settlement fund that had been earmarked for moorage and fishing access improvements.[208]

The government kept up its consultation practices on key policies during the transition period. Darwin regularly attended weekly community meetings with McArthur, who was in charge of the "legislative project," to develop TFN's twenty-three foundational laws. Margaret also remembers attending most of the community meetings that occurred around treaty ratification and during the transition period. The government's first annual report provides an overview of the extent of citizen engagement at the time:

> Consultations included two sets of family meetings, on the Land Use Plan and on the referendum and law questions near the end of 2008. The consultations on the Land Use Plan were, with the exception of the treaty ratification vote in 2007, TFN's most extensive to date. TFN held 14 family meetings, 6 community meetings including with communities off TFN Lands, and several other meetings with specific groups such as TFN youth and elders.[209]

Bak, Adams and other leaders repeatedly emphasized this mode of participatory governance, even asserting that TFN wants to be a model to other governments of how to do consultation right. "We used to be the people that fell through all the cracks," said Adams. Under self-government she hoped TFN could show the rest of Canada and the world how to ensure no one falls through the cracks. The major difference between TFN's model and the consultation policies of other governments, according to Bak, is that TFN weighs everyone's different perspectives equally. Input from a bureaucrat on land use matters is no more important than input from a member involved in the fishery.

[208] Parliament of Canada 142:097 (2008) (statement of John Cummins); TFN, *Annual Report 2008-2009*; TFN, *Service Plan 2009-2010,* 20.

[209] TFN, *Annual Report 2008-2009*, 5.

Developing a Land Use Plan

The terms of the treaty agreement called for the development of a land use plan. A plan was also required for TFN's membership in Metro Vancouver.[210] Like any municipality, TFN knew its ability to provide services and benefits to its population would depend on how much money it could generate through taxation and land development. Moreover, the terms of TFN's deal with the port in 2004 had virtually guaranteed that some of the new lands gained in the treaty agreement would be set aside for a container handling facility, but the new government would need plans and zoning designations in place in order to proceed with development. Planners put together a vision based on the consultation process that set forth an agenda of significant growth for TFN—in population, land development and economic diversification. The industrial projects contemplated near Deltaport were part of a mixed-use approach that included commercial, residential and agricultural development. According to Bak and Baird, TFN considered smart growth and sustainable community models to inform this process.

The plan, approved by TFN voters in July 2008,[211] called for new commercial nodes in the northeast along Highway 17, a mix of new residential development for members and non-members on lands owned by the government and by individuals, a restored and revitalized community zone at the heart of the current village, and industrial development around the Deltaport causeway (see map seven, Appendix F). Most of the 290 hectares of former reserve land was being converted to the TFSI form of First Nations ownership. This unique kind of title was created under the treaty agreement to replace family-held certificates of possession and integrate into the settler property regime, but places certain restrictions on the sale and disposition of these lands.[212] TFN leaders hoped to fuel residential development on TFSI lands and revitalize its community

[210] Bak, interview.

[211] TFN, *Annual Report 2008-2009.*

[212] Anonymous interviewee 1; Baird, interview. This was another compromise that Baird cited as essential to reaching a treaty agreement: in order to accept the property system of settler society, TFN insisted that the provincial government create a form of fee simple title specific to Tsawwassen land owners.

centre in order to attract members who had moved away from the reserve to return to a new, self-governing TFN.[213] The plan included protected "blueways" for ponds, lakes and watercourses, and preserved its bluff lands and tidal marsh along the entire foreshore. According to McArthur, the government had entertained several offers to develop marinas and the like over the years, but, in the end, decided to protect all of it. He also found it remarkable that, after all the sound and fury over agricultural lands transferred under the treaty agreement, TFN decided to add the ALR designation to the agricultural lands set aside in its plan. In fact, 157 hectares of the settlement lands were to be designated for agriculture or managed forests, a larger area than the 135 hectares set aside for industrial development.[214]

The plan fit TFN's needs and the desires of members, but was not, technically, an official community plan (OCP) equivalent to those of other municipalities required to comply with Metro Vancouver's Livable Region Strategic Plan (LRSP).[215] TFN had never been consulted or participated in the processes that created the LRSP, and had been equally left out of its benefits and results over time. In order to complete TFN's membership in Metro Vancouver, the provincial government, at TFN's request, deemed the land use plan to be consistent with the LRSP.[216] Despite the long history of exclusion and discrimination, Huntington and other proponents of regional planning felt that this move violated the years of hard work that had gone into the LRSP, and that some of TFN's particular development intentions were not compatible with some of its provisions.

Post-Settlement Relations with the Port

Among these critics one of the biggest concerns was the prospect of port-related industrial development on land previously designated as agricultural. TFN was taking steps towards holding up its end of the settlement agreement with the port authority. In

[213] Adams, interview.
[214] TFN, *Land Use Plan*.
[215] The LRSP was subsequently replaced by the Regional Growth Strategy.
[216] Bak, interview; Huntington, interview.

2009 the transition government hired a consultant to develop an industrial lands strategy, and secured funding from the federal government under the Canada Economic Action Plan to prepare the lands for development.[217] Thanks to this harmonization of TFN's strategies with neo-liberal government programs and the needs of the global economy some of the benefits of TFN's settlement with the port had started to trickle in by 2009. After the amalgamation of the region's port authorities in January 2008, Port Metro Vancouver (PMV) took over VPA's commitments. PMV transferred $1 million for TFN to set up a training fund, by mid-2009 one member had tapped into the fund. During the transition period, construction was underway for Deltaport's third berth. Ten members pursued job opportunities, including Margaret. She worked for the firm that had won the construction contract. Cox confirmed that VPA had required all firms bidding for the third berth project to include job guarantees for TFN members. In addition, TFN member-owned businesses secured $500,000 in contracts.[218]

Sheila Williams, who had started as a summer student worker with the port authority in 2003, was still the only member working a full-time job with PMV as of 2012. Other leaders confirmed, without naming names, that only one member was filling the permanent job slots guaranteed in the MOA, but Williams prefers not to ask if this is how she is counted because she hopes the port hired her on permanently because they liked her work, not just to fill a quota.[219] According to Baird, TFN could have taken penalties from the port for not living up to this jobs commitment but has opted not to. TFN leaders have found that many members need education and skills training in order to qualify for port jobs. Lucille noted this gap, but hopes that others will be inspired by Williams's example to pursue a few years of schooling and a permanent port job.

Overall, however, port business had declined along with the global economic downturn affecting most of the world between 2007-2009. Over the course of 2008, plans for T2 stalled and there were no signs of potential TFN joint ventures in the near

[217] Parsons Brinckerhoff, "Industrial Lands;" TEDC, "TFN Industrial."
[218] TFN, *Annual Report 2008-2009.*
[219] Baird, interview; Anonymous interviewees 1 and 2.

future. Baird acknowledged that not as many members as hoped had used the fund to develop port-related businesses. “It’s a case of be careful what you wish for,” she said. “We got concessions out of Port Metro that we weren’t able to implement on our end.” But the government has since made a “big push on entrepreneurialism generally” and prioritized skills training and education programs for its members.

Just four months ahead of the treaty effective date, because a sliver of doubt remained about the transitional government’s policy-making mandate, TFN decided to put the question of a form of government, approval of the legal framework, and replacement of the land and election codes to a vote of the membership.[220] The referendum offered four options, ranging from an Indian Act model to a self-government model.[221] Although the Constitution Act had been finished before the final agreement was ratified, the transition council had found some elements were not working as intended now that they were actually drafting legislation, so they also included some constitutional amendments in the referendum. “We were all terrified,” said Baird, because constitutional amendments require the approval of fifty percent plus one of all eligible voters. In keeping with the integration approach, TFN members chose a government model that would incorporate traditional practices into a modern democratic system. An “overwhelming majority” approved this model, the laws and the constitutional amendment.[222]

Implementing Self-Government

On April 3, 2009 TFN became the first self-governing urban First Nation under a modern treaty agreement in British Columbia. The laws, regulations and government structure approved during the transition were immediately and automatically enacted as provincial, federal and local officials joined TFN leaders and members to commemorate

[220] Baird, interview.
[221] TFN, *Annual Report 2008-2009.*
[222] Ibid., 5.

the historic day.[223] Two and a half weeks later, Baird, who had arguably served as midwife to the new nation born on April 3, gave birth to her third daughter. People thought she had planned it that way, her treaty milestone daughters, but she saw it another way. “It is a huge pleasure to me—almost a reward,” said Baird, “to have the first [Tsawwassen] child to be born free of the Indian Act.”

A New Order of Government

TFN’s new government infused cultural practices into its structure while creating its own space in the existing framework of local, regional, provincial and federal governance.[224] “On the surface,” Baird said, “many of our critics don’t realize the gains we’ve made . . . because they’re not familiar enough with our treaty to really know, although they’re full of opinions about it.” Indeed, Adams has found there is a general misunderstanding of the nature of TFN’s new status. Many see it as a local government, equal to a municipality, and at the bottom of the jurisdictional hierarchy. In fact TFN is a unique form of comprehensive First Nations jurisdiction—what McArthur says many experts are now calling a third order of government in Canada. While it is a local government, and has most of the powers that a municipality does, it is more akin to a provincial or territorial government in its jurisdiction. TFN participates in regional government for basic services and planning purposes, and has paramount power over its own lands including use, development and regulation. But the new government also controls many programs and services formerly within provincial or federal jurisdiction including the administration of membership and Indian status, fisheries, child protective services, education and social assistance. Being a “classic” example of the third order of government with these broad jurisdictional powers means, in effect, that TFN stands alone.[225] According to Adams, that scares people sometimes, but it is powerful to stand alone.

[223] TFN, *Annual Report 2008-2009.*
[224] Bak, interview. TFN, Canada and B.C., *Final Agreement*, 135-162.
[225] McArthur, interview.

Margaret offered a concrete example of what this means, explaining that TFN's new government now has the power and responsibility to protect and police itself. As landowners and the government pursue development projects, for example, TFN must ensure that soils imported to stabilize land are not contaminated and that buildings are constructed properly. The difference can be seen even in something as mundane as insurance. TFN must take measures to properly indemnify and insure itself.[226] Municipalities, as creatures of the province, are backed by a senior government. But TFN "doesn't have an overseer and doesn't have a fall-back."[227] Self-government means taking on a great deal of responsibility, and also some significant risk. Baird offered a more abstract example of what it means to stand alone as a third order of government in the local context. As the first First Nation member, TFN took a "leap of faith" in joining the Metro Vancouver board, but has done so under the terms of a special agreement, not in the same way that municipalities are members. As Baird said, "I don't quite feel like I fit in at Metro, but I don't quite feel like I fit in at First Nations political forums either, so we're kind of in this new space."

Government Structure

TFN's government structure reflects both the hybrid integration model voters chose before the effective date and the broad nature of its jurisdiction. TFN maintains the traditional position of chief to head the government, selected through a standard electoral process. The chief is expected to be "working on behalf of Tsawwassen and representing Tsawwassen" externally.[228] The chief is also member of the TFN executive council and legislature. The latter consists of twelve other elected members. To run for office, at least two other eligible voters must nominate a qualified candidate. The term is thirty-three to thirty-six months, meaning new elections approximately every three years. The full legislature holds two or three intensive sessions annually to debate and approve

[226] Anonymous interviewee 1. The matter of insurance was also discussed at a legislative session that I attended on February 28, 2012.

[227] McArthur, interview.

[228] TFN, "Voter Questions," 3.

TFN's laws and budget. The chief and the four legislators receiving the most votes form the executive council. This body is most closely equivalent to a municipal or band council.[229]

Darwin described the functioning of the executive as "pretty straightforward." The council meets weekly to make decisions on day-to-day operations and big proposals, receiving documents, policies, ideas and briefings on items that need executive approvals for review beforehand.[230] This council also oversees the treaty implementation process and the TEDC, established in 2009 "to develop, manage and facilitate successful business ventures that will generate jobs and wealth for Tsawwassen First Nation."[231] The TFN executive council appoints the corporation's executive director and board, and the government is sole shareholder, providing an important potential revenue stream. Adhering to a city manager model of public administration the executive council directly oversees a chief administrative officer (CAO), who manages government activities and public servants. Several leaders of the treaty negotiation era, some of whom were also legislative councillors, maintained positions within the new bureaucracy. Margaret went back to work for the new TFN government; she "was beginning to learn more about our history, our culture, and incorporating that in with your job, when it's your family and your culture, you would never get that anywhere else." The government hired experienced outsiders for major public administration roles such as CAO, chief financial officer and executive director of the TEDC. It also hired at least two young advisors who had studied public policy under McArthur at SFU and helped the transitional government as part of their training. McArthur has continued in his role as "just an advisor." Leaders and members respect

[229] Ibid., 2; Bak, interview; TFN, *Constitution Act*, 6.

[230] Interestingly, Darwin's description of how he experiences being a member of the executive council is very close to the official description of the body found in TFN's 2009 "Voter Questions" document: it meets weekly to "manage the government's day to day operations, debate proposed regulations under Tsawwassen Law and [perform] other responsibilities of Tsawwassen Government" (p.3).

[231] TFN, *Service Plan 2010-2011*, 27; see also TEDC, "Introducing."

his advice but, he emphasized, they make their own decisions and are mapping their own future.

The constitution and treaty agreement called for several other bodies to be established to complete a checks and balances system. These include: a permanent advisory council of TFN members as a check on elected officials; a judicial structure and process to enforce TFN laws and integrate with B.C.'s legal jurisdiction; a taxation authority on which non-member residents have dedicated seats; and a consultative committee specifically for those non-members.[232] The residents of Stahaken and Tsatsu Shores still are not enfranchised to vote in TFN elections, but through these channels they participate in the taxation and servicing issues that most directly affect them. Advisory council members are elected at an annual general meeting (AGM) of the membership for three-year terms. This body meets every other week, more often during the legislative sessions. The council is the main conduit between members and executive council and the TFN legislature and its meetings are open to anyone wishing to express concerns or ideas.[233] The AGM is part of an administrative "accountability cycle" that also includes an annual service plan and an annual report summarizing progress on service plan goals. Eventually, the government hopes to incorporate reporting from all of its councils, committees and the TEDC into this cycle.[234]

Elections and Internal Relations

In addition to establishing these structures and systems, new leaders had to be elected for self-government to fully take effect. In the summer of 2009 the transition government held a nominating meeting. While many of the existing leaders and former band councillors planned to stand for election, the new government needed fresh

[232] TFN, *Constitution Act*, 7-8; TFN, Canada and B.C., *Final Agreement*, 138-9. TFN, *Annual Report 2009-2010*, 10.

[233] Bak, interview; Adams, interview; Baird, interview.

[234] Baird, interview.

recruits in order to fill the twelve legislative seats.[235] Margaret and Darwin were among those nominated by friends and family members. Sheila Williams, who was considering skipping the nomination meeting, felt compelled to go after her cousin nominated her, and then decided to accept.

In September Baird was acclaimed as chief, and Margaret, Lucille, Darwin, Williams and Bak were elected legislative councilors along with seven others. Williams was shocked and a little scared by her election because she worried she was not qualified to handle high-level decision-making. Bak and Darwin received enough votes to sit on the executive council. On the "lifechanging night" of the election Darwin received a call informing him that he had been elected to the executive by one vote. He had to decide that night whether to suspend his studies and return home to TFN to serve; he chose to accept the honour.

