



Corporate Report

NO: R025

COUNCIL DATE: March 9, 2009

REGULAR COUNCIL

TO: Mayor & Council

DATE: March 5, 2009

FROM: General Manager, Engineering

FILE: 0450-20 (LMTAC)
0440-01 (First Nations)

SUBJECT: Treaty Negotiations - Proposed Stewardship Policy from the Tsleil-Waututh Nation

RECOMMENDATION

The Engineering Department recommends that Council:

1. Receive this report as information; and
2. Support the Lower Mainland Treaty Advisory Committee's intended course of action as documented in this report with respect to the Stewardship Policy proposed by Tsleil-Waututh Nation.

BACKGROUND

The Tsleil-Waututh Nation (TWN), with a population of 447 members, traditionally occupied and used the land and waters in and around North Vancouver and the lower mainland. The TWN's "Statement of Intent" (SOI) traditional boundary area, as submitted to the BC Treaty Commission for the purpose of Treaty Negotiations, encompasses an area of approximately 179,000 hectares. The boundary of the TWN's traditional area is illustrated in Appendix I attached to this report.

At a September 2008 Treaty Negotiations Main Table Working Group, the TWN provided representatives from Canada, British Columbia, and the Lower Mainland Treaty Advisory Committee (LMTAC) with a confidential briefing on the development of a *Tsleil-Waututh Stewardship Policy*. Parties were advised that the *Policy* would introduce and outline the TWN's expectations with respect to consultation and accommodation for project development within the TWN's 'Consultation Area.' At the time, the LMTAC table representative to the TWN negotiations requested that LMTAC provide Executive Committee members with a copy of the Tsleil-Waututh Stewardship Policy immediately upon receipt and subsequently proceed with analysis and impact assessment of the document.

The noted Consultation Area represents a territorial boundary whereas the TWN requires consultation to assess potential impacts of proposed land and resource policies, plans and developments that may transpire therein. The TWN's proposed Consultation Area is consistent with the current scope of Provincial consultation boundaries and is deemed to be independent of, and greater in geographic area than, their SOI area. To this end, the TWN Consultation Area encompasses an area of approximately 413,000 hectares and affects 23 local government jurisdictions including the City of Surrey. A copy of the TWN proposed Consultation Area map is attached as Appendix II.

DISCUSSION

At the February 25, 2009 meeting, Lower Mainland Treaty Advisory Committee (LMTAC), LMTAC Board members received a briefing on specifics pertaining to the TWN's proposed *Stewardship Policy*. A copy of the Tsleil-Waututh Nation Stewardship Policy is attached as Appendix III. This policy is considered a public document that can be shared with Councils and Boards.

The Tsleil-Waututh Nation Stewardship Policy, if implemented, has several legal and practical implications for local government, the most significant of which is a consultation fee structure that the TWN is proposing for any development-related projects that proceed within their Consultation Area boundary. Given the vastness of their Consultation Area, this would include any developments that occur within the lower mainland (including developments within the City of Surrey).

The TWN's fee schedule, as reflected on page 16 of their attached Stewardship Policy (Appendix III), is summarized as follows:

Tsleil-Waututh Nation Stewardship Policy Fee Schedule

Specific Fees:

- Referral Set Up Fee: \$250 per application
- Cultural Heritage Investigation Permit: \$200-\$400 per application

Rates for TWN Staff:

- Resource Technicians and Administration: \$50/hour
- Senior Resource Technicians: \$75/hour
- GIS Technicians and Mappers: \$75/hour
- Resource Managers: \$100/hour

Contracted Technical or Professional Services:

- At cost + 12% administration

Travel Expenses

- At cost + 12% administration

LMTAC has advised its Board members that prior to engaging in analysis and/or determining a course of action regarding the TWN's proposed Stewardship Policy, more information and clarification is required from both the TWN and the Province.

Accordingly, the TWN representatives will appear as a delegation to present their *Stewardship Policy* at the March 25, 2009, LMTAC Board meeting where a detailed overview of the policy will be provided. Meanwhile, the LMTAC Executive has sent a letter (dated February 20, 2009) to Assistant Deputy Ministers for both the Ministry of Aboriginal Relations and Reconciliation and Ministry of Community Development requesting a meeting as soon as possible, in advance of the March 25 Board meeting, to discuss potential implications of the Stewardship Policy for local government. A copy of the Executive Committee's letter is attached as Appendix IV. This letter includes a number of key questions posed to the Province in relation to the Stewardship Policy. These questions are as follows:

Consultation and Accommodation

- The Stewardship Policy places the duty to consult on government; however, case law has placed the duty to consult with the Crown. Local and regional governments are not representatives of the Crown. What are the consequences to local government for failing to consult within the parameters described in the Tsleil-Waututh Nation (TWN) Stewardship Policy?
- Will the Province create consultation guidelines for project proponents, including local government, and what assurances are there that the Province's guidelines will be sufficient to satisfy the requirements of the TWN Stewardship Policy?
- How does the Province reconcile the differences between the TWN Consultation Area and the Statement of Intent area, and what are the implications for local government? For example, will local governments have to consult with all First Nations overlapping the TWN consultation area in the manner set out in the Stewardship Policy?
- How does the TWN Stewardship Policy fit into the greater context of the provincial Government's New Relationship?

