

Tla-o-qui-aht First Nations Agreement in Principle Negotiations Canada-British Columbia

Summary of 2nd Revised Land and Cash Offer and Cash Analysis

The Tla-o-qui-aht Negotiators and Steering Committee, with the support of our Ha'wiih, have decided to accept the following offer made by BC and Canada, with conditions for the purposes of moving us from Stage 4 (Agreement in Principle) into Stage 5 (Final Agreement) of the treaty process.

We currently negotiate under a process that is called the BCTC (British Columbia Treaty Commission). It is a 6 stage process that Tla-o-qui-aht did not design. Unless they change this process, we are just operating within the confines of that structure.

If Tla-o-qui-aht had it our way, we would have been negotiating the Final Agreement at this point. But the structure is what it is, and the AIP (Agreement in Principle) provides a clear framework and parameters of what the next stage (Final Agreement) must provide much more clearer detail to.



Tla-o-qui-aht First Nations Agreement-in-Principle Negotiations Canada-British Columbia

Summary of Second Revised Land and Cash Offer

September 21, 2010

INTRODUCTION

At the request of Tla-o-qui-aht, British Columbia and Canada have prepared the following summary of the Second Revised Land and Cash offer tabled on September 21, 2010 (Second Revised Offer). The Second Revised Offer contains enhancements to the land and cash packages set out in the initial Land and Cash Offer tabled on February 10, 2009 and the first revised offer tabled on March 4, 2010 (see Table 1).

This summary is without prejudice and provided for discussion purposes only. This summary does not replace or modify the Second Revised Offer in any way. For a full understanding of all the terms and conditions please refer to the Second Revised Offer.

The Second Revised Offer was tabled with the objective of concluding AIP negotiations as quickly as possible (see Table 2). Moving forward into Final Agreement negotiations will open opportunities for further substantive negotiations on matters ranging from Tla-o-qui-aht's interests in Meares Island to the negotiation of resource revenue sharing.

Table progress directly links to further implementation of the Incremental Treaty Agreement (ITA). Subject to the terms and conditions of the ITA, as soon as practicable after initialling an agreement that the AIP land selection negotiations are substantially complete, BC will transfer \$150,000 to Tla-o-qui-aht; and, as soon as practicable after the AIP is initialled and approved by the Parties, BC will transfer a second land parcel (District Lot 121) in Tofino to a designated company of Tla-o-qui-aht.

The Second Revised Offer is without prejudice and is conditional on the Parties resolving all issues in the negotiations. The Offer and a concluded AIP are not legally binding. Only a final agreement ratified by all three Parties ("Tla-o-qui-aht Final Agreement") will become legally binding.

ELEMENTS OF SECOND REVISED OFFER

Land and Capital Transfer

Table 1. Land Component of Initial and First Revised Land Offers: February 10, 2009 and March 4, 2010

Land Offered	Original Land Offer February 10, 2009 Area (hectares)	First Revised Land Offer March 4, 2010 Area (hectares)
Provincial Crown land	7,759.7	10,142.7
Existing Tla-o-qui-aht Indian reserves	347.8	355.9
Total land package	8,107.5	10,498.6

Note: the Incremental Treaty Agreement lands are included in the above offers and the Second Revised Offer.

Table 2. Land Component of Second Revised Offer: September 21, 2010

Land Offered	Area (hectares)
Provincial Crown land	10,195.7

Existing Tla-o-qui-aht Indian reserves	355.9
Total land package	10,551.6

Note: The Second Revised Offer proposes an additional parcel of land, adjacent to Opitsaht on Meares Island.

Table 3. Capital Transfer Component of Initial, First Revised and Second Revised Offer

Offer	Cash Amount	Notes
Original	\$23 million	
First Revised	\$27 million	
Second Revised	\$30 million	Includes \$3 million increase for economic development fund

It should be noted that the total area of the lands and cash offered in the Second Revised Offer is approximately 30% greater than the total area of the lands and cash offered in the February 2009 Offer.