In February 2010 TFN held its first legislative session. By 2012 Baird believed the legislature-executive council structure had "expanded the community's participation in governing." The legislators I interviewed seemed to agree with her assessment. Several legislators, including Williams, represent TFN's disproportionately young membership. Asked why he decided to run for legislature Darwin said: "I really care about my people and I care about keeping this place a well-knit community. There's a lot of families that are pretty close. I have a lot of love for the people around here. I like to stand up and have opinions and try to make things happen for the community." After three years Williams felt totally comfortable with her role as a decision-maker. She said that she intended to run again to bring further transparency to governing and give TFN members a chance at "true democracy." Margaret, too, hoped to be nominated and re-elected in 2012. She was excited to be part of the monitoring system ensuring that TFN's government is making the right decisions for its members and has really enjoyed her role as a legislator. Reflecting on the difference between pre and post-treaty governing, Lucille also stressed the greater transparency and accountability that the new

[235] TFN, *Annual Report 2009-2010*.

structure has brought. The executive council is accountable to the legislature and the legislature is accountable to the community. She feels there is more input and debate now, especially having the meetings of the legislature open to the public. From his position as observer and advisor, McArthur believed the legislature had been working very well—both as the legislative branch of government and as a venue for member engagement—in large part because of the commitment of its elected officials.

Like any government, TFN has internal and external critics, and the extent of its representativeness and accountability are always open to question. Some opponents believed it should have been closer to the traditional First Nations model of consensus-based decision-making. McArthur called TFN a highly "participatory form of government." But at least one interviewee worried that the process is rigged in favour of TFN officials because members simply do not have the capacity to absorb or understand the technical, legal and otherwise arcane information that often accompanies key decisions. Sheila Williams hoped there would be greater accountability and less apathy under TFN's new government, but was unsure whether it had changed or increased participation from the membership. People were getting packages on key votes and pressing issues so often she feared it was information overload. Even Bak, one of the primary proponents of TFN's intensive form of consultation, admitted that it had been "relentless"—to the point that members were "probably sick of the sight of us"—particularly in the transition period and first year of post-treaty governance.

Adams, as a member of TFN's citizen advisory committee, emphasized that the government embraces its critics, encouraging them to continue participating and trying to help them accept decisions with which they did not agree. But Kermit felt pretty disconnected from decision-making because, by the end of the day, he was usually too tired to attend evening meetings. He hoped the new government was doing a better job of protecting him, his neighbours and the environment, but he was not sure. Although he was happy that the port might be planning some projects to "help us out" he was uncertain whether TFN's new relationship with the port would help ease his concerns about pollution and cultural impacts.

External Relations

TFN's evolving relationship with PMV is an example of how leaders are deploying self-government externally. Many now describe the port authority, along with the federal and provincial governments, as TFN's partners.[236] In January 2010, when Deltaport's third berth officially opened for business, Baird sang a prayer song at the ceremony.[237] In her 2012 interview for this study Baird cited a "very positive working relationship" and frequent contact between the two jurisdictions to move forward on plans for TFN's industrial lands. As an off-shoot of that relationship, TFN has even signed a memorandum of understanding (MOU) with Deltaport terminal operator TSI Terminal Systems to promote business collaboration through contracting and purchasing agreements.[238]

Bak also called the port authority a partner, but considered the relationship as still in an uncertain "grey period." The real test will come in the decision-making process as PMV proceeds with T2 plans. But most of the members and leaders interviewed for this study generally agreed with Darwin that "working with the port is good for the Tsawwassen First Nation." Lucille considered the settlement agreement a successful negotiation because it resulted in a long-term partnership and economic benefit from the port. Darwin specifically cited the benefit of job opportunities during the third berth construction and anticipated more with future expansion and the development of TFN's industrial lands, particularly after members get more training. He thought the port should be partnering with TFN regardless, but saw the relationship under the terms of the settlement agreement as a form of payback for the injustice of the port's original construction and its decades of environmental and cultural effects. Margaret agreed that the port had "kind of compensated" for its impacts on TFN's quality of life with the benefits that came out of the settlement agreement. In addition to the cash, funds for future business investment and job opportunities, she cited a number of mitigation

[236] Bak, interview; Adams, interview; anonymous interviewee 4.
[237] Kerr, "Third Berth," 1.
[238] TFN and TSI, *MOU*.

projects that PMV has undertaken in partnership with TFN. They collaborated on a study of eelgrass along the foreshore, and PMV subsequently hired a TFN contractor to do eelgrass rehabilitation work. The port also brought in a crew to clear out excess dead wood that no longer gets washed away or moved along by regular tidal flows. She anticipated that PMV would "work with us a lot more" if the next phase of expansion goes forward. Sheila Williams also sees the relationship as "very postitive" and "mutually respectful" where before the MOA it was "terrible." Adams saw the relationship in an even more positive light—the port was "somebody to invest in us," when no one else was willing. Without the "win-win" of the settlement agreement—land that the port needed in exchange for investment that TFN needed—she thought the band probably would not have pursued the treaty and would likely have eventually died out. In fact, the AIP and court rulings make clear that the lawsuit had to be settled before TFN could reach a final agreement. And most of the TFN leaders and members interviewed for this project agreed that the ongoing "partnership" with the port is an important component of successful self-government.

Adams believed that the establishment of these kinds of government-to-government relationships was perhaps the most important accomplishment of the treaty agreement. TFN now has a more legitimate and powerful place among the hierarchy of jurisdictions—it must be recognized and respected, and it is empowered to collaborate and build more equal partnerships with other governments. Adams characterized this as being "legal," suggesting that if you are not legal you are nothing. Baird clarified that the treaty has given TFN "legal capacity as a natural person," which allows the government to directly enter into agreements and exercise jurisdiction. Under the Indian Act the Tsawwassen First Nation was invisible and had no say in the development surrounding it or the policies, services and amenities that affected their lives. Any decision or initiative it took had to be approved by the federal ministry of Indian Affairs.[239] After the treaty it was as if TFN suddenly really existed. Lucille said, "at least now we're treated as an equal to the municipalities." In fact, TFN is more than that. "[U]nder the Indian Act we had to

[239] Williams, interview; Adams, interview; McArthur, interview.

assert 'we're a government too, we're a government too'" Baird said. But post-treaty "I don't have to do that anymore, anywhere. It is just assumed by everyone now…. It's an intangible benefit that I never really thought of, it never occurred to me, but it's awesome!"

Several of TFN's leaders and members reiterated this point—now that we are self-governing, we can no longer be ignored, we can participate, we have a bigger, collective voice and others have to listen. TFN has a seat at the table in environmental assessments and other public consultation processes for any resource or land development process within its traditional territory, a seat at the regional government level to decide matters of basic services such as water, sewer and drainage, and control over development occurring on its own lands. TFN has been and likely will be unfairly impacted by development in the future, but interviewees hoped that the treaty had ushered in a more fair, inclusive process for decision-making in which TFN can negotiate adequate mitigation and remedy for negative impacts.[240] Even Huntington stressed the significance of the governance change at TFN: they are now part of the whole.

Some believe this status has helped reconcile TFN with its neighbours. Lucille thinks that the relationship with Delta in particular is better than before. But, although TFN leaders seem to take pains to maintain respectful relations and communications with neighbours, the community continues to face criticism and backlash in reaction to its planned development projects. For all the flack Baird still gets from outsiders for TFN's plans, she feels critics ignore the overwhelming community support reflected in the votes to approve the port settlement agreement and the land use plan, which includes industrial development. Delta's leaders are also still sore about servicing issues.[241] But as Adams pointed out, Delta now had to deal with TFN as an equal through Metro Vancouver. Sheila Williams considered Delta residents' opposition to port expansion a waste of time and felt their criticisms of TFN's development plans were "silly." After at least two decades of TFN trying to develop and never telling their neighbours what to do,

[240] Adams, interview; Williams, interview; anonymous interviewees 1, 2 and 4, Bak, interview.
[241] Gentner, interview; Huntington, interview.

she cannot fathom how Deltans should have the right to tell TFN what to do. Darwin, contemplating the negative reaction TFN has faced to plans for a major commercial development along Highway 17, said: “They want to worry about us making a mall? Two hundred years ago we used to live up on that bluff over there.” Then, under colonial settlement, the Tsawwassen became Indians, and the Indians were moved down to what maps at the time identified as “marshlands.” Darwin continued:

> So I don’t see how some people can just think so critically of us—oh, those Indians just going after that mall for their money. But there’s a lot more to it in my eyes. Sure the money and job opportunities will be great. But it will also be good just to make kind of like a statement: yeah, we’re here; we’re still around; we’re not assimilated and we still have our voice.

After sitting through many emotional meetings with neighbours opposed to the treaty’s land transfers, Lucille also took umbrage with neighbouring critics. She remembered the treaty debate over port backup lands at Brunswick Point as particularly difficult and upsetting. Lucille heard farmers argue that they had held the land for 100 years and had improved it with drainage to make it arable, whereas TFN never used the land. “Meanwhile they don’t think of First Nations having all their land taken away,” she said. The Tsawwassen “owned” its land for thousands of years compared to those 100 years of farming, and now had to fight so hard just to get a tiny portion of it back.

Indeed, for TFN members and leaders history was always present, but, as McArthur pointed out, TFN’s non-Aboriginal neighbours in particular seem to suffer from a “wilful forgetting of history” when they judge TFN’s actions. According to Blomley this memory loss is widespread in B.C.: “there seems an enduring blindness towards both historic dispossessions and the continuation of indigenous claims to urban land.”[242] Gordon echoed Baird’s sentiment about the magnitude of the sustainable way of life that the Tsawwassen had lost under colonialism and the importance of remembering this long history when considering the value of the treaty agreement. Tsawwassen people had swam, gathered shellfish and hunted in a way that sustained bird habitat and the

[242] Blomley, *Unsettling*, xx.

natural ecosystem for centuries, but "their traditional paths and waterways vanished under private land ownership and development." The impacts of infrastructure, agricultural and suburban development had been heaped upon their reserve. And they had staked out a claim to land within the treaty process among the clamour of forces who wanted that same land preserved for bird habitat, protected for agricultural production or developed for industrial use after over a century of no one respecting their voices. The treaty agreement and the settlement agreement with the port are "part of reconciliation and also part of recognizing [TFN's] interests and rights, which are constitutional, legal and moral."[243]

Land, Revenue and Reconciliation

In large part the difficulties of reconciliation between TFN and its neighbours have centered around questions of land. Indeed, land is arguably the crux of every element of this story. This was reinforced in almost every interview. Even Kermit, who admitted he was not sure about the difference between pre and post-treaty governments, stated: "all I know is I have my land." Margaret considered the "100 percent control over our own lands" as the major gain in decision-making power under the post-treaty government. Asked about the most important issues facing TFN's current government, Darwin chose land and development, and Sheila Williams said the budget, because "it's just everything": member benefits, living standards, health, job opportunities, education, development. "At least," said Adams, "the land that we got we have a say over, and we get the money that should come to us." Lucille believed it was the land gained and the power to undertake industrial and commercial development that would allow TFN to be self-sufficient again. Cox thought TFN might have pursued many of its economic development goals without a treaty, as the Squamish and some other urban First Nations have been able to do, but did not have sufficient lands as an Indian band. He believed that it was not being a self-governing jurisdiction that has given TFN greater power over decision-making, but the new lands it gained under the treaty

[243] McArthur, interview.

agreement that now provide the government an asset base from which to work and give it the status of major land owner. McArthur underscored this point as well. Much of the land under TFN's jurisdiction is now owned by the government, which means TFN not only governs use and development, it can participate directly in development.

As some of these comments suggest, questions of revenue and budgets are also definitional to self-governance. TFN's goal in pursuing treaty negotiations and other parallel or alternative strategies had always been to achieve socioeconomic conditions equivalent to the rest of Canada and the Lower Mainland specifically. As McArthur underscored, many of the provisions of TFN's port settlement and final agreement were meant to secure the assets, land and resources that would make this goal achievable. TFN's transitional government, and the new government after 2009, operated largely on funding from senior governments, including the transfer payments agreed to in the treaty's cash component. These payments, along with some continued program funding from Indian and Northern Affairs Canada (INAC), were set to continue for a period of ten years after the effective date. TFN had agreed to pay back its treaty loans on a similar schedule to allow time for the new government to settle pending claims and establish its own mechanisms for generating revenue.[244] These arrangements mirrored the theory behind the TFN-VPA settlement agreement, which had sought to provide enough cash to invest in future opportunities for prosperity. But this ever-changing revenue situation, paired with the experimental model as a stand-alone third order of government, has made for some nerve-wracking struggles as the government considers long-term development projects and programming plans. Not only has the government had to take a careful approach to risk management, Baird said, TFN has also had to balance its financial interest in projects, such as focusing on rent returns on lands in the early days, rather than equity investment.

It may be too soon to tell whether TFN's governance transformation and new relationship to their lands will facilitate "true reconciliation," fulfill TFN's own goals of self-

[244] TFN, Canada and B.C., *Final Agreement*; TFN, *Annual Report 2008-2009*; TFN, *Annual Report 2009-2010*.

determination, economic sustainability and socio-cultural healing, or achieve environmental justice. Baird believed the abandonment of the Indian Act and the power to develop land is quickly shifting the focus of TFN's government from poverty management to wealth management. As Kermit surmised, only time will tell how these processes will unfold. For now the story of how this experiment came about provides for a deeper understanding of environmental justice in Canada and the future of urban sustainability in the Lower Mainland.

Chapter 6.

Analysis

In this project I set out to explore whether TFN's governance transformation over the past twenty years constitutes a claim for environmental justice, and how the new regime provides opportunities to achieve environmental justice. Although the term environmental justice does not hold much currency in Canada, TFN's story showcases the key elements of Canadian environmental justice and demonstrates the utility of using the concept as a theoretical framework. Simply as a First Nations community that has suffered disproportionate environmental impacts without a fair share of the benefits of development, or power over decision-making, this case reinforces the fundamental distributional and procedural justice elements of environmental justice, and upholds the claim that Aboriginal/non-Aboriginal relations are central to Canada's environmental justice landscape. Across the board, in the literature and on the ground, the principle that those experiencing environmental injustice should speak and act for themselves is also essential to the environmental justice approach. Thus the narrative data at the heart of my case study rely most heavily on interviews with TFN leaders and members. More importantly, my conceptualization of environmental justice comes primarily from interviewees' definitions of the term.

Most of the people I interviewed were not familiar with environmental justice as a concept or a movement. As I discussed at greater length in chapter two, among the Tsawwassen interviewees in particular there was an almost universal understanding of what constitutes environmental injustice. Nearly everyone spoke about the construction of the port and ferry terminals, and the impacts those have had on TFN's land, water, culture and way of life when I asked them what environmental justice meant to them. Interviewees had a harder time imagining what might constitute environmental *justice*. Most everyone considered true justice—a return to an undamaged environment and a

traditional way of life—to be impossible and unattainable. Many emphasized procedural over distributional strategies as ways to seek environmental justice by proxy. This again reinforced the conclusions in the literature that people facing environmental injustice in Canada and Canadian environmental justice scholars tend to focus on procedural issues and outcomes, rather than the prevailing distributional focus in the U.S. If procedural justice is the functional proxy for environmental justice for TFN members and leaders, then the process of transformation was certainly a claim for environmental justice.

Finally, TFN's story as a whole resonates with scholarly observations that larger structural processes strongly influence attempts to achieve environmental justice in Canada. Weaving together the stories told by each of my interviewees with sources from the public record allowed for a closer examination of these influences. Two sub-questions came out of this synergy between the literature and TFN members "speaking for themselves:" does TFN now have more *power* over the decisions that affect members, the TFN community and the environment in general; and how do larger processes of neo-liberalism and globalization affect these powers of self-government?