Land Alienation

- Does the Provincial Government expect that local government must adhere to the TWN Stewardship Policy 2.2.3 when disposing of municipal or regional district lands?

Land Resource and Other Planning Initiatives

- What differences are to be expected in the applicability of the Stewardship Policy between municipal and regional district planning processes?
- How do the expectations of the TWN compare to forthcoming guidelines from the Ministry of Community Development for local government engagement with First Nations?

Assessment of Proposed Developments

- TWN goals (page 5) for the Stewardship Policy include preferential employment and contracting with TWN members and corporations. This outcome, while perhaps desirable, may conflict with local government labour contracts and procurement policies as well as the Trade Industry and Labour Mobility Agreement (TILMA). How should these potential differences in policies be reconciled?

Resourcing Requirements for Tsleil-Waututh Engagement

- As a matter of principle, governments at all levels do not charge each other for consultation. Do the Federal and Provincial Governments expect local government to participate in consultations if fees are deemed a prerequisite by First Nations?
- If local government does not pay TWN fees for consultation, is the consultation process still valid?
- Who is responsible to provide resource funding to First Nations to facilitate consultations?
- Do the Tsleil-Waututh Band and Council need to enact a by-law in order to charge consultation fees, and would the by-law require the approval of Indian and Northern Affairs Canada?

Next Steps Proposed by LMTAC

LMTAC will initiate analysis and action following a meeting with the Province including informal discussions with provincial negotiators at the TWN Treaty Negotiations Table and the TWN delegation at the LMTAC Board meeting on March 25, 2009. To this end, LMTAC will work closely with the Province to assist in their analysis of the Policy. Subsequently, LMTAC will work in conjunction with member Councils and Boards to formulate a strategy and gain consensus on an appropriate course of action to deal with this issue.

CONCLUSION

The Tsleil-Waututh Nation, located in North Vancouver, has proposed a Stewardship Policy that includes a Consultation Area that encompasses a boundary of approximately 413,000 hectares and affects 23 local government jurisdictions including the City of Surrey. The intent of the TWN's policy is to compel affected local governments to consult with and pay related fees to the TWN on any and all land development and planning matters. If implemented the policy has legal and practical implications for local government.

On behalf of all Lower Mainland local governments, LMTAC has communicated its concerns to the Province. LMTAC will be engaging in analysis of the TWN's Stewardship Policy and intends to develop a course of action, subject to Board approval and following meetings with the Province and a presentation of the Stewardship Policy by the TWN at the March 25, 2009 LMTAC Board meeting.

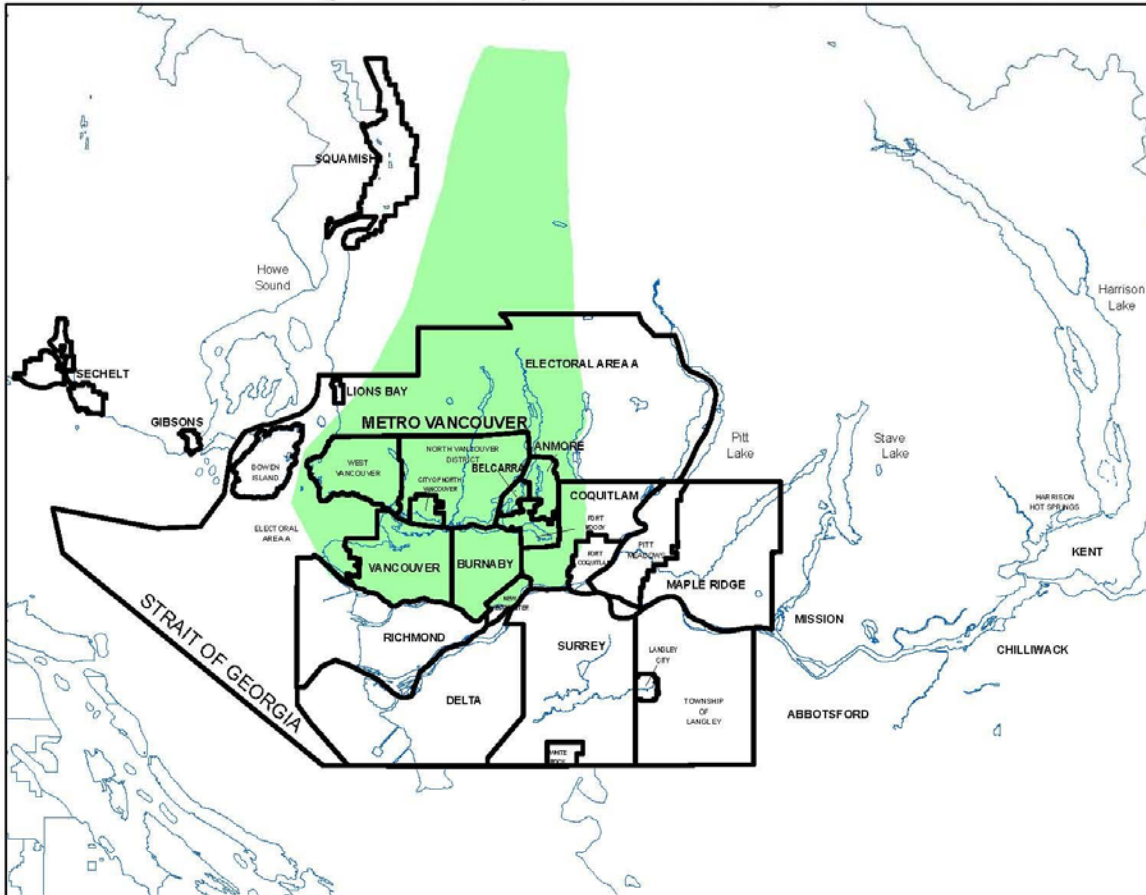
Staff will provide Council with further updates once clarification is obtained as the above-referenced events and actions unfold.