Pre-Approved Additions to Tla-o-qui-aht First Nations Land

In the Second Revised Offer, Canada and BC propose two parcels of fee simple land as pre-approved additions to treaty land if acquired by Tla-o-qui-aht (on a willing seller/willing buyer basis) within 15 years of the Effective Date of a Final Agreement. The two parcels are:

- District Lot 619, Clayoquot District. Adjacent to Okeamin Indian Reserve #5 and approximately 32 hectares in size.
- District Lot 612, Clayoquot District. Adjacent to Ilthpaya Indian Reserve #8 and approximately 92 hectares in size.

Land and Resource Protection Measures

British Columbia has established **Regulation 252/2010** to prevent further mineral claims staking on an interim basis on proposed treaty lands.

In the Second Revised Offer, BC indicated that it is currently working on the issuance of a **Section 16 Map Reserve**, temporarily withdrawing the proposed treaty lands from any further disposition under the *Land Act*.

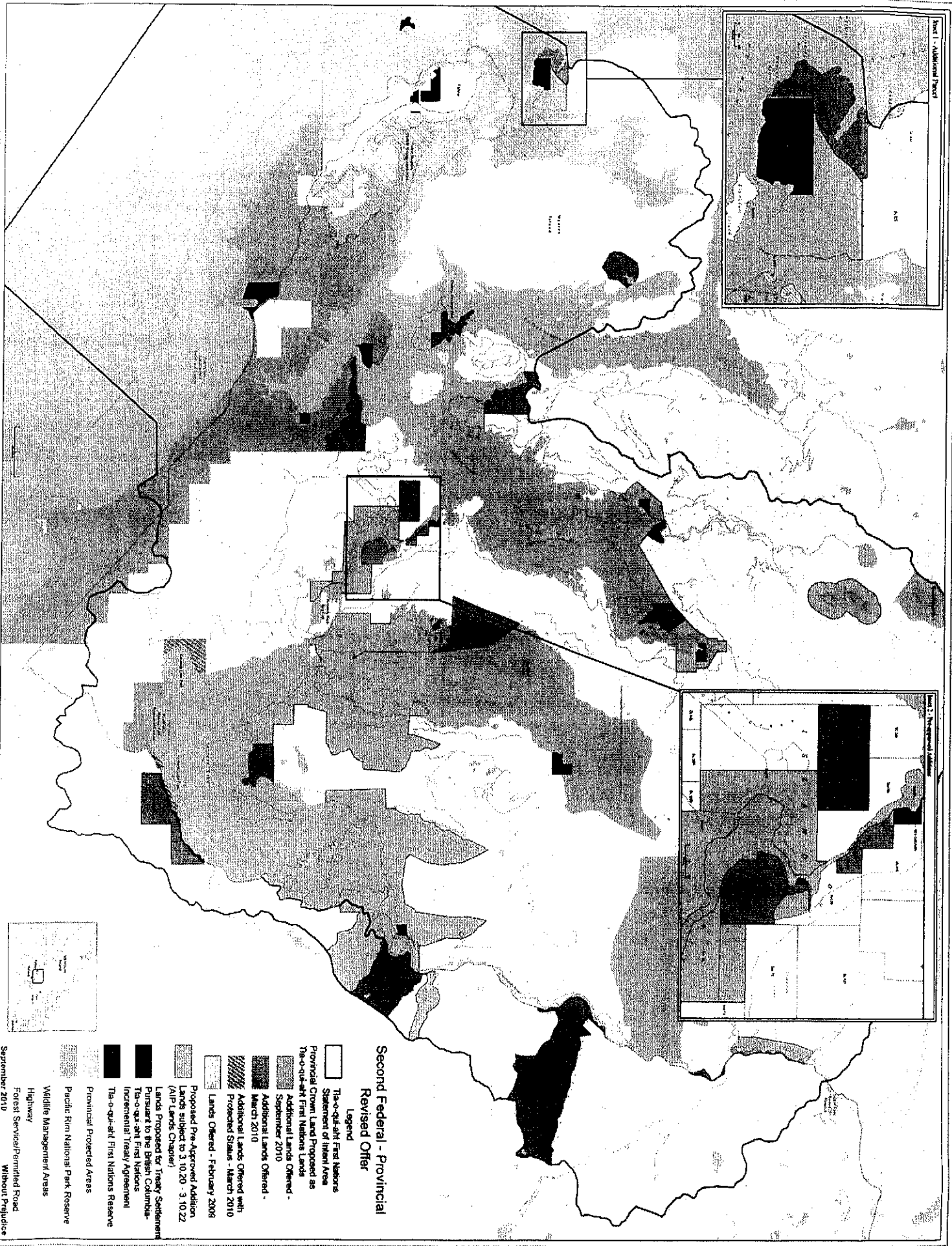
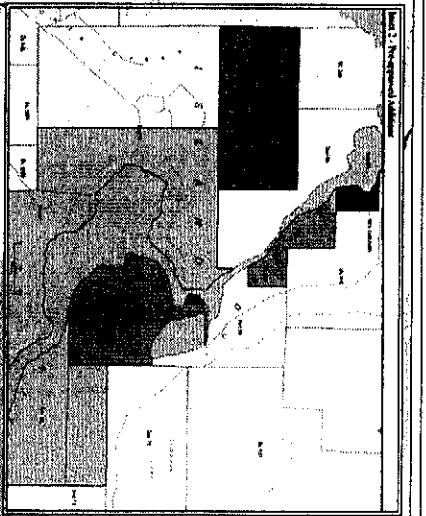
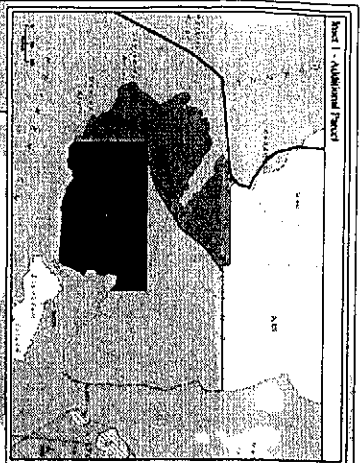
BC will work with Canada to implement a Treaty Related Measure that will include an additional land protection measure: a **Part 13 Designation** under the *Forest Act*, preventing the issuance of further forest tenures or harvesting activity on existing tenures for a set time period on proposed treaty lands.