I argue that self-government—again, as a representation of procedural justice that serves as environmental justice by proxy—gives TFN and its members a better opportunity to achieve environmental justice. But this opportunity is beset by global forces largely beyond the control of urban governments—capitalism and neo-liberalism—and by the personal and power dynamics that shape inter-governmental relationships. Based solely on the legal, administrative and jurisdictional structures of post-treaty government, TFN undeniably has more, and more direct, power over many crucial areas of decision-making: their own lands, social welfare, servicing, economic development, just to name a few. But the process of governance is influenced just as heavily by relationships, leadership and more intangible social, political and economic forces. How the government exercises its powers is just as important as the decisions it makes and in which it participates on behalf of its citizens. Furthermore, the power of individual TFN members to affect key decisions is contested. TFN's new structure offers an array of opportunities for consultation and participation that members did not have under the Indian Act, and the treaty process has allowed TFN to embrace and enfranchise members who had been alienated from their native community. But interpersonal relations, family histories and socio-economic circumstances may

influence members' capacity to engage, and residency may affect the outcomes and impacts of key decisions.

Interview data strongly reinforced this complex and contested question of power. I asked participants whether, thanks to the treaty agreement and port settlement, TFN members and the TFN government now had more power over decisions—senior government decisions, decisions affecting the environment, health and social justice. Some said yes, some said no, some said maybe, and some said we don't know yet. In many ways it is still unclear whether self-government will result in a more equitable quality of life for TFN members. The clearest example of this uncertainty, and the complex nature of governance power, lies in the story of TFN's evolving relationship with the port authority.

Procedural Justice and TFN's Relationship with the Port

Bak and Baird, who, in their professional capacities, likely encountered and worked with their non-Aboriginal neighbours and critics more than other members and leaders, took pains to emphasize that the treaty and settlement agreement with the port were not connected, or, more precisely were on different tracks. This is clearly a direct reaction to the critiques expressed by the likes of Huntington, Gentner and their constituents—what Bak calls "conspiracy theories" fuelled by the local media. "Because in a temporal sense those things ran so close together, the media and some of our political detractors portrayed [them] as being tied at the hip and they're not," said Bak. Cox, coming from the port's perspective, contended that the crossing of TFN treaty negotiations and port expansion plans was coincidental. The port would have pursued its expansion project in any event and TFN had already long been working towards its treaty. Finding a mutually beneficial resolution to TFN's lawsuit was helpful to the port but not essential. It was a happy coincidence that TFN had the promise of a future land base that was valuable to the port upon which to stake its negotiations. Baird acknowledged that many seemed to believe the alignment of the VPA settlement agreement and the treaty process "was planned this way by the powers that be," but agreed with Cox that it was a coincidence of timing and interests. Under self-government

many leaders see both agreements—the treaty and the port settlement—as essential elements that depend on each other for success.[245]

In most interviews I followed up my question about gains in decision-making power with a specific question about whether TFN has more power over port development decisions. Answers varied, and most credited forces beyond the treaty and settlement agreement. Many agreed that TFN has more influence over port decisions now, but not necessarily greater authority. Cox believed there was a new "synergy"—the port was more open to TFN's input because it was a landowner of significance to port interests. "If that was MacMillan-Bloedel that had [TFN's] land, there would be the same synergy. So I don't think it's an authority thing, I think it's a land interest."[246] He also credited a more cultural change within port leadership. Public relations and community consultation had become more of a priority as a new generation took over from an old guard of mostly maritime leaders. Sheila Williams, the TFN legislator who works for PMV, thought that TFN had more influence at the port not so much because of its settlement agreement, but "because First Nations consultation is on the [port's] agenda now." She thought port leaders had realized that they need decent relations with the communities where the port operates, including municipalities and First Nations. TFN's standing with PMV is enhanced because it is now more akin to a municipal government.

Williams's conclusion resonates with the near consensus among interviewees that simply being its own government has given TFN more general clout. Margaret believed TFN has more influence than others because it represents a collective power. A non-native resident next to a port or ferry terminal is just a lone voice. The resident might be listened to at her or his municipal hall, but has little power to go beyond that level to affect how port and ferry decisions are actually made. Not only do TFN members have collective Aboriginal rights enshrined in the Canadian constitution and in their treaty agreement, their new existence under self-government is also a collective power that reshapes the relationships with other levels of government. Reflecting on local relations

[245] Adams, interview; Bak interview; Baird interview.
[246] MacMillan-Bloedel was an iconic and controversial B.C. timber company.

during the most recent port expansion process between 2002-2010, Cox concluded: "Tsawwassen had some leverage over the port, Delta didn't. Tsawwassen seemed to come with constructive solutions, Delta didn't." His analysis bolstered Margaret's sense of TFN's group power—TFN had "leverage" because it was able to launch a lawsuit based partly on its Aboriginal rights and title. But it also suggests the limits of that leverage and the continued power imbalance between TFN and PMV even post-treaty. Influence and outcomes may depend much more on whether TFN leaders take what non-Aboriginal governments see as a "constructive" approach to inter-governmental relations rather than on the letter of the agreements or the scope of their Aboriginal rights.

The Influence of Globalization and Neo-liberalism

Huntington echoed Williams's idea that PMV is interested in maintaining good relations with TFN. Being its own government has something to do with that. She believed the port and the provincial government would tend to solve problems in TFN's favour in order to maintain those relations, and, in the case of the province, to prove the treaty is working. But ultimately the port is bigger than TFN and does not need TFN. As Cox, Baird, McArthur and Bak have acknowledged, had TFN not come to the negotiating table with "constructive solutions," and had VPA not been in a hurry to develop its expansion program, the port authority likely would have fought off TFN's 2002 lawsuit with its superior legal and financial power. McArthur admitted that TFN had never had any real control over port development and could not stop it. In exchange for a benefits agreement that met its needs and interests, TFN gave up the power of its legal threat to slow down development with Aboriginal rights and title claims. The power imbalance persists and the compromises inherent in maintaining good relations weigh more heavily on TFN. The Tsawwassen government has chosen not to enforce penalty provisions in the MOA because leaders would rather maintain a good working relationship.

Judging from media reports, Bertha Williams has maintained her opposition to TFN's settlement agreement, port expansion, the provincial Gateway Program and its South Fraser Perimeter Road (SFPR) project.[247] But the TFN government has supported these port-related projects. The port settlement agreement contains no reference to the SFPR and technically it is not a port project, so TFN as a government and its members should be free to take any position they please. But because the road is meant to serve goods movement, in large part port trucks, opposing it could damage TFN's relations with PMV. TFN officials may genuinely support the perimeter road project, but it is easy to see how provisions of the TFN-VPA agreement creep beyond the reach of their original intentions. In fact, this kind of influence on decision-making and local relationships is reflected in literature on urban and First Nations governance that increasingly finds evidence of the long reach of globalization and neo-liberalism into local everyday life as jurisdictions are forced to compete for investment and ever-dwindling state funding.[248]

Genter suggested a similar theory in considering TFN's self-government power. Although TFN has some greater say over decisions generally, no local government—municipal or First Nation—has enough power over development that serves the interests of globalization and corporate profit. Both the anti-democratic, quasi-private structure of the port authority and the efforts of provincial and federal governments to use public funds and policy to promote international trade are also prime examples of neo-liberal practice, as described in the literature review. Globalization and neo-liberalism affected the processes, influences and relationships that shaped TFN's journey to self-government and will continue to shape its experiment into the future.

I found the views of Delta's two MLAs to be representative of other TFN critics—Deltans, local leaders, community activists and environmentalists. Many of these critiques have troubling undertones: sometimes infused with racism and paternalism; often wilfully forgetful of historical events; and frequently ignorant of the myriad issues

[247] "TFN Member," *Delta Optimist*, 3.
[248] See Raybould "Economics;" Blomley, *Unsettling*; McAllister, *Governing Ourselves?.*

and actual facts at play. But they can be helpful in considering the influential larger forces of globalization and neo-liberalism. The MLAs believed the theory that the treaty and port deals were, as Bak refuted, “joined at the hip” and that the port authority “grabbed” every issue on the negotiating table after its MOA with TFN. Genter felt TFN ended up a pawn in the larger game of globalization. He believed senior governments prioritized TFN and pushed to a final agreement because there was a “jewel” in the deal for the provincial government: urban agricultural land that could be unlocked for port-industrial development. Huntington agreed that the port and senior governments needed to “stabilize development options,” which is why the province “put so much energy into” treaty negotiations with TFN. Beyond her concerns about TFN’s plans for its land, Huntington worried about the effects on surrounding property in Delta, particularly as she was seeing speculation such as the optioning of farmland for millions of dollars. She echoed the fears of many of her non-native constituents that certain economic interests want Delta to become an industrial zone.

The provincial government throughout the treaty process, but particularly under Campbell, was clearly motivated by pressure from investors and corporate interests that wanted certainty about B.C.’s lands and resources to ensure their profits. The province went so far as to provide public relations funds to boost the prospects of a favourable treaty vote at TFN with promotional material and monetary incentives. The port aggressively sought to increase its container capacity with Deltaport’s third berth and T2 in order to attract a share of global trade in cheap Asian consumer goods and Canadian natural resources. As PMV has acknowledged, it needs land and social license to serve these imperatives of globalization. The settlement with TFN provided both. In fact, Cox, who worked for B.C. Rail before moving to VPA, hinted at what could be seen as a co-optation competition. Over the course of the early 2000s, he remembers, there was a sort of friendly rivalry between the two agencies to see which could profitably “get close” to TFN. Cox even credits TFN and its willingness to settle its lawsuit with helping the port to stave off objections from other First Nations with overlapping traditional territory claims around Deltaport.

Co-optation and Makúk

Thus, as already suggested, and discussed in the literature review, there is plenty of evidence of what Dyck called elite co-optation practices in TFN's story. But evidence of co-optation practices does not necessarily mean TFN has been co-opted. In another clear example of Lutz's makúk concept, TFN and other parties had different motivations in negotiations and interpret outcomes differently. The TFN government's goal has long been to provide cultural survival and socio-economic equity for its current and future generations. After over a hundred years of unsustainable urban development occurring throughout TFN's traditional territory without its consent or participation, TFN's options for meeting those goals were limited. As other case studies of environmental justice claims in Canada have shown, First Nations have pursued many alternative avenues with similar goals. All present serious pros and cons for people most directly affected by multiple injustices, and many do not offer the scope of powers and opportunity available under a modern treaty agreement that includes self-government. What is more, given its history and urban surroundings, TFN's opportunities for economic development had already been unalterably shaped by colonial forces. Although it meant accepting these painful and deeply unjust realities, TFN leaders chose a pragmatic approach towards integration, pursuing a treaty agreement with neo-liberal governments and tapping into the forces of globalization with its port partnership. As Bak said:

> It wouldn't serve us to drag Canada kicking and screaming into the courtroom and then ask for the moon and stars, and then drag them to the negotiating table and ask for the moon and the stars. Sooner or later . . . we had to portray ourselves fairly and say this is our population, and this is how we are affected by what's going on, and by the absence of our ability to govern ourselves and by the effect of industrial development. Those effects compound each other, but they overlap and they interact as well and we had to make sure that those connections were acknowledged.

TFN members have largely upheld this pragmatic approach, at least according to their voting records. People like Cox and Gordon, who sat across negotiating tables from TFN's leaders, believed that is why TFN has been able to successfully reach agreements.

Thus motivations at negotiating tables may have differed, but it should be no surprise that the outcomes of these processes may well serve both TFN's needs and goals, and the imperatives of global trade and neo-liberal governments. TFN's pragmatism in accepting these forces and trying to tap them to the advantage of its members and its community mirrors the efforts of other local governments negotiating a space in the global economy. But as the literature most often suggests, these efforts entail risk and may compromise the rights and quality of life of local residents. Many cities have risked dependency on a thread of the global economy that is largely beyond their control. TFN is betting on a combination of real estate and port-related development—both of which depend on global trade and financial markets beyond the control of local communities—to support members and the functioning of self-government. But leaders continue to be pragmatic. I asked Baird specifically if she worried about TFN's success being dependent on port development and global trade. She said she banished any worry after participating in a junket of port cities around the world.[249] She became convinced that the trade will continue—Canada, Vancouver and TFN can choose to take advantage of it or not. Even as Baird's views seem to converge with former adversaries at the port and provincial government, TFN's journey to self-government remains a prime example of makúk. For port officials and associated business interests the port is a means for corporate profit that theoretically provides widespread economic benefit. Provincial officials seem to agree; perhaps, taking a cynical view, because corporate profit also supports political careers. For Baird and her community, the port is a means for lifting members out of poverty and supporting a more accessible, accountable and culturally appropriate government.

So far it would seem the diverse views contained in this makúk have been largely compatible. But, as Thom suggests, TFN self-government in this context could be catastrophic, positively transformative or both.[250] TFN certainly has greater power over

[249] Yuile, "Falcon's Follies;" B.C., "Asia Tour." This tour, in 2008, was funded by B.C. Rail and the provincial government to support and promote the port development aims of the Gateway Program.

[250] Thom, "Anathema," 33-34.

decision-making in general, and certain key areas in particular, such as land use. But as the exploration of port development decisions reveals, these powers are tempered both by forces largely beyond local control—economic processes of globalization and political processes of neo-liberalism—and by the power and personal dynamics that shape inter-governmental relationships. Thus TFN's power to pursue procedural justice will likely continue to be contested and negotiated.

So, if procedural justice stands for environmental justice by proxy in this case does TFN now have better opportunities to achieve environmental justice? To some extent. Members and leaders probably have a better opportunity now of achieving environmental justice. These wishy-washy (but legitimate) answers to my original research question became clear fairly early in the course of my data collection. By themselves, the answers are not particularly helpful, and led me to question whether using the concept of environmental justice is relevant or useful in this case. To each of my interviewees I expressed my hope that the results of my study would be in some way helpful. Most were unsure if it would be, and listening over again to the recordings of the interviews I was a little chagrined that these quips on my part sounded like hubris. But, having pieced together the data into a complex narrative, I conclude that asking questions from an environmental justice framework is indeed helpful. It allows for the victims of environmental injustice to tell the story of what environmental justice means, while also highlighting key themes and critical points of conflict that must be recognized and meaningfully negotiated if we hope to achieve urban sustainability. TFN's story demonstrates the larger, more important point that sustainability must be just in order to succeed. In the concluding pages of this paper I begin to consider these key themes in hopes of motivating further research and action towards just sustainability.

Chapter 7.

Conclusion: Towards a Just Sustainability

This case brings to the fore the social, economic, environmental and cultural issues that must be negotiated if we are truly serious about achieving a sustainable city. As McArthur stated, “you can’t ignore history and the need for reconciliation and justice in environmental values and in looking for sustainability.” Every aspect of this case study—from the research design, to the literature review and conceptual framework, to the narrative data—has reinforced the overwhelming importance of fair and accountable governance to achieve just sustainability. But TFN’s story also reveals two other elements that citizens, leaders, planners, neighbours, scholars and urban residents must incorporate into our negotiations towards a sustainable future: reconciliation, and how we share and value land.

Good Governance and Local Power

This case study has explored governance in many ways, but overwhelmingly demonstrates the importance of ensuring people have some real power over the decisions that affect their lives. For two centuries Tsawwassen people had been beset by decisions over which they had little or no control. The creation of reserves, the Indian Act, the construction of the ferry and port terminals, development of settler property for farming, housing, business, industry and infrastructure, regional planning and basic services, the establishment of parks and conservation areas, welfare and social programs, you name it. So, I was understandably dumbstruck when Huntington, speaking of TFN’s post-treaty development plans, declared without a trace of irony: “It’s very hard on neighbours to accept that those decisions are out of their hands.”