Vincent Lalonde, P.Eng.
General Manager, Engineering

VL/RAC/brb

- Appendix I: Tsleil-Waututh Nation Statement of Intent
- Appendix II: Tsleil-Waututh Nation Proposed Consultation Area Map
- Appendix III: Tsleil-Waututh Nation Proposed Stewardship Policy
- Appendix IV: LMTAC letter to February 20, 2009 letter to the Province dated February 20, 2009

Tsleil-Waututh (Burrard) Nation Statement of Intent



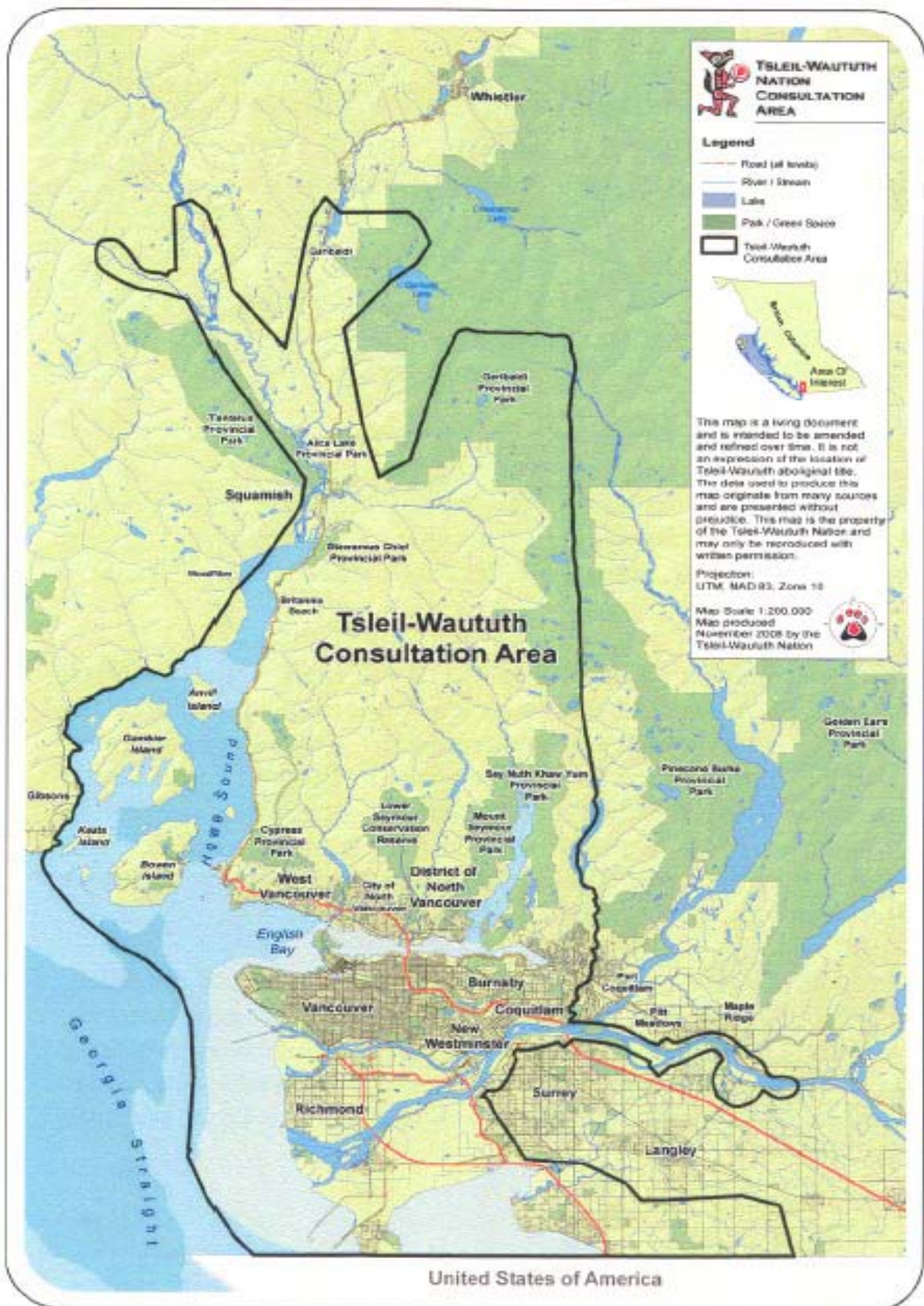
Statement of Intent boundaries are shown without prejudice to any party.
Boundaries are subject to change over time, and depict BC's interpretation only.

