

K'ómoks Treaty Governance Fact Sheet

After three decades, the Province of British Columbia (B.C.), Government of Canada (Canada), and K'ómoks First Nation (K'ómoks) are nearing the conclusion of negotiations and have now initialled a modern treaty. After initialling, Crown consultations, and legal review, a revised version of the K'ómoks Treaty would need to be voted on by K'ómoks members in a ratification vote. Should K'ómoks members ratify the treaty, B.C. and Canada would also need to ratify the treaty, including passing legislation to bring the treaty into effect. This process will take several years to complete.

Modern treaties are an important part of advancing reconciliation, righting past wrongs and recognizing First Nations self-governance and self-determination. Treaties create jurisdictional and operational certainty for everyone in the region, while supporting partnerships, economic development and community well-being. Treaties are informed by the United Nations Declaration on the Rights of Indigenous Peoples and the Truth and Reconciliation Commission's Calls to Action. For many years, organizations, businesses, interest holders, local governments and people in the Comox Valley have been involved in these negotiations on various elements of the proposed treaty and will continue to be involved as each government moves toward ratifying the agreement.

Treaties address a wide range of interests between a First Nation, B.C. and Canada. One of those is governance and self-determination. This fact sheet provides information on governance in the K'ómoks Treaty. Learn more at <https://engage.gov.bc.ca/KomoksTreaty>. If you have questions, please contact: komoks.treaty@gov.bc.ca

What is self-government for Treaty Nations?

Recognition of the right of self-government and Indigenous law-making authority is what makes a treaty possible. The shift away from the *Indian Act* is foundational. A treaty creates a stronger framework for governance and recognizes a broader set of authorities to govern the First Nation's lands and members. A treaty and a new constitution for the First Nation must first be ratified by the First Nation's members in a democratic vote.

Treaties recognize the inherent right of First Nations to self-govern and establish laws over matters integral to the Treaty Nation's governance, such as certain programs, services, and lands and resources. They also enable Treaty Nations to fully participate in regional government bodies as voting members.

What kind of law-making authority would K'ómoks have under their treaty?

The K'ómoks Treaty contains law-making authority for K'ómoks on matters related to treaty lands, resources on those lands, and other areas of governance, such as culture and heritage. K'ómoks areas of authority also include the delivery of health services, education, land management and public works.

Would the *Indian Act* still apply?

With the exception of determining Indian status, after a transition period, the *Indian Act* would no longer apply to K'ómoks, their lands or members. Although each treaty contains provisions that extend section 87 of the *Indian Act* to eligible persons in qualified circumstances, these provisions essentially replicate but do not extend application of the *Indian Act*.

Instead, constitutionally protected self-government provisions in the treaty would enable K'ómoks to make its own decisions as a government. These decisions include matters related to cultural preservation, social programs, education, government operations, property taxation, land management and economic opportunities and partnerships. The Constitution of Canada and the *Canadian Charter of Rights and Freedoms* would still apply to the First Nation governments and their members.

How would Treaty Nation laws and laws of B.C. and Canada interact?

Modern treaties use a “concurrent law model.” This means K’ómoks laws, provincial laws and federal laws will all apply on K’ómoks treaty lands. In matters where K’ómoks has law-making authority, the treaty sets out which law prevails if a K’ómoks law conflicts with a federal or provincial law.

In areas related to internal matters, K’ómoks laws would have priority over conflicting federal and provincial laws. Examples include government administration, use of treaty lands, K’ómoks assets on these lands, culture and heritage, and K’ómoks membership.

In other areas, federal and provincial laws would have priority in a conflict with K’ómoks laws, such as in relation to environmental protection. Conflicts between laws are expected to be infrequent. However, should a conflicting law arise, the treaty clearly delineates the relationship of laws and the prevailing law in the event of a conflict, should the parties disagree on their respective jurisdictions or the relationship of laws.

How do First Nations governments and governance on treaty lands relate to municipal governments?

K’ómoks treaty lands will not form part of any municipality or regional district electoral area. Treaty lands are not part of a regional district, unless K’ómoks becomes a member.

K’ómoks has governance authority over its own treaty lands. K’ómoks is responsible for managing its intergovernmental relations with local governments and may enter into agreements with local governments to provide services. The existing service agreement between K’ómoks and the Regional District for sewer and water would continue. The treaty also provides for the opportunity for the Treaty Nation to fully participate in regional government bodies.

The treaty provides for the option to turn lands owned by the First Nation into treaty lands. There is a specific process outlined in the treaty, which would require the consent of B.C. and Canada, taking into account municipal engagement and any potential adverse affects on the rights of other Indigenous groups.

Do local government bylaws apply to treaty land?

No. Local government bylaws will not apply on treaty lands. Treaties recognize the inherent right of First Nations to self-govern. K’ómoks would create its own government laws on treaty lands to be regulated by the First Nation.

Why does K’ómoks have to ratify their constitution?

Under the treaty, K’ómoks members must ratify a constitution for their Nation. This is an important part of the ratification process, which involves a democratic vote.

The constitution is the internal and guiding governance rules for each Nation, similar to how the Canadian Constitution contains core provisions and takes precedence over other federal law in Canada. Among other things, the constitutions must provide that the K’ómoks government is democratically and financially accountable to its members. The K’ómoks constitution would come into force on the effective dates of the treaty if it is approved by community members.

What does treaty ratification mean?

Ratification is the approval process that the treaty must go through before it can come into effect. The first step is a vote by K’ómoks members on whether or not to enter into the treaty. To pass, the treaty must both be approved by a double majority vote, whereby more than 50% of eligible voters vote and of those, more than 50% vote for the treaty.

For B.C. and Canada, the approval includes developing and passing legislation to make the treaty law. Part of the process also includes K’ómoks, Canada and B.C. signing the treaty. If successfully ratified, the treaty comes into effect on the “effective date,” which is usually a couple of years after it is signed. On the effective date, treaty lands are owned by the Treaty Nation and the Treaty Nation government operations begin.