Bak related a similar story about Steves. In a meeting with TFN leaders, expressing exasperation with provincial consultation practices and the government's failure to heed the desires and opinions of municipalities and local residents, Steves declared: "[the province] is treating us like Indians!" Despite Steves's earlier comments in the press calling TFN's land settlement under the treaty "too rich," Bak assured me that Steves fully understood the irony of this declaration, and has been very supportive of TFN's self-government goals. Steves's and Huntington's larger point is is among the most important lessons to take away from this story—the local communities that bear the direct impacts of development do not have equitable power over the decisions that allow development to happen. While TFN's history unquestionably demonstrates this truth, Delta's experience with port expansion and a slew of other provincial and federal infrastructure projects in recent years also bears it out.

Among other things, the way in which senior governments have exercised their superior power has allowed for divide and conquer tactics and exacerbated already troubled Aboriginal/non-Aboriginal relations. Without even fully considering the long and disturbing conflict between TFN and Delta over servicing agreements (which merits further study and analysis), the benefit of hindsight in this case reveals how secrecy and opacity poisoned intergovernmental relations in ways that did not benefit any party involved. Because TFN and the provincial government chose to keep secret the 1998 protocol agreement that protected a portion of the backup lands for future treaty settlement, it caused disproportionately negative reactions when details of the deal became apparent in the lead-up to TFN's AIP. The secrecy of the agreement gave it an air of conspiracy that fed Delta critics' tendency to focus on the potential loss of agricultural land within its jurisdiction rather than considering the history of dispossession and realizing that TFN had agreed to negotiate for a mere fraction of its traditional territory. The move inflamed long-standing tensions between Delta's fishers and farmers and their First Nations neighbours, and its effects reverberated throughout the treaty process. The political conflict over ALR designation on treaty transfer land arguably originated with the 1998 deal, heightening political rifts within the NDP and contributing to years of struggle and strife at the treaty table for TFN.

The failure to release the MOA and port settlement agreement documents at the time the deal was made also came back to bite VPA and TFN. Although most of the

important details were made public through the media at the time, the fact that a community group had to file a freedom of information request three years later to get its hands on the actual documents again gave the deal an air of conspiracy before anyone even read the letter of the agreements. This timing was doubly unfortunate because it came on the heels of revelations that VPA had basically conspired with DFO to drop the T2 project from its expansion plans in order to ensure that the environmental assessment application would be successful. Although Environment Canada originally objected to these dealings, it eventually accepted the move leading to the approval of the third berth project over the opposition of local residents and the municipality. Already deeply suspicious of and disempowered by the environmental assessment process, Delta's port opponents believed the settlement documents proved that VPA had never abandoned its plans for T2 and had effectively lied to the public and regulators in order to push its agenda forward. The unaccountable port authority acted in bad faith, and the environmental assessment process, where members of the public are supposed to have the opportunity to affect major decisions, had failed the residents of Delta. While it may not be accurate or excusable, it is easy to see why TFN's neighbours could easily lump the treaty process into a larger conspiracy theory, and ignore the myriad crucial issues the treaty and port settlement deals were meant to address. Instead they focused on what TFN planned to do with a small portion of its settlement lands.

As with so many elements of TFN's story, this is another prime example of makúk. Internal and external critics are neither wrong nor right about the "real story" behind TFN's transformation. Rather, all the stories my interviewees told, even with their diverse and sometimes conflicting interpretations, coexist as elements of truth. The critiques that Bertha Williams's aired in the media and her letter to the United Nations, which helped to fuel outsider theories about the monetary motivations behind treaty and port negotiations, are not really inconsistent with the prevailing and generally reasonable explanations offered by TFN leaders. Debts to Stahaken claimants and BCTC likely did become motivating factors to continue the treaty process and focus on economic development, but that does not exclude the other powerful motivating factors like a desire for equity, prosperity, land tenure and self-determination. Provincial funding ahead of the treaty ratification vote was likely both a cynical move, particularly on the

part of the B.C. Liberal government, to ensure approval, and a legitimate attempt to provide an equitable share of treaty benefits to long-suffering elders.

Deep-seated historical legacies of racism and colonialism must be addressed on many levels—from its institutionalization in senior government policy and practice, to its personal and psychological effects on every resident of Canada—in order to bring about just Aboriginal/non-Aboriginal relations. But this case study makes clear that good governance—in particular transparency, accountability and meaningful mechanisms for local power—is required if we are to have any hope of reaching reconciliation.

Aboriginal/non-Aboriginal Reconciliation

In her speech to the legislature on the eve of the treaty ratification vote Baird argued that although the compromises had been bitter, TFN had found "true reconciliation" through the treaty process. Much more work, however, is required on the part of settler society to reach true reconciliation. Gordon suggests, as a starting point, adopting Assembly of First Nations Chief Shawn Atleo's assertion that treaties are not only for First Nations, but for everyone because we are all parties to them. The rights, benefits, and responsibilities enshrined in treaties must be shared by First Nations and settler society. Or, as McArthur put it, reconciliation is about learning to live together.

TFN's focus on acknowledging and compensating for sins of the past in its journey to self-governance shows that reconciliation must begin with history. As discussed in the above narrative, TFN members and supporters have found the wilful loss of historical memory among their non-Aboriginal neighbours to be baffling, frustrating, and deeply hurtful. Whether wilfully or not, history must be remembered and redressed for reconciliation to occur. Indeed, TFN's story cannot be understood without the benefit of historical insight. Lutz's *Makúk*, and Harris's *Making Native Space* have provided cultural, historical, and geographical context for the story. Harris's geography of the creation of reserves within a settler private property regime shows that colonial dispossession and segregation of First Nations has denied Aboriginal people access to their traditional economies and to the settler capitalist economy. For over a hundred years a huge metropolis was developing around Tsawwassen without the participation of

or shared benefits for Aboriginal people. When TFN was fighting the power lines and highway and ferry and port terminals they were all alone. No one was there to help them then. No one stood with them.[251]

Many of the leaders and members I interviewed felt that neighbours and outsiders in general fail to understand, or have very different ideas about not only the facts of what has happened at TFN over the last two decades, but also about the comprehensive and complex meaning of the transformation that is taking place in their community. For some, TFN's experience has revealed fundamental rifts in Aboriginal and non-Aboriginal ideas of fairness and sustainability.

Many interviewees aired concerns about environmentalists in particular. Baird said her experience during TFN's transformation has led her to question the principles behind environmentalism: does the nature environmentalists are trying to preserve include people? Some conceptions of environmentalism exclude at least Aboriginal people. "It's this whole painting First Nations into this noble savage past," she said. "Our rights are frozen in time, we're relics." So long as Aboriginal people are "skipping around in the forests with . . . bows and arrows" it is fine, but anything "beyond that is not allowed." Baird agreed with the characterization of another First Nations leader that this is a form of neo-colonialism. She remembered a TFN elder being particularly exasperated by environmentalists' critiques of TFN's plans because he believed they were fighting to preserve an already grossly compromised state of the ecosystem. Since European contact, Baird said, her people have faced "some of the most extreme environmental changes." And those changes include agriculture. But because TFN insisted on removing the ALR designation (itself an imposition of settler society) from settlement lands, environmentalists "were some of my biggest opponents," Baird said. Farming is a form of land development, not a state of nature, and she has found its characterization as an "environmental practice" baffling. Adams finds the rift between First Nations and environmentalists particularly distressing. Not only does it allow

[251] McArthur, interview.

governments and corporate interests to employ divide and conquer tactics, it hinders the ability to find win-win solutions to urban problems. McArthur, who identifies himself as an environmentalist, sees a strong environmental ethic among TFN members and leaders based on their long-term attachment to the land and water. This is reflected in the relatively significant conservation and agricultural elements of TFN's land use plan. Baird, Bak, and McArthur all cited the plan's mixed and balanced vision as part of a concerted commitment among TFN leaders and members to develop a sustainable community. Baird referenced the classic pillars of sustainability—social, economic and environmental—as part of the approach, but added a fourth cultural pillar, which is equally important to her community.

Reconciliation, from an environmental justice perspective, will require serious rethinking and examination of the traditional values and practices of environmentalism in particular, and more generally a dramatic shift in non-Aboriginal approaches to Aboriginal relations. As Lutz puts out, this is not an 'Indian problem,' but a "white-problem."[252] Harris argues that reconciliation—most especially settlement of Aboriginal land claims—must be negotiated through a politics of difference. It took me a while as I proceeded through my interviews to understand what this might mean. One of the things that drew me to TFN's story was a desire to understand the conflict between TFN and its neighbours. If they were suffering the same impacts from port activity, why didn't I see any evidence of attempted alliances or solidarity? Why was the treaty agreement so controversial among TFN's neighbours? The more I unpacked the story, the more disturbed I became by evidence of racism and neo-colonialism, as discussed immediately above and in the story at the core of this case study.

My interviews really drove home the enduring gulf between First Nations and settler society. I asked generally whether or what about the treaty and port agreements had been controversial. I expected this question to prompt TFN leaders and members to discuss conflicts with Delta. But most of these interviewees thought first of internal

[252] Lutz, *Makúk.*

controversy or criticism from other First Nations. A few noted particular worries among TFN treaty opponents that the band was not ready to handle self-government and that members would lose their tax benefits as Indians.[253] Many had to be prompted with a specific question about opponents in Delta. Even the surroundings gave evidence of the extent to which TFN existed primarily in a First Nations world. Government buildings were filled with First Nations newspapers, art and cultural material. The most prominent feature of settler society, other than the port and ferry terminals looming in the distance and their enduring impacts on TFN's air, land and water, was a framed cover of the Delta Optimist's newsmaker of the year edition from 2011. TFN's plans for a major mall-style commercial development had been selected as the number one newsmaker.

An effective politics of difference does not mean that the divisions between settler and First Nations worlds should be erased, but should equitably live together. This requires mutual recognition, understanding and compromise. As Lutz's makúk concept helps us to understand, events, decisions, actions, places and things have multiple meanings that co-exist. Reconciliation means both understanding the history of and engaging in makúk. Particularly along Aboriginal/non-Aboriginal lines past events and current processes will have different implications and outcomes that can only be reconciled through negotiation and dialogue, starting from "a place of creative understanding"[254] Nowhere is this more apparent than when considering the central element of land in Aboriginal/non-Aboriginal relations.

'Land is Not a Possession'

Land is at the heart of Aboriginal claims and experience. Questions of land claims, land tenure, land use and, more philosophically, the value or meaning of land are fundamental to TFN's story and to the quest for urban sustainability. Both Blomley and Harris underscore the centrality of land and property to contemporary negotiations over

[253] Williams, interview; anonymous interviewee 1.
[254] Lutz, *Makúk*, 299.

title and sovereignty. Harris's historical findings of "the depth and tenacity of [Aboriginal] attachment to the homes that they had almost, but not quite, lost" through colonial dispossession,[255] are reinforced in Blomley's assertion that property narratives are central to urban Aboriginal identity. Adams declared: "land is not a possession," and Bak's mantra is "if we hurt the land, we hurt ourselves." As evidenced by the perceptions of environmental impacts as cultural impacts, TFN's relationship to land is more than just as an asset owner. Adams continued: "Land means so much to us as First Nations because it's always been taken away from us." As Baird pointed out in her 2007 speech, colonial "tools of land title and other rights of newcomers were mapped over our territories . . . these tools have evolved to land use designations, official community plans and livable regional strategies."[256] In media interviews, Bertha Williams has suggested that, considering this history, TFN gave up too much in extinguishing its more general and legally evolving claim to Aboriginal title over its whole traditional territory.[257] This is also why it was so difficult ultimately to choose the integration approach that accepted the very tools of colonialism. But that approach has not necessarily erased TFN's unique Aboriginal form of property claim. Instead, again in the spirit of makúk, it has simply mapped new forms of property claim and land value onto TFN's lands.

While those claims and values coexist, the coexistence may not be equitable, and claims are often in conflict, as this case study clearly shows. TFN's Aboriginal conception of land has been in conflict with the private property regime for well over a century. But even that regime is contested, as can be seen in Gentner and Huntington's notions of land value. Gentner believes that Canadians have a prevailing respect for the commons in contrast to the worship of private property he sees in the United States. So for him, most land is a public asset. The fact that a huge amount of land in B.C. and throughout Canada is Crown land has made modern negotiations with First Nations possible because settler governments have something they can hand over to original

[255] Harris, *Making Native Space*, 285.
[256] Baird, *Making History*, 2.
[257] Gordon, "No Reservations;" Glavin, "Treaty Rights."

inhabitants. Huntington prioritizes the ecological value of land over all else. In the case of TFN's lands, she believes that their value as habitat in the Pacific bird flyway, and as productive agricultural lands trumps their potential to provide for TFN members' social, cultural and economic prosperity. While her view represents many of the deeply troubling elements of environmentalism discussed above, all land does have an undeniably fundamental role in the natural ecosystems that support all life, including humans. This ecological value of land is most often in conflict with the prevailing capitalist paradigm that values land as a commodity in local, regional and global markets. Certainly port officials and port-related interests see TFN's land from this perspective—it is now on the market and holds development potential that could work to the competitive advantage of the port industry.

In fact, most everyone agreed that TFN's geographic location made prospects of a successful treaty agreement and subsequent self-government possible. TFN lands are strategically located for cultural revitalization and as part of important global avian habitat. But what made the difference in post-modern negotiations was TFN's strategic location in the urban and global marketplace. As Gentner put it, TFN was "fortunate enough to be in the shadow of development" and that demand from settler society motivated senior governments to negotiate. He believed this was an inherently unfair approach to negotiations because First Nations with nothing to offer the status quo will be unlikely to get the same attention. Many at TFN seem to have accepted the inequities that come along with settler land economics. Margaret, contemplating the change from CP interest to TFSI ownership said now it is pretty much like anywhere else where sometimes you get lucky in the real estate market. If you're a farmer with land that has the prospect of urban development you end up a big winner, but if you have remote farmland somewhere the value never goes up.

Kermit perhaps best summed up the meaning of coexisting property claims in TFN's post-treaty world. He saw little difference between holding a CP interest and now being a TFSI owner. "It's still my land," he said, but now he has to pay taxes like white people. In return he got a much broader set of choices. Although he was living on his land and had no plans to sell or develop it, he could. The First Nations form of title places some restrictions on disposal to protect Aboriginal ownership, but because his title is recognized by the status quo, the land has value in the markets of settler society,

and because TFN members and government now have access to credit, Kermit's land is a financial asset. Moreover, if he did want to develop, he would go directly to TFN, a government run by his relatives, friends and neighbours, rather than begging, likely to no avail, from a distant and paternalistic colonial government. The competing values that different people have mapped onto TFN's land remain, but under treaty and self-government, those claims have the potential to coexist with less conflict and greater opportunity for equity and environmental justice.

Reconciliation for TFN has meant a dramatic negotiation of the meaning of land, one that has allowed for an expansion of how land is valued and held within the TFN community. A similar negotiation and expansion, based on reconciliation and good governance, will have to occur if we truly want to achieve urban sustainability in metro Vancouver. Taking an environmental justice approach to this case study has allowed me to see that a "just sustainability paradigm" in Vancouver must consider these key elements. I have only begun to explore these elements and the literature that would be essential for a deeper understanding of each. Although my conclusions are merely starting points for future research, I hope they also serve as kernels of insight for current and future practice, for we have no choice but to fight together for a just and sustainable future.

Bibliography

"Behind the Rhetoric." *Delta Optimist,* November 16, 2005.

"Deal Paves Way for Major Vancouver Port Expansion." *Daily Commercial News and Construction Record* 77, no. 220 (November 16, 2004): 3.