Chief: Leah George - Wilson
Total Band Membership (estimated): 447
Population on Reserve (estimated): 231
Number of Existing Reserves: 3
Total Area of Reserves: 110 Hectares
Total Area Under Negotiation: 178,900 Hectares
Status: Stage 4

Sources: BC Treaty Negotiation Office (Victoria, BC)
Indian & Northern Affairs Canada (Ottawa, ON)
Lower Mainland Treaty Advisory Committee
Metro Vancouver Policy & Planning Department

December 2008

APPENDIX II



Tsleil-Waututh Nation



Stewardship Policy



Issued
January
2009



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TSLEIL-WAUTUTH NATION
Children of TAKaya – Wolf Clan
BURRARD INDIAN BAND



Welcome to Tsleil-Waututh territory. This Stewardship Policy is an invitation to all governments, individuals and organizations to participate in a process of land and resource stewardship.

This Policy applies to all lands and resources within the consultation area shown on the attached map. This consultation area map represents the area where the Tsleil-Waututh Nation requires consultation to assess potential impacts of proposed land and resource policies, plans and developments on Tsleil-Waututh interests.

The Consultation Area captures documented Tsleil-Waututh use and occupancy information. It is important to note that the consultation area map was created for the sole purpose of defining where consultation is required with the Tsleil-Waututh Nation and is consistent with the current scope of Provincial consultation boundaries. This consultation area map is independent of, and does not replace the Tsleil-Waututh Nation Statement of Intent Map as submitted to the BC Treaty Commission.

If you hold interests in the land, water and resources in the Tsleil-Waututh consultation area granted to you by other governments, or if you have plans or projects that involve the use of this area, we wish to talk to you about ways in which those interests can be used to better serve your needs and those of the Tsleil-Waututh Nation.

Leah D. George-Wilson
Chief, Tsleil-Waututh Nation

Tsleil-Waututh Nation Declaration

We are the Tsleil-Waututh First Nation, the People of the Inlet. We have lived in and along our Inlet since time out of mind. We have been here since the Creator transformed the Wolf into that first Tsleil-Wautt, and made the Wolf responsible for this land.

We have always been here and we will always be here. Our people are here to care for our land and water.

To be the caretakers and protectors of our Inlet.

Our people descended from powerful Hereditary leaders, Waut-salk and Sia-holt. We know where we come from and we know who we are. We respect our heritage and

Nothing can change our history and our truth.

Our people travelled far and wide on our traditional territory, they paddled Our waters and climbed our mountains.

They understood the richness that our traditional territory held, and in Understanding this, they knew our land.

Our ancestors were responsible for our rivers, streams, beaches and forests. Of our traditional territory.

Our people knew our land well because it was for the benefit of everyone.

Our Tsleil-Waututh Nation is moving into our future.

Our children and our land are our future.

Our future will bring enough for our children's children to thrive.

We are looking forward,

We are ready to meet the next millennium.

Therefore, be it known far and wide that our Tsleil-Waututh Nation, the People of the Inlet, are responsible for and belong to our traditional territory.

Let it be known that our Tsleil-Waututh Nation is a Nation unto itself.

Holding traditional territory for its people.