Cap on Provincial Expropriation of Tla-o-qui-aht First Nations Lands

In the Second Revised Offer, British Columbia indicated it is prepared to establish a cap or limit on the amount of treaty land provincial expropriating authorities could expropriate, for public infrastructure purposes, in accordance with the terms of a final agreement. BC proposes a **cap of 4%** of Tla-o-qui-aht First Nations Lands.

CONCLUSION

British Columbia and Canada share Tla-o-qui-aht's objective in concluding an AIP as quickly as possible and moving into the Final Agreement stage of treaty negotiations. We believe the Parties are poised to reach agreement on the outstanding matters in the AIP, including the components of land and cash, prior to the end of 2010. As Canada and British Columbia have noted during AIP negotiations, there are significant matters to negotiate at Final Agreement that address core interests that Tla-o-qui-aht have addressed with us.



Second Federal - Provincial Revised Offer

Legend

- Tla-o-qui-aht First Nations Statement of Interest Area
- Provincial Crown Land Proposed as Tla-o-qui-aht First Nations Lands
- Additional Lands Offered - September 2010
- Additional Lands Offered - March 2010
- Additional Lands Offered with Protected Status - March 2010
- Lands Offered - February 2008
- Proposed Pre-Approved Additional Lands subject to 3, 10 20 - 3, 10 22 (AIP Lands Chapter)
- Lands Proposed for Treaty Settlement Pursuant to the British Columbia-Tla-o-qui-aht First Nations Incremental Treaty Agreement
- Tla-o-qui-aht First Nations Reserve
- Provincial Protected Areas
- Pacific Rim National Park Reserve
- Middle Management Areas
- Highway
- Forest Service/Permitted Road
- Without Prejudice

September 2010

Date: September 23, 2010
 To: Tla-o-qui-aht First Nations Steering Committee
 From: Dan Legg
 Subject: Analysis of AIP Land and Capital Transfer Offer—September 21, 2010

On September 21, 2010 Tla-o-qui-aht received a revised Land and Cash offer. Both the land and cash components have increased over the March 4, 2010 offer. The land offer has increase by 65 hectares (.6%) and the cash offer has increased by \$3 million (11.1%).