"Funds Flow to Ensure Yes Vote on Treaty Deal." *The Province,* July 12, 2007.

Haida Nation v. B.C. and Weyerhaeuser, Docket CA027999 (British Columbia Court of Appeals February 27, 2002).

"History Repeating; Protests and Controversy have Long Plagued the Tsawwassen Hydro Right-of-Way." *Delta Optimist,* January 13, 2010.

"Judge Refuses to Delay Tsawwassen Band's Lawsuit." *The Vancouver Sun,* April 27, 2004.

Memorandum of Understanding between Tsawwassen First Nation and TSI Terminal Systems Inc.: Tsawwassen First Nation, 2010, http://www.tsawwassenfirstnation.com/ECDEV-TFN-TSI_signed_MOU_02.16.10.PDF.

"Steves Quits Treaty-Making Table." *Richmond News,* September 22, 2004.

"TFN Member Files Injunction to Halt Work on SFPR." *Delta Optimist*, May 27, 2011.

"TFN Members Support Managing their Own Lands." *Delta Optimist,* November 19, 2003.

"Tsawwassen Band Claims Property Tax." *The Vancouver Sun,* July 7, 1993.

"Tsawwassen First Nation Ratifies $47-Million Deal with Port Corp." Canada NewsWire, November 30, 2004.

Tsawwassen First Nation v. Vancouver Port Authority, Docket: Vancouver S021209 (British Columbia Supreme Court, December 24, 2003).

Tsawwassen First Nation v. Vancouver Port Authority, Docket: Vancouver S021209 (British Columbia Supreme Court, April 22, 2004).

"Tsawwassen Incentives to Sign Treaty are Part of the Democratic Package." *The Vancouver Sun*, July 13, 2007.

"Tsawwassen Settlement Heralds a New Era of Cooperation." *The Vancouver Sun,* November 13, 2004.

Abbott, Carl and Sy Adler. "Historical Analysis as a Planning Tool." *Journal of the American Planning Association* 55, no. 4 (1989): 467-477.

Agyeman, Julian, Robert D. Bullard, and Bob Evans. "Exploring the Nexus: Bringing Together Sustainability, Environmental Justice and Equity." *Space and Polity* 6, no. 1 (2002): 77-90.

Agyeman, Julian, Peter Cole, Randolph Haluza-Delay, and Pat O'Riley, eds. *Speaking for Ourselves: Environmental Justice in Canada*. Vancouver: UBC Press, 2009.

Agyeman, Julian*. Sustainable Communities and the Challenge of Environmental Justice*. New York: New York University Press, 2005.

Ali, S. Harris. "The Political Economy of Environmental Inequality: The Social Distribution of Risk as an Environmental Injustice." In *Speaking for Ourselves: Environmental Justice in Canada*, edited by Julian Agyeman, Peter Cole, Randolph Haluza-Delay and Pat O'Riley, 97-110. Vancouver: UBC Press, 2009.

Anand, Sudhir and Amartya Sen. "Human Development and Economic Sustainability." *World Development* 28, no. 12 (2000): 2029-2049.

Babbie, Earl and Lucia Benaquisto. *Fundamentals of Social Research*. Second Canadian Edition. Toronto: Nelson Education, 2010.

Baird, Kim*. Making History: Tsawwassen First Nation, First Urban Treaty in Modern-Day British Columbia*. Speech to the B.C. Legislature, October 15, 2007, http://www.tsawwassenfirstnation.com/071015_Chief_Baird_Speech.pdf.

———. "Speaking Notes: Treaty Making from and Urban Perspective." Vancouver, B.C., Pacific Business & Law Institute Conference, April 2000. Guy Genter papers.

Baird, Kim, Katherine Gordon, and Robin Dodson to the editors of Delta Optimist, South Delta Leader and Richmond Review, February 19, 2003. Guy Gentner papers.

Balcom, Susan. "Stahaken: Something Special Indian Name Conjures Up Magic of New Development." *The Vancouver Sun,* November 21, 1987.

Bell, Don H., Chair of Lower Mainland Treaty Advisory Committee to Lois E. Jackson, Mayor of Delta, 2003. Guy Gentner papers.

Blomley, Nicholas. *Unsettling the City: Urban Land and the Politics of Property*. New York: Routledge, 2004.

Bohn, Glenn and Jim Beatty. "A-G Slams Delta Suit Over Native Land." *The Vancouver Sun,* December 11, 2004, B4.

Bohn, Glenn. "Delta Exits Treaty Talks" *The Vancouver Sun,* March 5, 2003.

British Columbia. “Asia Tour 2008,” Canada’s Pacific Gateway. http://www.pacificgateway.gov.bc.ca/asia_trip_2008.htm (accessed May 1, 2013).

British Columbia Treaty Commission. "About Us." http://www.bctreaty.net/files/about_us.php (accessed March 3, 2013).

———. "Funding." http://www.bctreaty.net/files/funding.php (accessed March 12, 2013).

———. "A Lay Person’s Guide to Delgamuukw." http://www.bctreaty.net/files/pdf_documents/delgamuukw.pdf (accessed March 14, 2013).

———. *Lheidli T’enneh Communications Probe*, 2007. http://www.bctreaty.net/files/pdf_documents/Lheidli_Tenneh_Ratification_Final.pdf (accessed March 20, 2013).

Bryant, Bunyan and Paul Mohai, eds. *Race and the Incidence of Environmental Hazards: A Time for Discourse*. Boulder, CO: Westview Press, Inc, 1992.

Bullard, Robert D. *Dumping in Dixie: Race, Class, and Environmental Quality*. Boulder, CO: Westview Press, Inc, 1994.

Buzzelli, Michael*. Environmental Justice in Canada: It Matters Where You Live*. Ottawa: Canadian Policy Research Networks, 2008.

Buzzelli, Michael, Michael Jerrett, Richard Burnett, and Norm Finklestein. "Spatiotemporal Perspectives on Air Pollution and Environmental Justice in Hamilton, Canada, 1985–1996." *Annals of the Association of American Geographers* 93, no. 3 (2003): 557-573.

Canada and British Columbia. *Speaking Notes: Joint Response by Canada and British Columbia to the Tsawwassen Treaty Presentation*. For Main Table Meeting, October 21: British Columbia Treaty Commission, 1999. Guy Genter papers.

Cardinal, Nathan. "The Exclusive City: Identifying, Measuring and Drawing Attention to Aboriginal and Indigenous Experiences in an Urban Context." *Cities* 23, no. 3 (2006): 217-228.

Carmichael, Amy. "Loans to Natives to Negotiate Land Claims Climb High as Potential Settlements." *The Canadian Press,* December 30, 2003.

Castells, Manuel. "Local and Global: Cities in the Network Society." *Tijdschrift Voor Economische En Sociale Geografie* 93, no. 5 (2002): 548-558.

CitySpaces Consulting Ltd. and Fletcher and Company Municipal Consulting Inc. *Tsawwassen First Nation Community Planning and Development Report: Proposed Treaty Settlement Lands*, 2002. Guy Gentner papers.

Clark, Anthony. "Spaces of Engagement and the Politics of Scale in B.C.'s Gateway Program." Masters in Urban Studies, Simon Fraser University, 2010.

Corporation of Delta. "Brief History." http://www.corp.delta.bc.ca/EN/main/residents/740/brief_history.html (Accessed February 2013).

———. *Council Report: Withdrawal from LMTAC*, F.O6, February 27, 2003. Guy Gentner papers.

Coy, Patrick G. and Timothy Hedeen. "A Stage Model of Social Movement Co-Optation: Community Mediation in the United States." *Sociological Quarterly* 46, no. 3 (Summer2005, 2005): 405-435.

Cradock, Gerald. "First Nations' Political Economy in British Columbia: A Partnership Recovered?" Masters in Communication, Simon Fraser University, 1997.

Crang, Mike. "Analysing Qualitative Materials." In *Methods in Human Geography*, edited by Robin Flowerdew and David Martin. Second Edition, 218-232. Harlow, England: Pearson Prentice Hall, 2005.

Dalby, Simon and Fiona Mackenzie. "Reconceptualising Local Community: Environment, Identity and Threat." *Area* 29, no. 2 (1997): 99-108.

Daniels, Alan. "Port Will Spend $1 Billion to Double Container Capacity: Among Projects for the Next Decade are another Berth and New Terminal at Roberts Bank." *The Vancouver Sun,* October 24, 2002.

Deacon, Leith and Jamie Baxter. "Framing Environmental Inequity in Canada: A Content Analysis of Daily Print News Media." In *Speaking for Ourselves: Environmental Justice in Canada*, edited by Julian Agyeman, Peter Cole, Randolph Haluza-Delay and Pat O'Riley, 181-202. Vancouver: UBC Press, 2009.

Debbané, Anne-Marie and Roger Keil. "Multiple Disconnections: Environmental Justice and Urban Water in Canada and South Africa." *Space and Polity* 8, no. 2 (2004): 209-225.

Dyck, Noel. "Tutelage, Resistance and Co-Optation in Canadian Indian Administration." *Canadian Review of Sociology & Anthropology* 34, no. 3 (08, 1997): 333.

Edmonds, Eve. "Land Claims Hot Topic: Tsawwassen Deal Sets Rich Template, Contends Steves." *Richmond News,* Nov 17, 2004.

Energy Justice Network, “Environmental Justice/Environmental Racism.” http://www.ejnet.org/ej/ (accessed October 2011).

First Nations Summit. "Background: The Treaty Process." http://www.fns.bc.ca/treaty/t_time.htm (accessed March 12, 2013).

———. "Statement to Canada and B.C. on the Supreme Court of Canada Decision in Delgamuukw." http://www.fns.bc.ca/pdf/p_delgam0198.pdf (accessed March 14, 2013).

Flyvbjerg, Bent. *Making Social Science Matter: Why Social Inquiry Fails and How it Can Succeed Again*. Cambridge, New York: Cambridge University Press, 2001.

Gaber, John and Sharon L. Gaber. "Utilizing Mixed-Method Research Designs in Planning: The Case of 14th Street, New York City." *Journal of Planning Education and Research* 17, no. 2 (1997): 95-104.

Glavin, Terry. “Treaty Rights.” *Vancouver Magazine,* April 1, 2009.

Goldtooth, Tom B. K. "Indigenous Nations: Summary of Sovereignty and its Implications for Environmental Protection." In *Environmental Justice: Issues, Policies, and Solutions*. Washington, D.C.: Island Press, 1995.

Gordon, Katherine. “No Reservations.” *Canadian Geographic,* April 2008.

Gough, Liz. Letter to the Editor. *Delta Optimist,* September 13, 2006.

Gulyas, Maureen. "Baird Facing Challenge from Ex-Chief in Tsawwassen First Nation Election." *Delta Optimist,* Mar 26, 2003.

———. "Civic Staff Voice Concerns Over Expansion at Port." *Delta Optimist,* December 1, 2004.

———. "Port Impacts Minimized as Review Split." *Delta Optimist,* April 19, 2006.

———. "Q & A with the Candidates: Election Series." *Delta Optimist,* June 16, 2004.

———. "Rail Yard Concerns Grow." *Delta Optimist,* January 20, 2007.

———. "Second Treaty Resignation." *Delta Optimist,* September 22, 2004.

———. "TFN Files Writ to Protect Legal Rights." *Delta Optimist,* December 17, 2003.

———. "Tsawwassen First Nation Treaty Initialling More about Port Development, Politicians Argue." *The Vancouver Sun,* January 20, 2007.

Gyarmati, Sandor. "Delta Wants Port Expansion Stopped Until Studies Done." *Delta Optimist,* December 3, 2005.

———. "Looking Back." *Delta Optimist,* June 12, 2010.

Hagar, Mike. "New Tsawwassen First Nation General Election Set for April." *The Vancouver Sun,* January 7, 2013.

Haluza-Delay, Randolph. "Environmental Justice in Canada." *Local Environment* 12, no. 6 (12, 2007): 557-564.

Haluza-Delay, Randolph, Pat O'Riley, Peter Cole, and Julian Agyeman. "Introduction. Speaking for Ourselves, Speaking Together: Environmental Justice in Canada." In *Speaking for Ourselves: Environmental Justice in Canada*, edited by Julian Agyeman, Peter Cole, Randolph Haluza-Delay and Pat O'Riley, 1-26. Vancouver: UBC Press, 2009.

Harris, R. Cole. *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia*. Vancouver: UBC Press, 2002.

Harris, Paul. "VPA Deal Boosts First Nation's Port Involvement." *Business in Vancouver* no. 787 (Nov 23-Nov 29, 2004): 6.

Howard, Ross, Ben Berfitt, and Don Eaton. “Shape Shifters: The BC Land Claims Issue Has a New Look.” *B.C .Business Magazine,* May 2003.

Hume, Mark. "Bigger-Port Bid Hobbled: Project could Hurt Migratory Bird Habitat, Environmental Assessment Says." *The Globe and Mail,* June 14, 2005, sec. British Columbia News.

Hunter, Justine. "Chief Urges NDP to Take Stand on Tsawwassen Treaty." *The Globe and Mail,* July 23, 2007, sec. British Columbia News.

———. "Native Communities Denounce Historic Treaty." *The Globe and Mail,* October 15, 2007, sec. British Columbia News.

———. "NDP Divisions Widen Over Landmark Deal." *The Globe and Mail,* October 16, 2007, sec. British Columbia News.

———. "NDP Torn Over Tsawwassen Treaty." *The Globe and Mail,* August 22, 2007, sec. British Columbia News.

Ishiyama, Noriko. "Environmental Justice and American Indian Tribal Sovereignty: Case Study of a Land–Use Conflict in Skull Valley, Utah." *Antipode* 35, no. 1 (01, 2003): 119.

Iversen, Bernita. "Backgrounder: Roberts Bank Container Port Expansion." Corporation of Delta (2011).

Jackson, Lois E., Mayor of Delta to Don H. Bell, Chair of Lower Mainland Treaty Advisory Committee. Guy Gentner papers.

Jafri, Beenash. "Rethinking "Green" Multicultural Strategies." In *Speaking for Ourselves: Environmental Justice in Canada*, edited by Julian Agyeman, Peter Cole, Randolph Haluza-Delay and Pat O'Riley, 219-232. Vancouver: UBC Press, 2009.

Jang, Brent. "Native Deal Sets Stage for B.C. Port Expansion." *The Globe and Mail,* November 11, 2004.

Joyce, Greg. "Progress Slow on Treaty Talks, Negotiators Say: First Nations Frustrated with Stalemate." *The Globe and Mail,* September 29, 2006, sec. British Columbia News.

Keil, Roger, Melissa Ollevier, and Erica Tsang. "Why is there no Environmental Justice in Toronto? Or is there?" In *Speaking for Ourselves: Environmental Justice in Canada*, edited by Julian Agyeman, Peter Cole, Randolph Haluza-Delay and Pat O'Riley, 65-80. Vancouver: UBC Press, 2009.

Kerr, Jessica. "Third Berth Opens for Business." *Delta Optimist,* Januray 20, 2010.

Larsen, Soren C. "Promoting Aboriginal Teritoriality through Inter-Ethnic Alliances: The Case of the Cheslatta T'En in Northern British Columbia." *Human Organization* 62, no. 1 (2003): 74-84.

Lovelace, Robert. "Prologue. Notes from Prison: Protecting Algonquin Lands from Uranium Mining." In *Speaking for Ourselves: Environmental Justice in Canada*, edited by Julian Agyeman, Peter Cole, Randolph Haluza-Delay and Pat O'Riley, ix-xix. Vancouve: UBC Press, 2009.

Lutz, John Sutton. *Makúk: A New History of Aboriginal-White Relations*. Vancouver: UBC Press, 2008.