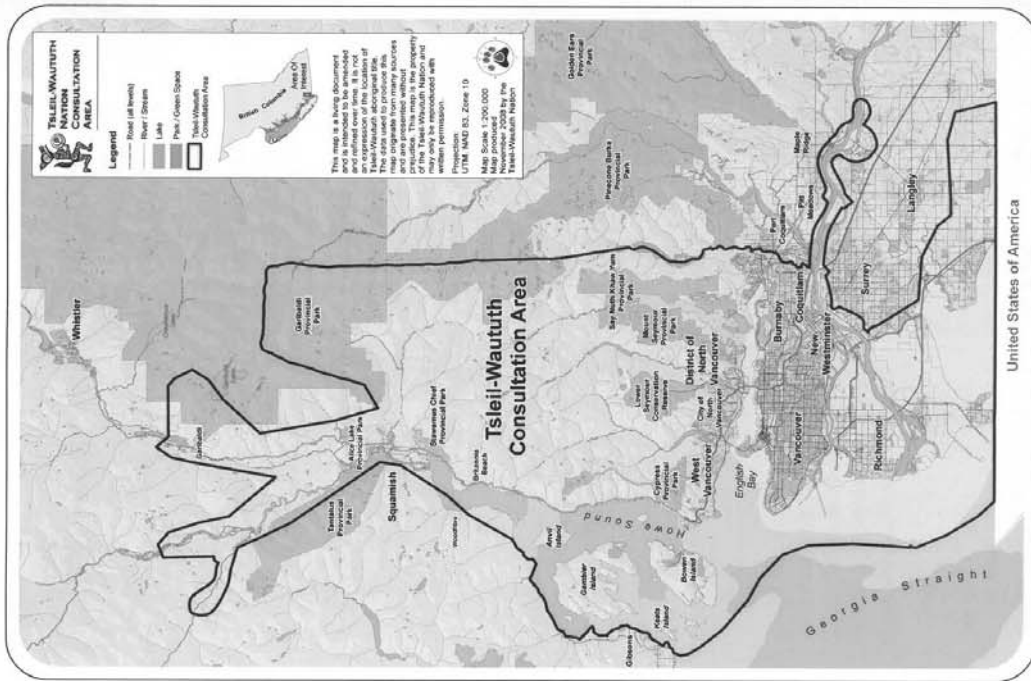


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Background

More than a decade ago, the Tseil-Waututh community gave the leadership direction to put the Tseil-Waututh “face” back on our traditional territory. Tseil-Waututh began this journey by undertaking a traditional and contemporary analysis of the natural, cultural and societal conditions of the territory. The purpose of this analysis was to examine the partnership potential of working with governments and others to add the unique Tseil-Waututh dimension to activities taking place within Tseil-Waututh territory and to create greater economic and social results that can be equitably shared.

Tseil-Waututh also began the steps necessary to resume our stewardship role for the lands and resources in the territory and our use and occupancy areas and to make every effort to engage others in rebuilding the health of the Burrard Inlet and its surrounding lands.

Contact Information

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All images courtesy of the Tseil-Waututh Nation.

Tsleil-Waututh Centres of Excellence and Consulting Services

As a result of Tsleil-Waututh's initiatives to restore and rebuild our stewardship role, we have built strong internal capacity in various resource management areas over the past decade. The consulting services provided by the Tsleil-Waututh Centres of Excellence described below illustrate some of these internal capacities.

GIS Mapping and Information Technology

The Tsleil-Waututh have developed an accomplished GIS Department which performs GIS analysis and mapping. As the single most comprehensive source for digital bio-physical information on the Tsleil-Waututh traditional territory, the GIS Department has been a vital component in many projects including the Say Nuth Khaw Yum Bio-Regional Atlas, the Indian River Watershed Bio-Regional Atlas, and more. The department offers competitive hourly rates and will provide high quality maps as a contract service or for joint projects.

Planning Initiatives

The Tsleil-Waututh offer planning advice with special focus on strategic land use planning, timber supply analysis, forest stewardship planning, and cultural and ecological value mapping. The Tsleil-Waututh have won numerous awards for their planning projects, including the Canadian Society of Landscape Architects National Merit Award for the Whey-ah-Wichen/Cates Park Management Plan. Governments and others who are undertaking planning activities are encouraged to consider using Tsleil-Waututh planners as a key part of your program or project.

Tsleil-Waututh culture is intertwined with our relationship to the waters of the territory. Industrial development and urban growth have led to levels of pollution in the marine and freshwater environments making the harvest of resources—shellfish, marine plants and other species—for food and economic purposes impossible. To help restore the health of these systems, the Tsleil-Waututh have developed a Marine Stewardship Program

involving systematic water quality testing in the Burrard Inlet and Indian Arm. These tests measure water quality, shellfish contamination and potential impacts on human health. All samples are delivered to Environment Canada Pacific's Environmental Science Centre for assessment. Unlike other water-testing organizations, the Tsleil-Waututh Stewardship program incorporates traditional knowledge, thereby offering a unique, comprehensive, and well-rounded service to other businesses.