Component	Offer March 4, 2010	Offer Sept 21, 2010	Increase (%)
Land ¹	10,131 hectares	10,196 hectares	65 hectares (.6%)
Cash	\$27 million	\$30 million	\$3 million (11.1%)

¹ Does not include existing reserve lands

Comparative Data

Attached is Schedule A—an analysis of the current Tla-o-qui-aht Land and Cash offer in relation to past offers to the Nation and to other Nations in the treaty process. The original offer to Tla-o-qui-aht in the NTC AIP, the February 10, 2009 offer, the March 4, 2010 offer and the current offer are included in the schedule.

Factors to Consider in Assessing the Revised Offer

1. Relationship between Cash and Land Values

There is a direct link between the amount of cash and the amount and value of the land in an AIP offer. If more land or land of high value is offered to a Nation the potential amount of cash (capital transfer) will be reduced. If a Nation is prepared to accept less land or land of lower value then the potential amount of capital transfer will be increased.

2. Use of Capital Transfers

Capital transfers are not intended to fund programs and services for the Nation's members. These are discretionary funds that the Nation may use for any purpose. It has been stated that a primary objective of the Nation under treaty will be to create a local economy for employment of members and generation of revenues. If this objective is pursued the capital transfer funds will be an important source of equity and seed money for new economic development activities.

3. Other Revenue Sources in Treaty

The Nation will be negotiating a number of other funding sources in the treaty or side agreements.

Programs & Services–Existing block funding will be rolled over into the Fiscal Financing Agreement and will be supplemented with the addition of Health Canada and AFS funding.

Pre-Treaty Implementation–The Nation will negotiate and receive funding to address ratification and implementation activities.

Post-Treaty Implementation–Funding will be added to the existing block funding in the Fiscal Financing Agreement to address the increased responsibilities of the Nation's government under treaty.

Resource Revenue Sharing–The final agreement will include funding yet to be negotiated in recognition of resource extraction in the Nation's traditional territory.

Other Funding–In the final agreement stage of the treaty process the Nation will have an opportunity to negotiate other sources of funding including economic development and capital infrastructure.

Summary

The revised offer is an improvement over the March 4, 2010 offer. Given the relationship between cash and land the cash offer should be assessed in the context of Tla-o-qui-ah'ts priorities and the value of the land offer.

Respectfully submitted,
Dan Legg, CGA

Data Analysis - Per Capita and Ranking Information

NATION	POPULATION	CAPITAL TRANSFER AMOUNTS		Ranking
		AIP \$	Per Capita \$	
Yale First Nation	145	\$ 6,936,000	\$ 47,834	1
Lheidli T'enneh First Nation	320	14,321,000	44,753	2
Tla-o-qui-aht First Nations (NTC AIP)	759	28,700,000	37,813	3
Ucluelet First Nation	607	22,020,000	36,277	4
Huu-ay-aht First Nations	565	20,428,000	36,156	5
Ka:'yu:'k'ih' / Che:k'tles7et'h' First Nations	479	17,312,000	36,142	6
Uchucklesaht Tribe	161	5,796,000	36,000	7
Toquaht Nation	116	4,166,000	35,914	8
Tsawwassen First Nation	358	11,267,000	31,472	9
Tla-o-qui-aht First Nations (Sept, 2010 AIP)	966	30,000,000	31,056	10
Sliammon First Nation	959	29,003,000	30,243	11
Tla-o-qui-aht First Nations (March, 2010 AIP)	966	27,000,000	27,950	12
Tla-o-qui-aht First Nations (Feb, 2009 AIP)	944	23,000,000	24,364	13
In-SHUCK-ch Nation	925	22,408,000	24,225	14

Offer Legend
NTC AIP
Feb, 2009 AIP
March, 2010 AIP
Sept, 2010 AIP

Hectares	LAND QUANTITY ¹		Ranking
	Per Capita		
915	6.3		11
3,653	11.4		5
5,920	5.0		13
5,239	8.6		9
7,181	12.7		3
5,920	12.4		4
2,834	17.6		1
1,293	11.1		6
372	1.0		14
10,196	10.6		7
6,000	6.3		12
10,131	10.5		8
7,760	8.2		10
13,208	14.3		2

¹ Land does not include existing reserves