MacDonald, Fiona. "Indigenous Peoples and Neoliberal “Privatization” in Canada: Opportunities, Cautions and Constraints." *Canadian Journal of Political Science* 44, no. 2 (2011): 257–273.

Mah, Cheryl. "Tsawwassen Pact Major Step for VPA: Billion Dollar Expansion Closer." *Journal of Commerce* no. 94 (Nov 24, 2004): 1.

Mascarenhas, Michael. "Where the Waters Divide: First Nations, Tainted Water and Environmental Justice in Canada." *Local Environment* 12, no. 6 (12, 2007): 565-577.

Maudie, Max. "Investment Fund Promise Turned the Tide in Port Authority Dispute." *Raven's Eye* 8, no. 7 (12, 2004): 11.

McAllister, Mary Louise. *Governing Ourselves? The Politics of Canadian Communities*. Vancouver: UBC Press, 2004.

McNeil, Alison and Joanne Gauci*. First Nations Relations Update to LMTAC*: Lower Mainland Treaty Advisory Committee, 2004. Guy Gentner papers.

Mitchell, Brian. *BC Treaty Commission Report: Tsawwassen First Nation Treaty Ratification Communications Analysis*. Vancouver: British Columbia Treaty Commission, 2008, http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/447705/tsawwassen_treaty_ratification_analysis_final.pdf (accessed March 15, 2010).

Mitchell, Don. "The Annihilation of Space by Law: Anti-Homelessness Laws and the Shrinking Landscape of Rights." *Antipode* 29, no. 3 (2002): 303-335.

Mitchell, Bruce and Dianne Draper. "Environmental Justice Considerations in Canada." *Canadian Geographer* 45, no. 1 (March, 2001): 93-98.

Odam, Jes. "Homeowners Not Worried about Deal with Indians." *The Vancouver Sun,* Jul 13, 1993.

Ominayak, Chief Bernard and Kevin Thomas. "These are Lubicon Lands: A First Nation Forced to Step into the Regulatory Gap." In *Speaking for Ourselves: Environmental Justice in Canada*, edited by Julian Agyeman, Peter Cole, Randolph Haluza-Delay and Pat O'Riley, 111-122. Vancouver: UBC Press, 2009.

Page, Justin. "Salmon Farming in First Nations' Territories: A Case of Environmental Injustice on Canada's West Coast." *Local Environment* 12, no. 6 (12, 2007): 613-626.

House of Commons Debate. *Tsawwassen First Nation Final Agreement Act, Mr. John Cummins.* Volume 142, Number 097 Cong., 39th Parliament, 2nd Session, May 16, 2008.

Parsons Brinckerhoff*. Tsawwassen First Nation Industrial Lands Master Plan, Executive Summary*, 2009. http://www.tsawwassenfirstnation.com/ECDEV_TFN_Industrial_Lands_Master_Plan-Executive_Summary_10.09.pdf (accessed March 23, 2010).

Place, Jessica and Neil Hanlon. "Kill the Lake? Kill the Proposal: Accommodating First Nations' Environmental Values as a First Step on the Road to Wellness." *Geojournal* 76, no. 2 (2011): 163-175.

Rahder, Barbara. "Invisible Sisters: Women and Environmental Justice in Canada." In *Speaking for Ourselves: Environmental Justice in Canada*, edited by Julian Agyeman, Peter Cole, Randolph Haluza-Delay and Pat O'Riley, 81-96. Vancouver: UBC Press, 2009.

Raybould, Tim*. The Economics of First Nations Governance Investment Capital, Money and Wealth Accumulation*. National Centre for First Nations Governance, 2006. http://fngovernance.org/ncfng_research/tim_raybould.pdf (accessed October 26, 2011).

Ries, Ed. "It's Time to Stop Trying to Block Band's Economic Development." *Delta Optimist,* October 23, 2002.

Rose, Alex. “Deliverance: Greater Aboriginal Participation in the Economy could End the Failed System of Ongoing Intergenerational Welfare, Structural Unemployment and Third World Poverty.” *B.C .Business Magazine,* June, 2001. v.29(6).

Rossiter, David and Wood, Patricia K. "Fantastic Topographies: Neo-Liberal Responses to Aboriginal Land Claims in British Columbia." *Canadian Geographer* 49, no. 4 (Winter, 2005): 352.

Simpson, Scott. "Tsawwassen Band's Partnership Historic:" *The Vancouver Sun,* November 11, 2004.

Szychter, Gwen. *Chewassen, Tsawwassen, Or Chiltinm: The Land Facing the Sea*. Delta, BC: Self-published, 2007.

Taylor, Dorcetta E. "The Rise of the Environmental Justice Paradigm: Injustice Framing and the Social Construction of Environmental Discourses." *American Behavioral Scientist* 43, (2000): 508-580.

Teelucksingh, Cheryl. "Environmental Racialization: Linking Racialization to the Environment in Canada." *Local Environment* 12, no. 6 (12, 2007): 645-661.

TFN, Canada and British Columbia. *Openness Protocol*: British Columbia Treaty Commission, 1995. Guy Gentner papers

———. *Tsawwassen First Nation Final Agreement*: British Columbia Treaty Commission, 2007. http://www.bctreaty.net/nations/agreements/Tsawwassen_final_initial.pdf.

———. *Tsawwassen First Nation Framework Agreement*: British Columbia Treaty Commission, 1997. http://www.bctreaty.net/nations/agreements/tsawwass_frmwrk.pdf.

———. *Tsawwassen First Nation Treaty Negotiations: Summary of Agreement in Principle*. Vancouver: British Columbia Treaty Commission, 2003, http://www.bctreaty.net/nations/agreements/Tsawwassen_AIP.pdf.

TFN, Canada and British Columbia Chief Negotiators. *Tsawwassen Treaty Negotiations Update and Report, Main Table, December 11*: British Columbia Treaty Commission, 2002. Guy Gentner papers.

Thom, Brian. "The Anathema of Aggregation: Toward 21st Century Self-Government in the Coast Salish World." *Anthropologica* 52, no. 1 (2010): 33.

Tsawwassen Economic Development Corporation. *Introducing TFN's New Economic Development Corporation*. http://www.tsawwassenfirstnation.com/ECDEV_Introduction_10.24.09.pdf (accessed March 23, 2010).

———. *Tsawwassen First Nation Industrial Lands Metro Vancouver, British Columbia* http://www.tsawwassenfirstnation.com/ECDEV-TFN_Lands_for_Chinese_Trade_Mission_10.15.09.pdf (accessed March 23, 2010).

Tsawwassen First Nation. *Annual Report 2009-2010*. http://www.tsawwassenfirstnation.com/TFN_annual_report_2009-10.pdf (accessed November 8, 2010).

———. *Annual Report, April 2008-March 2009*. http://www.tsawwassenfirstnation.com/TFN_Annual_Report_08-09_FNL.pdf (accessed March 23, 2010).

Constitution Act, (2009), http://www.tsawwassenfirstnation.com/tfnlaws/laws/CONSTITUTION%20ACT.pdf (accessed December 8, 2010).

———. *Land Facing the Sea, Tsawwassen First Nation: A Fact Book*, 2003.

———. *Land use Plan*. 2009. http://www.tsawwassenfirstnation.com/TFN_Land_Use_Plan.pdf (accessed March 23, 2010).

———. *Service Plan 2009-2010*, 2009. http://www.tsawwassenfirstnation.com/TFN_annual_report_2009-10.pdf (accessed 2013)

———. *Service Plan 2010-2011*, 2010. http://www.tsawwassenfirstnation.com/TFN_Service_Plan_2010-11.pdf (accessed November 8, 2010).

———. “Staff Directory to the Tsawwassen First Nation Government,” 2010. http://www.tsawwassenfirstnation.com/TFN_Staff_Directory_04.10.pdf (accessed November 8, 2010).

———. “Tsawwassen First Nation Makes BC History; Votes 'Yes' to Ratify Province’s First Urban Treaty.” News Release, July 25, 2007.

———. “Voter Questions,” 2009. http://www.tsawwassenfirstnation.com/TFN_Election_information_pamphlet.pdf (accessed November 8, 2010).

———. "Who We Are." http://www.tsawwassenfirstnation.com/whoweare.php (accessed March 4, 2013).

Tsawwassen First Nation and Province of British Columbia. *Roberts Bank Protocol Agreement*. British Columbia, 1998. Guy Gentner papers.

Tsawwassen First Nation and Vancouver Port Authority. *Memorandum of Agreement*, November 5, 2004. http://www.tsawwassenfirstnation.com/TFN_VPA_Memorandum_of_Agreement.pdf

———. *Settlement Agreement*, November 4, 2004. http://www.tsawwassenfirstnation.com/TFN_VPA_Settlement_Agreement.pdf

Tsawwassen First Nation Main Table Working Group. *Report on Treaty Negotiations*, October 6, 2004. Guy Gentner papers.

United Church of Christ Commission for Racial Justice. *Toxic Wastes and Race in the United States*: UCC, 1987, http://www.ucc.org/about-us/archives/pdfs/toxwrace87.pdf.

Valentine, Gill. "Tell Me about . . . : Using Interviews as a Research Methodology." In *Methods in Human Geography*, edited by Robin Flowerdew and David Martin. Second Edition, 110-127. Harlow, England: Pearson Prentice Hall, 2005.

Walks, R. Allan and Bourne, Larry S. "Ghettos in Canada's Cities? Racial Segregation, Ethnic Enclaves, and Poverty Concentration in Canadian Urban Areas." *The Canadian Geographer* 50, no. 3 (2006): 273-297.

Westra, Laura. "Environmental Racism and the First Nations of Canada: Terrorism at Oka." *Journal of Social Philosophy* 30, no. 1 (1999): 103-124.

Williams, Bertha to Dr. Rodolfo Stavenhagen, Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People of the United Nations Commission on Human Rights: Bill Tieleman's blog, July 23, 2007. http://billtieleman.blogspot.ca/2007/07/tsawwassen-first-nations-treaty.html

Williams, Bertha, Jackie MukSamma, Timothy Hereditary Hagoos, Dexter Quaw, Chief Arthur Adolph, and Skwelkwek'welt Protection Centre. *Shadow Report in Response to Canada's 19th and 20th Periodic Report to the United Nations Committee on the Elimination of Racial Discrimination (Cerd)*: United Nations Office of the High Commissioner for Human Rights, 2012.

Yuile, Laila. "Falcon's Follies: Gateway, SFPR and the Railgate Connection." Laila Yuile's Blog, posted February 6, 2011. http://lailayuile.com/2011/02/06/falcons-follies-gatewaysfpr-and-the-railgate-connection/

Appendices

Appendix A.

Interview Guidelines

Title of Study: *Tsawwassen First Nation governance: an environmental justice case study*

SFU Office of Research Ethics Reference number: 2011s0624

1. Review the consent letter and form to ensure that the participant understands the terms of participation, establish whether the interview is to be recorded, and collect the completed form ("you may want to keep a copy to have all the contact and study information in case you have questions or concerns later").
2. As you read in the letter my project is a case study of TFN governance. I'm interested in how decisions are made and how that affects environmental justice. In this case I'm specifically looking at the new post-treaty system of governance, and the series of decisions that allowed that change to come about. So, I'm particularly interested in the 2002 lawsuit against the port and senior governments, the settlement agreement with the port, the treaty process, and the recent Deltaport expansion, although previous events are also important. I have a checklist of themes I'd like to talk to you about, but I'd like this to be a very open-ended conversation and I encourage you to ask me questions as well.
3. In that spirit I'll just start by asking you to describe your understanding of how the current system of governance for TFN came about and how you were involved in that process.

   Themes for follow-up questions:

   - opinion on each of the decisions and the results of the set of decisions taken as a whole.
   - What, if anything, considered controversial about these decisions?
   - What, if any, alternatives to any or all of these decisions did TFN consider and/or did other entities offer?

4. As I said before, I want to understand TFN's new form of governance. Could you describe, based on your understanding, how decisions are made under TFN's new system?

   Follow-up questions/themes:

   - What power do TFN members and TFN government have over decisions that affect health, the environment, and social justice? Does this differ from the former band/reserve system; how? Does it differ from other municipalities; how?

- What power do TFN members and TFN government have over decisions taken by senior governments? Does this differ from the former system; how? Does it differ from other municipalities; how?
- What power do TFN members and TFN government have over decisions about port development specifically? Does this differ from the former system without the port settlement deal; how? Does it differ from other municipalities; how?
- Could TFN could oppose any future port expansion or development activity considering the terms of its settlement deal?
- How do TFN decisions affect urban development patterns and sustainability regionally?

5. This is an environmental justice case study based on my interests and work background. One of the most important questions for me is how you would define the concept of environmental justice?
- Do you think any of the decisions or steps along the way (the lawsuit, the settlement, the treaty, port expansion) or all of them working together constitutes environmental justice, or a step towards environmental justice?
- Opinion on whether the current system achieves environmental justice, and to what extent.
- Any other follow-up questions appropriate to the participant's answers and opinions. Is there anything else you would like to add?

6. I may be delusional, but I hope that the findings of my study might be useful to all parties—do you think they could be? How? I would like to present my findings to continue the dialogue with participants once I've completed the study…advice on best way to go about this.
7. I may contact you again to clarify or with follow-up questions and of course regardless of whether I present my findings in the community I am happy to share my final paper, my defense will be open to the public, and the paper will be available online through SFU once it is complete and submitted.

Appendix B.

List of Interviewees

Date	Name	Category	Title or Pseudonym
8 February 2012	Vicki Huntington	Provincial government, Delta activist/ environmentalist	MLA (Delta South)
17 February 2012	Andrew Bak	TFN Executive Council	Legislator (2009-2012), TFN Government Services Technician
17 February 2012	Guy Gentner	Provincial government, Delta activist/ environmentalist	MLA (Delta North)
28 February 2012	Anonymous informational interviewee	Informational	N/A
29 February 2012	Ruth Adams	TFN elder	Member of TFN Advisory Committee
5 March 2012	Kim Baird (Kwuntiltunaat)	TFN Executive Council	Chief (1998-2012)
5 March 2012	Anonymous interviewee 2	TFN elected official	Lucille
9 March 2012	Anonymous interviewee 3	TFN member	Kermit
9 March 2012	Anonymous interviewee 1	TFN elected official	Margaret
12 March 2012	Jim Cox	Port Authority	Vice President of Infrastructure Development (2001-2007)
21 March 2012	Sheila Williams	TFN Legislator	Member of TFN Legislature

28 March 2012	Katherine Gordon	Provincial government, treaty negotiator	Chief Negotiator for B.C., 2000-2003.
3 April 2012	Doug McArthur	TFN advisor	Professor of Public Policy, SFU
4 April 2012	Anonymous interviewee 4	TFN elected official	Darwin
4 April 2012	Anonymous interviewee 5	TFN member	N/A

Appendix C.

Codebook

Narrative Codes

HIST	Historical background. Pertaining to events before 2002 that are related to, connected to, or led to the main events under investigation in this project.
TFN: LW	Tsawwassen First Nation lawsuit. Pertaining to the suit first filed in 2002 against Vancouver Port Authority, BC Ferries and the senior governments
PTEX: PRE	Port expansion: preliminary. Pertaining to Deltaport expansion plans between August 2002 when they were first leaked and the environmental assessment application filed in February 2005.
AIP	Agreement in principle. Pertaining to the AIP reached between Tsawwassen First Nation, the province and the federal government in its treaty negotiations in 2003.
TFN-VPA	Tsawwassen First Nation-Vancouver Port Authority. Pertaining to the settlement agreement and special Memorandum of Agreement between TFN and VPA that ended TFN's lawsuit in 2004.
PTEX: EA	Port expansion: environmental assessment. Pertaining to the Deltaport expansion project during the EA phase, from February 2005 up until the approval of the environmental certificate in November 2006.
PTEX: CON	Port expansion: construction. Pertaining to the Deltaport third berth expansion project during the construction phase November 2006-January 2010.
FINAG	Final agreement. Pertaining to the final agreement reached in treaty negotiations in 2006 and its ratification by Tsawwassen First Nation, the provincial legislature and parliament in 2007.
TFN: GV	Tsawwassen First Nation: governance. Anything describing or pertaining to decision-making processes after the ratification of the treaty final agreement, including preparation for the effective date.