Cultural Heritage and Archaeological Research

The Tsleil-Waututh traditional territory and include innumerable archaeological and heritage sites and resources. To ensure the preservation, protection and appropriate management of these sites and resources, the Tsleil-Waututh have developed an in-house archaeology department. Special focus has centered on land use and occupancy studies, land claims/treaty negotiations, policy development and archaeological assessments. The archaeological expertise developed by the Tsleil-Waututh is now offered to the business sector, other First Nations and other governments.

Stewardship Services

The Tsleil-Waututh own a number of companies that were created for the purpose of providing sustainable resource management services and providing economic development and employment opportunities for the Tsleil-Waututh community. These services include: forest resource planning, vegetation management, natural resource partnership negotiation, First Nation integrated community development, cross-cultural training, referrals, project administration and GIS mapping.

The Tsleil-Waututh Centres of Excellence are a contemporary dimension of our stewardship role. They operate in accordance with our own commitment to this Stewardship Policy. They are also a valuable component of Tsleil-Waututh economic development strategy. We encourage groups and individuals to consider utilizing these resources.

Scope of Policy and Stewardship Framework

This Policy applies to all of the surface and subsurface air, land, water, cultural and other natural resources within the Tseil-Waututh consultation area. The following goals apply to all proposed land and resource policies, planning initiatives and all projects planned, designed, and implemented within the consultation area:

- Assurance that the proposed policy, plan, development or land and resource use will not pose a threat of irreparable environmental, cultural or resource damage;
- Assurance that all such policies and projects contain an element that can contribute to the restoration of the natural and/or cultural health of the territories;
- Assurance that any proposed policy or project will provide more positive than negative social impacts for Tseil-Waututh people;
- Assurance that these policies and projects will not jeopardize, prejudice or otherwise compromise Tseil-Waututh Nation aboriginal rights, titles and interests;
- Provision for the widest possible opportunity for education and direct employment- related training for Tseil-Waututh people in connection with any agreed upon project;
- Provision for economic participation by the Tseil-Waututh Nation where possible, in commercial and industrial development projects;
- Assurance that any development will maximize and promote the development of new Tseil-Waututh business opportunities and the utilization of existing Tseil-Waututh businesses which may be associated with that development; and
- Provision for the proponent and the regulators to assist the Tseil-Waututh Nation to accomplish the objectives stated above by providing financial assistance where necessary to mobilize Tseil-Waututh's capacity to engage.

Tseil-Waututh Stewardship Policy

We are pleased to provide this Stewardship Policy to all governments, businesses and individuals that may have interests within the consultation area. The Tseil-Waututh Stewardship Policy is based on Tseil-Waututh aboriginal rights and title and our relationship with the land. We have been taught by generations of our Elders that we have a responsibility to steward and share the land. We have been marginalized over the past 150 years and confined to our reserves. It is our intention to reverse that pattern and once again fulfill our obligation to take care of the land and share its bounty.

This Policy acknowledges the obligation of governments to consult with and accommodate Tseil-Waututh interests and provides a collaborative and non-adversarial means for fulfilling that obligation.

This Policy does not constitute a blanket approval for land, water and resource decisions that have been made in the past in which the Tseil-Waututh did not participate. Those decisions, and the tenures or interests that have been created from them, need to be dealt with through individual processes involving Tseil-Waututh, the responsible governments and the various tenure holders in the consultation area.

We want this Policy to be a mechanism to further the growth of the relationships that we have built in recent years and to provide a certainty of purpose and intent that will invite and enable new partnerships and relationships. It is an invitation to work together with the full, up front and transparent knowledge of our needs and expectations.



Stewardship Policy – Principles and Provisions

The Policy is divided into five sub categories:

1. Consultation and Accommodation
2. Land Alienation
3. Planning
4. Development Assessment
5. Resourcing Requirements for Tsleil-Waututh Engagement

1. Consultation and Accommodation

1.1 Introduction

Consultation with Tsleil-Waututh and the accommodation of Tsleil-Waututh interests where required is the over-arching theme of this Policy. It touches all of the other specific provisions in the Policy related to planning, development and resourcing. It provides direction for governments and others on how to engage with Tsleil-Waututh and sets out specific steps to achieve what Tsleil-Waututh defines as “meaningful consultation”.

Governments have a legal obligation to avoid the unjustified infringement of aboriginal rights and title, to mitigate impacts and to accommodate First Nation interests. Tsleil-Waututh is committed to participating in consultation processes that reflect the principles described in this Policy where adequately resourced to do so.

1.2 Principles for consultation and accommodation:

The following principles frame the Tsleil-Waututh approach to consultation and accommodation:

1.2.1 In all cases, consultation with Tsleil-Waututh Nation should seek to achieve our informed consent.

1.2.2 Governments have the legal obligation to consult with Tsleil-Waututh and accommodate where there is potential for adverse impact or infringement. Tsleil-Waututh will cooperate with

proponents and others whom government has enlisted to engage with First Nations, however Tsleil-Waututh is clear that governments cannot “contract out” of their legal responsibility for consultation and accommodation.