Major Concepts Codes

EJ	Environmental justice. All other codes are more specific components of EJ as a broad concept, so this code will only be used to flag explicit/exact use of the terms "environmental justice," "environmental injustice," "environmental racism," or

	"environmental equity."
DJ	Distributional justice/injustice. These exact terms are unlikely to be used in documents or by interview participants, so the code shall be used to flag expressions of the concept of equitable/inequitable distribution of environmental goods and bads. Examples: disproportionate impacts/disproportionately affected; fairness/equity/equality in the sharing or distribution of environmental impacts and socio-economic benefits of development; comparing environmental situation of own community to other communities or of different communities in general.
PJ	Procedural justice/injustice. These exact terms are unlikely to be used in documents or by interview participants, so the code shall be used to flag expressions of the concept of equitable/inequitable power over or access to environmental decision-making for all, but especially for those directly affected. This includes land use, development, impacts of development and business/industrial activities (traffic, air and water pollution, habitat/ecosystem degradation, human health risks, etc.), regulation and mitigation. Examples: those directly affected had no say in the approval of the project; who was involved in permitting and environmental assessment and the weight/use of their involvement; actor had a fair/unfair influence over a decision; proper/improper consultation; inclusion/exclusion in decision-making bodies; rights to have a say/participate/be consulted/decide for ourselves; self-determination; self-government.
P1	Principle: Environmental Justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction. Will flag concepts regardless of whether it is in the context of the principle being affirmed or violated. Includes key terms and their proxies: "sacredness of Mother Earth," spiritual value of the earth/environment/ecosystem, deep relationship with/connection to the land; "ecological unity and the interdependence of all species," we are/ it is all connected, interconnectedness, if x suffers we all/everything else suffers; "right to be free from ecological destruction," freedom to live, work, play, pursue traditional lifeways (hunting, fishing, gathering, etc) in a clean, healthy environment and thriving ecosystem, access to clean air, water, land and resources (salmon, cedar, etc).
P3	Principle: Environmental Justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things. Will flag concepts regardless of whether it is in the context of the principle being affirmed or violated. Includes key terms and their proxies: "ethical, balanced and responsible uses of land and renewable resources," land development/activity/conservation happening in a way that is corrupt/fair/well or un planned/(un)sustainable/ "gobbling up" all of a certain kind of land or using a certain kind of land unwisely (e.g. industrial development of farmland), management of salmon fishing, health of salmon runs, similar for shellfish, crabs, birds, cedar, water, (other?); "sustainable planet for humans and other living things," larger scale impacts of local activities (global warming, GHGs, large/transborder habitat,

	regional supply of farmland/open space/greenspace/habitat, ecological effects elsewhere such as China, interior BC, or even other parts of the urban region).
P5	Principle: **Environmental Justice** affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples. Will flag concepts regardless of whether it is in the context of the principle being affirmed or violated. Will sometimes overlap with PJ, but will be used to specifically flag use of the terms or concepts of self-determination, self-government, self-governance, autonomy, sovereignty, control over own lives/services/juridiction/laws/resources, self-sufficiency in reference to TFN.
P7	Principle: **Environmental Justice** demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation. Will flag concepts regardless of whether it is in the context of the principle being affirmed or violated. This will basically overlap with PJ, all will get both codes. Excludes terms/instances/concepts flagged for P5.
P12	Principle: **Environmental Justice** affirms the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all our communities, and provided fair access for all to the full range of resources. Will flag concepts regardless of whether it is in the context of the principle being affirmed or violated. To be used for mention of development and redevelopment related policies, plans and regulations. "Honoring the cultural integrity" or respecting culture/cultural identity or preserving cultural practices. "Fair access for all to the full range of resources"—policy, plan, or action affects opportunities for jobs, services, local business, wealth or other socio-economic benefits.
P14	Principle: **Environmental Justice** opposes the destructive operations of multi-national corporations. Will flag concepts regardless of whether it is in the context of the principle being affirmed or violated. To be used if there is mention of negative impacts associated with corporations involved in port trade or operations (e.g. coal exporters, TSI or other terminal operators/tenants, shipping companies, logistics companies), or TFN land development.
GV	Governance. Will be used to flag specific references to how decisions are made, including who decides what, the steps in and functioning of the process (e.g. environmental assessment), and what influences decision-makers (bodies and individuals).

Appendix D.

Defining Environmental Justice

Name	Summary of interview transcription notes	Key Themes
Andrew Bak	Environmental justice is not possible because damage to environment cannot be undone, so closest approximation is to have a fair way to develop and make decisions. Aboriginal concept of the inexorable relationship between a person or group and a personified environment. Parasitic and therefore inherently unjust, so environmental justice is a way to make decisions in a way that minimizes impact. "When we hurt the land we hurt ourselves."	PJ, land-self/people, pure justice unattainable, minimizing impact
Ruth Adams	The power to have a say in decisions that affect the environment.	PJ, DJ, power
Kim Baird	Tensions between FNs and environmentalism. Environment as part of human life or humans as part of environment. People living in poverty can't live sustainably. Environmentalism/sustainability a privilege of the wealthy. Complicated. Historical injustice, including colonialism. Can't undo. Sustainable community means four pillars: environment, economy, social, cultural. True environmental jusitce would be a return to before. Attempt at sustainable community a proxy.	DJ, COL, just sustainability, culture. Real EJ not attainable. EJ critique of environmentalism.
Anonymous Interviewee 2	Having a say over decisions with impacts. Destruction of foreshore, shellfish, way of life without consultation.	PJ, DJ, cultural impacts
Anonymous Interviewee 1	Global effects of environmental damage. TFN will try to do its part to protect the environment in its actions, decisions, and development.	DJ, PJ, accountability, control (self-gvt), global view
Sheila Williams	7 generations--sustainable use of resources. Clear historical injustice that cannot be undone--reserves/colonialism and port/ferry. Self-government and pragmatism.	PJ, COL, RC, real justice unattainable
Anonymous Interviewee 4	Original development of port and ferries and distribution of its impacts are examples of environmental racism. Impacts are also cultural and health--shellfish gathering, coal dust in the air. Should have been addressed with mitigation/impact-benefit agreements at the time. The partnership with the port--although they should be doing it anyway--is partially payback for all of that.	DJ, PJ, mitigation and benefit-sharing, cultural impacts

Anonymous Interviewee 5	DJ. Environment and culture over economic gain. Traditional way of life. No power over environmental assessments. Gave up power over port decisions that impact them, and under treaty the most impacted residents are disempowered because of the weight of the non-resident, post Bill C-31 vote. Environmental justice would be a return to traditional way of life, access to unpolluted resources. History and culture. Power. Environmental justice about people.	DJ, PJ, power. EJ as a return to traditional way of life. Culture Indigeneity.
Anonymous Interviewee 3	The power to punish those who harm the environment.	PJ
Doug McArthur	TFN's last 100 years are classic example of environmental Injustice. Reconciliation. Agreements as means of acknowledgement and reconciliation.	DJ, PJ, colonialism
Vicki Huntington	The health and needs of ecosystems should take priority over human and economic development. Humans should take a moral responsibility for protecting the environment. Equal requirements to protect the environment for everyone, regardless of race.	Liberal notion of equality. Morality. Glaring absence of who sets the terms, makes the decisions. Ecosystem. Environment over/separate from people.
Guy Gentner	Justice for the species and ecosystems that sustain life on earth. For Delta, maintaining the Fraser River biosphere.	Biosphere over people or separate from people. Ecology.
Jim Cox	Fairness and considering whether something is good for the environment. Definitely unfair sharing of impacts and benefits with Tsawwassen, but doesn't buy environmental racism in siting. Port should listen to those impacted locally and try to deal with concerns, but can't give decision-making power.	DJ, RC, PJ--consultation, but not decision-making power

Appendix E.

Principles of Environmental Justice

WE, THE PEOPLE OF COLOR, gathered together at this multinational People of Color Environmental Leadership Summit, to begin to build a national and international movement of all peoples of color to fight the destruction and taking of our lands and communities, do hereby re-establish our spiritual interdependence to the sacredness of our Mother Earth; to respect and celebrate each of our cultures, languages and beliefs about the natural world and our roles in healing ourselves; to ensure environmental justice; to promote economic alternatives which would contribute to the development of environmentally safe livelihoods; and, to secure our political, economic and cultural liberation that has been denied for over 500 years of colonization and oppression, resulting in the poisoning of our communities and land and the genocide of our peoples, do affirm and adopt these Principles of Environmental Justice:

The Principles of Environmental Justice (EJ)

1) **Environmental Justice** affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.

2) **Environmental Justice** demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.

3) **Environmental Justice** mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.

4) **Environmental Justice** calls for universal protection from nuclear testing, extraction, production and disposal of toxic/hazardous wastes and poisons and nuclear testing that threaten the fundamental right to clean air, land, water, and food.

5) **Environmental Justice** affirms the fundamental right to political, economic, cultural and environmental self- determination of all peoples.

6) **Environmental Justice** demands the cessation of the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production.

7) **Environmental Justice** demands the right to participate as equal partners at every level of decision- making, including needs assessment, planning, implementation, enforcement and evaluation.

8) **Environmental Justice** affirms the right of all workers to a safe and healthy work environment without being forced to choose between an unsafe livelihood and unemployment. It also affirms the right of those who work at home to be free from environmental hazards.

9) **Environmental Justice** protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care.

10) **Environmental Justice** considers governmental acts of environmental injustice a violation of international law, the Universal Declaration On Human Rights, and the United Nations Convention on Genocide.

11) **Environmental Justice** must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compacts, and covenants affirming sovereignty and self-determination.

12) **Environmental Justice** affirms the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all our communities, and provided fair access for all to the full range of resources.

13) **Environmental Justice** calls for the strict enforcement of principles of informed consent, and a halt to the testing of experimental reproductive and medical procedures and vaccinations on people of color.

14) **Environmental Justice** opposes the destructive operations of multi-national corporations.

15) **Environmental Justice** opposes military occupation, repression and exploitation of lands, peoples and cultures, and other life forms.

16) **Environmental Justice** calls for the education of present and future generations which emphasizes social and environmental issues, based on our experience and an appreciation of our diverse cultural perspectives.

17) **Environmental Justice** requires that we, as individuals, make personal and consumer choices to consume as little of Mother Earth's resources and to produce as little waste as possible; and make the conscious decision to challenge and reprioritize our lifestyles to ensure the health of the natural world for present and future generations.

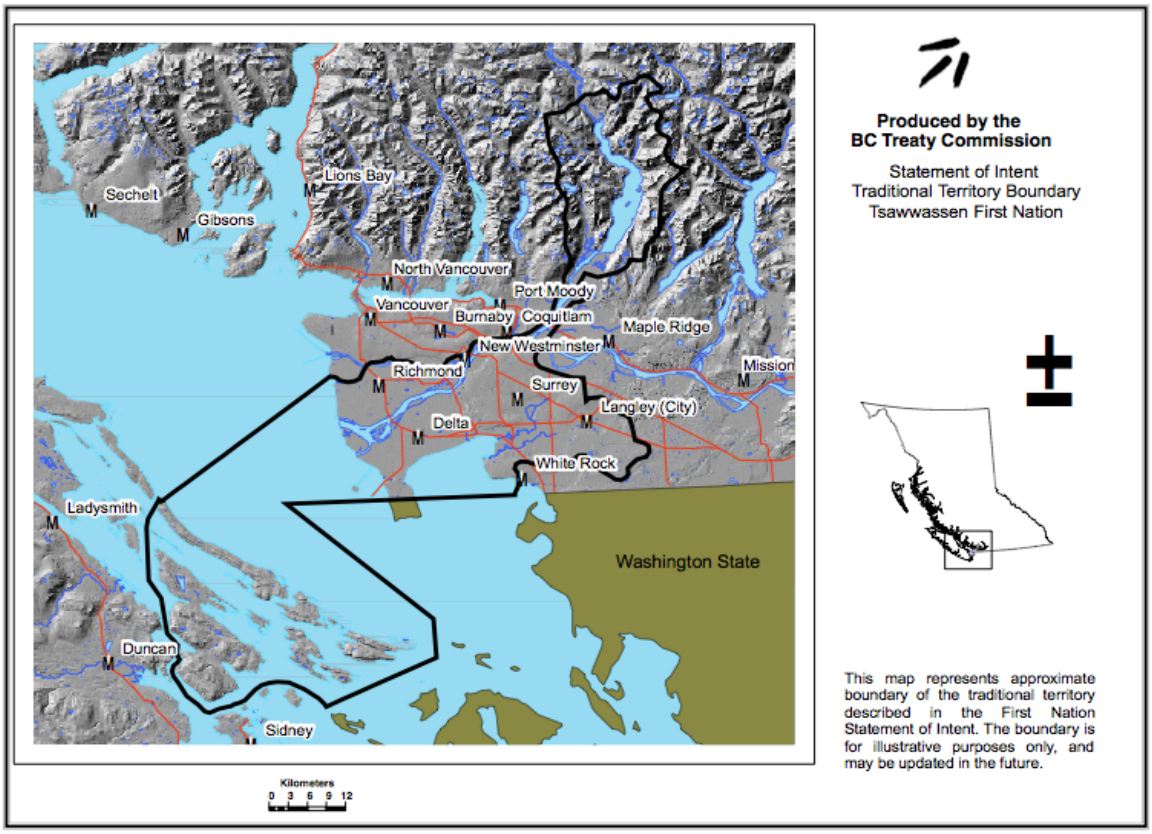
Appendix F.

Maps

Map 1: Metro Vancouver

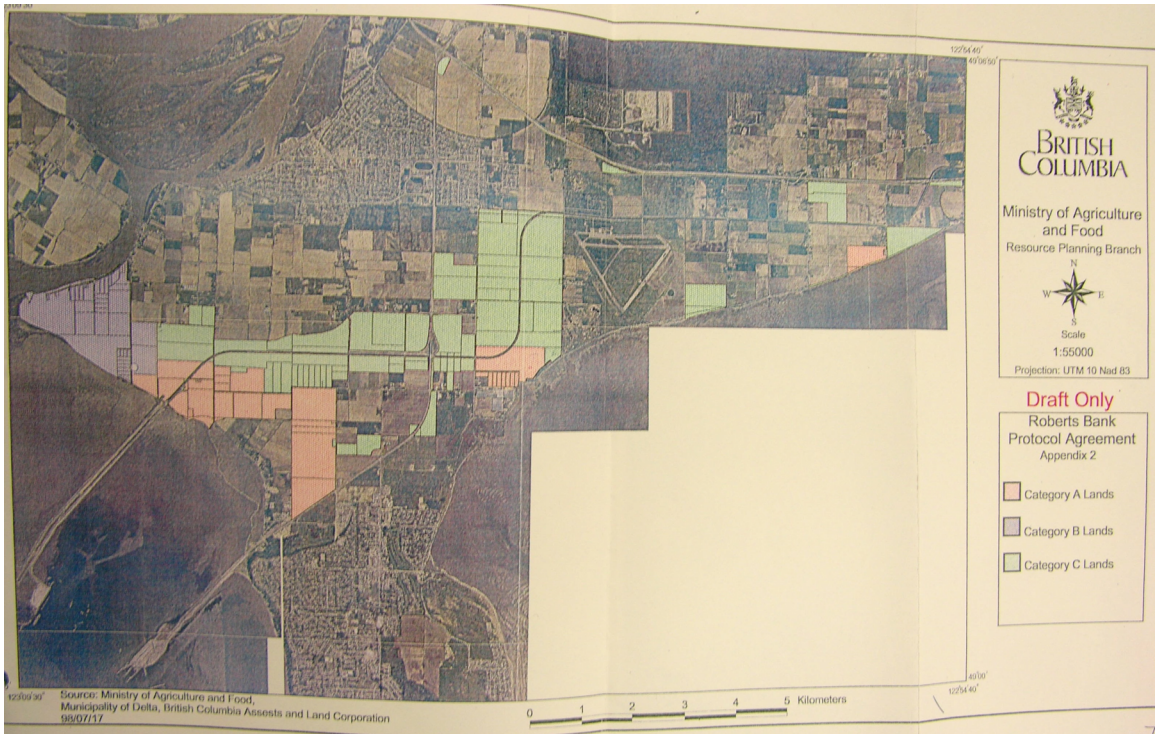
Source: Metro Vancouver (GVRD):
http://www.metrovancouver.org/about/maps/Pages/default.aspx

Map 2: TFN Traditional Territory



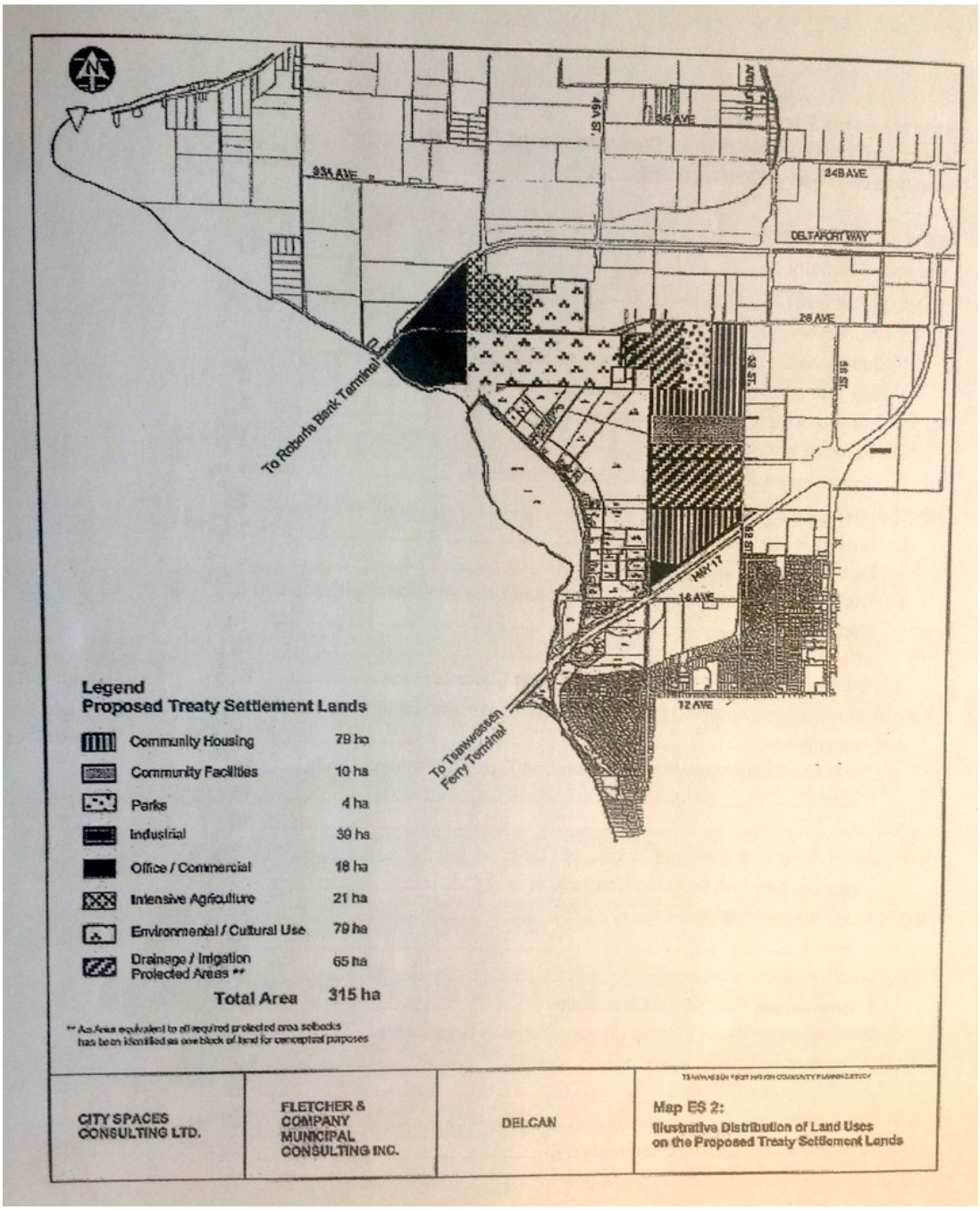
Source: BCTC: http://www.bctreaty.net/nations/soi_maps/Tsawwassen_SOI_Map.pdf

Map 3: 1998 Roberts Bank Protocol Agreement Parcels



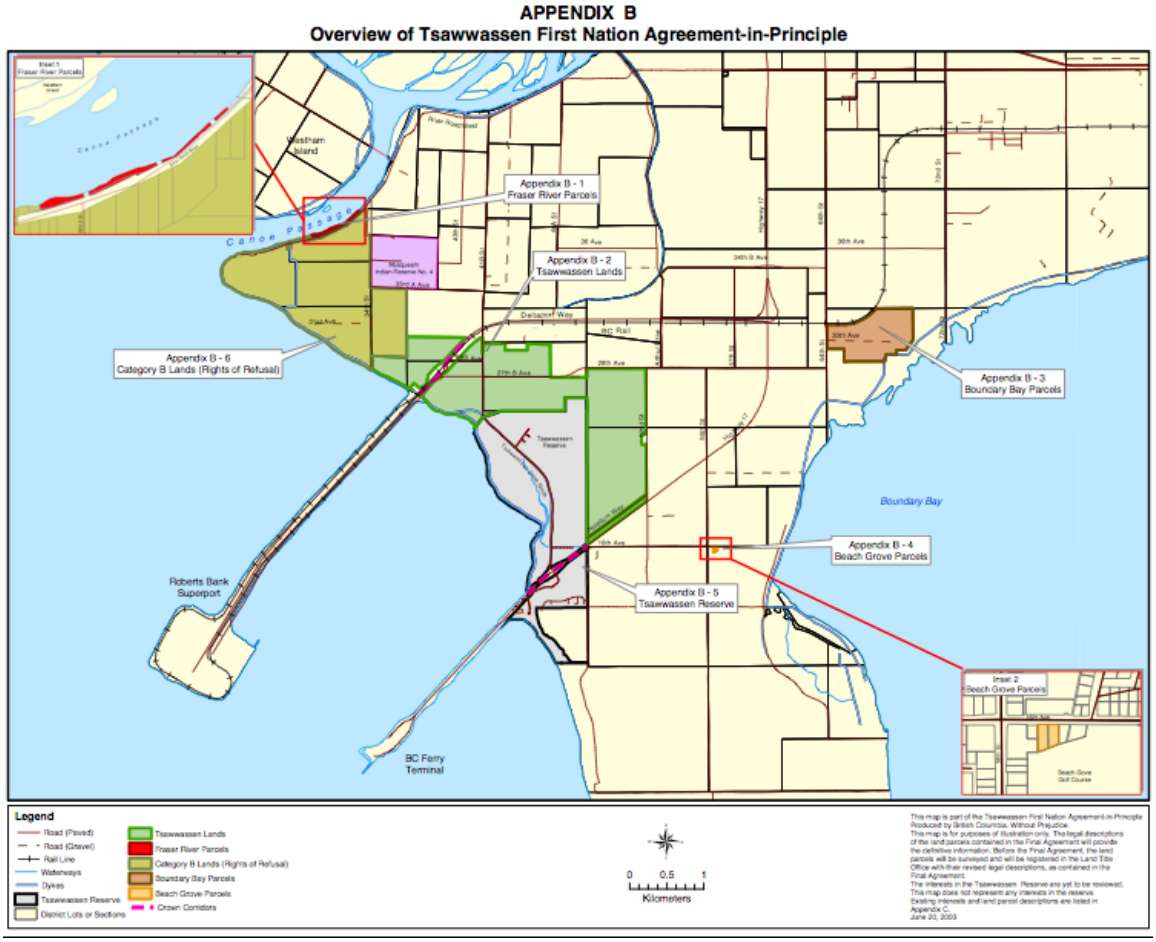
Source: TFN and B.C. “Protocol Agreement.” Photo of document from Guy Gentner papers.

Map 4: TFN 2002 Land Use Study



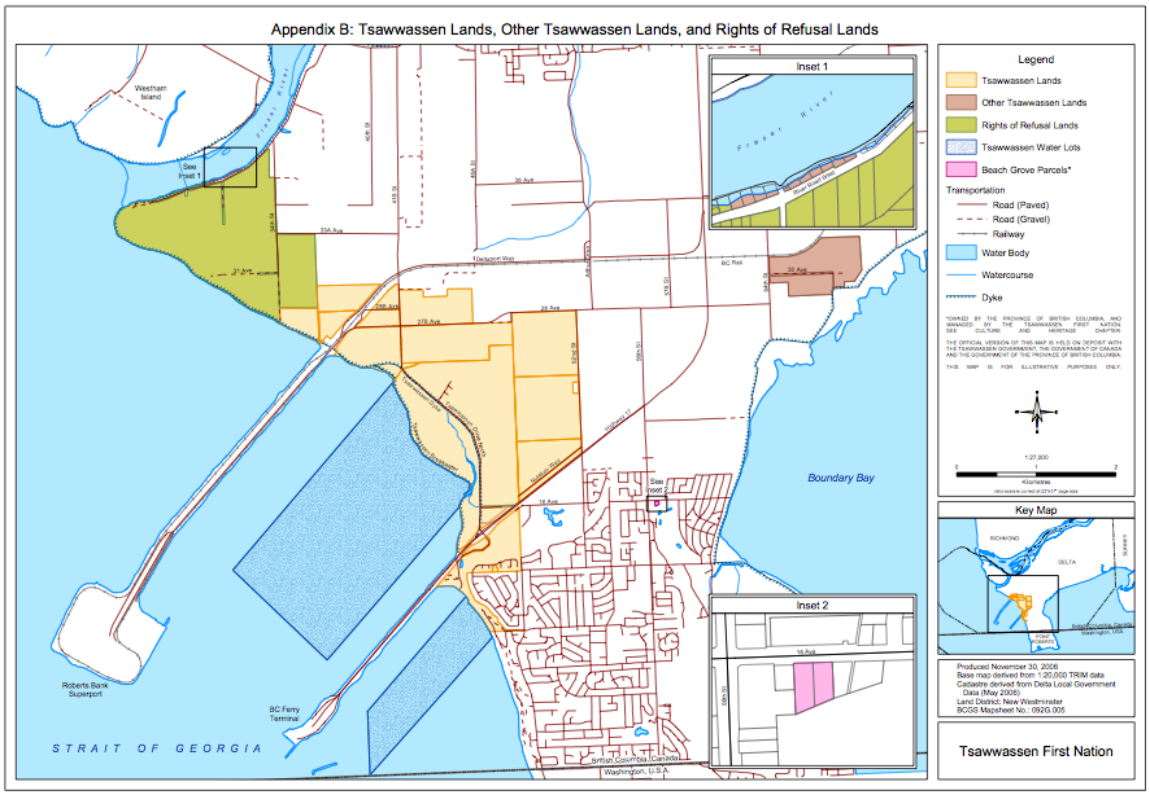
Source: CitySpaces and Fletcher & Co., *TFN Community Planning,* ES iv.

Map 5: TFN Proposed Settlement Lands, Agreement in Principle, 2004



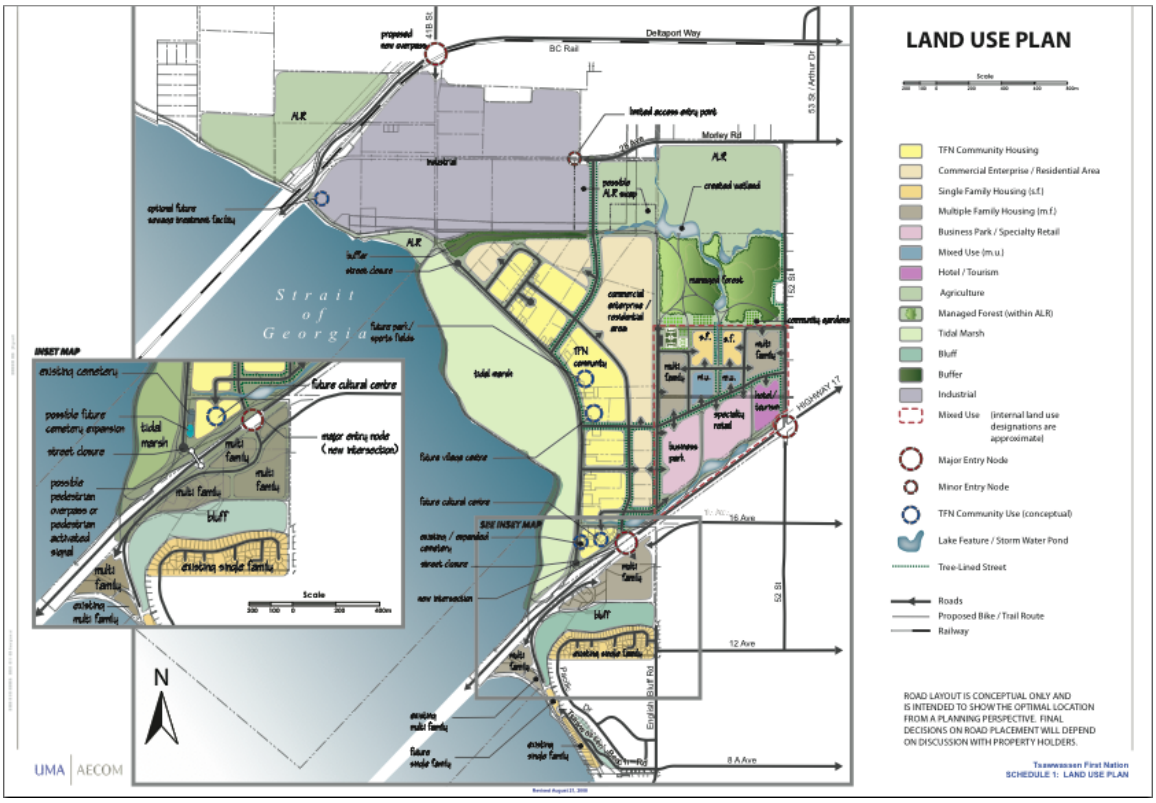
Source: TFN, B.C. and Canada, Agreement in Principle, 94.

Map 6: TFN Settlement Lands, Final Agreement, 2007



Source: TFN, B.C. and Canada, *Final Agreement*, Appendix B.

Map 7: TFN Land Use Plan, 2008



Source: TFN, *Land Use Plan*, Schedule 1.