1.3 Steps for meaningful consultation

1.3.1 The consultation process will focus on identifying means for involving Tsleil-Waututh as early in the planning process and decision-making process as possible.

1.3.2 Consultation with the Tsleil-Waututh Nation means:

- a) provision of notice by the responsible agency to the Tsleil-Waututh Nation of the matter to be decided;
- b) provision by the responsible agency and/or proponent of the resourcing required for the Tsleil-Waututh Nation to participate effectively in the consultation process (see Section 5 – Resourcing and the accompanying fee schedule);
- c) provision of information about the matter to be decided in sufficient form and detail to enable Tsleil-Waututh to understand the nature of the matter to be decided and its potential impact on Tsleil-Waututh interests and to prepare and present their views on the matter;
- d) provision of a reasonable period of time in which the Tsleil-Waututh Nation may prepare and present their views of the possible impact of the matter to be decided on their values, asserted aboriginal rights, titles and interests;
- e) provision for the responsible agency and the proponent to respond to the issues raised by Tsleil-Waututh; identifying those areas where the responsible agency agrees to incorporate Tsleil-Waututh views and identifying those areas of disagreement;
- f) establishment of an issue resolution process to deal with any disagreements arising from Tsleil-Waututh views and the response of the agency and proponent;

- g) provision for full and fair consideration by the responsible agency and the proponent of the information provided by Tsleil-Waututh including a specific response to any outstanding issues not resolved through the issue resolution process referred to above;
- h) responsible agencies must notify Tsleil-Waututh in writing of the proposed decision by the statutory decision maker identifying how Tsleil-Waututh interests were considered and addressed;
- i) Tsleil-Waututh must be provided with an opportunity to address any outstanding issues prior to a final decision by the statutory decision maker.

1.4 Steps for Accommodation

1.4.1 The consultation procedures outlined in Section 1.3 will include an accommodation process to address Tsleil-Waututh interests arising from potential adverse impacts or infringements. Accommodation arrangements may include, but are not limited to:

- a) economic accommodations;
- b) cultural accommodations;
- c) social accommodations;
- d) stewardship accommodations.

1.4.2 Tsleil-Waututh will take a flexible approach to structuring accommodation provisions. Depending on the nature of the proposed policy or project, Tsleil-Waututh may agree to offsetting stewardship initiatives, such as habitat restoration, carbon sequestration enhancement or other such projects, that contribute to the long term health of the territory.

2. Land Alienation

2.1 Introduction

Tsleil-Waututh has been excluded from government processes that enable the acquisition of so called "Crown land" from the early

20th century to the late 1950s. Since those laws were changed, a combination of federal fiscal policies for Indian Bands and a general level of poverty in these communities have made it very difficult for First Nations and First Nation citizens to acquire land. This makes the need for land a critical element of First Nation socio-economic development. Tsleil-Waututh has acknowledged this need and has taken steps to begin to address land requirements. Tsleil-Waututh is not averse to buying back areas of our traditional territory whenever they become available. Through this mechanism, for example, Tsleil-Waututh has acquired all of the fee simple land in the Indian River watershed.

2.2 Principles and Steps for Land Alienation

2.2.1 Land ownership together with appropriate jurisdiction is a key element of the Tsleil-Waututh community development strategy. Tsleil-Waututh is prepared to hold land in a number of ways, as 91(24) lands "reserved for Indians," fee simple, leasehold and through other mechanisms. Tsleil-Waututh land requirements include the need for rural land and, most importantly, for urban land for community expansion.

2.2.2 Any proposed alienation of provincial or federal land must first be the subject of meaningful consultation as set out in this Policy.

2.2.3 Where the Crown proposes a sale, lease, license or other disposition of Crown land in the traditional territory, the Tsleil-Waututh Nation must have priority opportunity to acquire those lands or equivalent lands within the traditional territory.

2.2.4 Existing tenure holders and licensees are invited to contact Tsleil-Waututh. We wish to work with you to structure a more effective working relationship that will add value to your activities and at the same time, contribute to achieving Tsleil-Waututh Nation objectives.

3. Land, Resource and Other Planning Initiatives

3.1 Introduction

Land and resource planning has been one inter-governmental function within which Tsleil-Waututh believes First Nations and other governments have made significant strides. As examples Tsleil-Waututh has led and helped secure resources for the Indian River Sustainable Resource Management Plan, the Say-Nuth-Khaw-Yum Park Management Plan and the Whey-ah-Wichen/Cates Park Management Plan. The following principles and processes are built, at least in part, on those experiences.

3.2 Principles to guide planning initiatives in the consultation area:

3.2.1 Effective planning is an important tool for the sustainable use of lands and resources.

3.2.2 Planning processes must be structured to reflect Tsleil-Waututh participation on a government-to-government basis.

3.2.3 All current planning processes and land use plan implementation processes should be evaluated and adjusted to be consistent with this policy.

3.24 New planning processes should consider Tsleil-Waututh's potential role as:

- process facilitator;
- the entity best suited to provide a balanced perspective on development and the environment;
- adding a cultural and historical perspective; and
- participating on the basis of our aboriginal rights and title.

3.3 Specific Steps for Successful Planning Processes

3.3.1 Any proposed planning initiative should first consider incorporating Tsleil-Waututh knowledge and proprietary information as a principal component of the data base for the plan. Tsleil-Waututh has collected and analyzed more information about the lands and resources of the traditional territory than any federal or provincial government agency, any local government or any present user of lands and resources. Tsleil-Waututh has built a highly competent planning and mapping function that is available to assist with undertakings throughout the consultation area.

3.3.2 The effectiveness of any planning initiative depends on the quality of the terms of reference for the plan. Tsleil-Waututh expects planners to engage Tsleil-Waututh prior to the completion of the terms of reference to ensure their thoroughness, relevance and applicability.

3.3.3 Tsleil-Waututh has demonstrated its ability to lead planning processes. Tsleil-Waututh suggests that planners consider using the Tsleil-Waututh expertise in this role.

3.3.4 Tsleil-Waututh may participate in "round table" stakeholder processes at their discretion provided that the government-to-government relationship has been established at the terms of reference stage and as an element of the final drafting and approval stages.

3.3.5 When a plan is near completion, Tsleil-Waututh needs to be involved in reviewing and providing input into a final draft before it is reviewed by other decision makers. The planning process needs to have a stage wherein Tsleil-Waututh and the planning agency can meet and resolve any outstanding issues on a government-to-government basis before approval.

3.3.6 Any plan that adversely impacts Tsleil-Waututh aboriginal rights, titles and interests, must be referred to Tsleil-Waututh with the intent of seeking Tsleil-Waututh's consent and must include provisions to accommodate any such impacts.

4. Assessment of Proposed Developments

4.1 Introduction

Tsleil-Waututh uses two "lenses" to analyze land use decisions, proposed projects and new or amended government policy that may impact our traditional territories and our traditional use areas. First, is the decision proposed a good land use decision? Does it represent the best use of lands and resources for the present and for the future? What impact does it have on the natural and cultural resource base within which it is proposed? What does it contribute to the cumulative effect of past land use decisions and what implications does it have for future development to which it may be linked or that it may enable?

The second "lens" looks at impacts and benefits. Will the proposed decision, project or policy have the ability to provide benefits to the Tsleil-Waututh community that are commensurate with the impacts that it will have? In this context, Tsleil-Waututh takes a holistic view of the project, decision or policy in context with the alienation of resources, lands and economic opportunities that have occurred throughout the traditional territory since contact and the assertion of sovereignty by settler governments.

Tsleil-Waututh will not endorse, approve or otherwise remove their objection to proposed decisions, projects or policies until Tsleil-Waututh has conducted a diligent assessment of the project through these two "lenses".

4.2 Principles for Assessing Policy and Project Development

4.2.1 Sustainable development is a key to supporting the social and economic objectives of the Tsleil-Waututh Nation and others.

4.2.2 Development assessment processes need also to reflect the government-to-government relationship between Tsleil-Waututh and the project review and approval processes. Key elements of that relationship are:

- a) Early Tsleil-Waututh involvement in the development of the

scope of assessment documents

- b) Tsleil-Waututh involvement that is voluntary and without prejudice in "round table" processes with stakeholders

- c) An "end of process" decision forum between Tsleil-Waututh and government decision makers to ensure that adequate consideration has been accorded Tsleil-Waututh suggestions and concerns.

4.2.3 The Stewardship Policy requires that projects provide commensurate benefits to the community in consideration of the impacts that it will have. Accommodation and impact and benefit arrangements can take many forms and Tsleil-Waututh will take a flexible and creative approach to discussions related to accommodation, impacts and benefits.

4.3 Specific Steps for Successful Development Assessment

4.3.1 Proposed projects should be referred to Tsleil-Waututh as early in the development process as possible. Tsleil-Waututh will be able to assist with compilation and verification of the data base which will inform project assessment decisions.

4.3.2 Project proponents are invited to contact Tsleil-Waututh Nation prior to submitting projects for municipal, regional, federal or provincial approval. We are interested in negotiating arrangements which may serve to strengthen proposals and contribute to achieving shared objectives.

4.3.3 It is very important that Tsleil-Waututh review and support the scope of review document or terms of reference. If consensus is achieved at the outset, the chances of an appropriate project assessment are greatly increased. If we get it wrong at the outset, it is much more difficult to correct.

4.3.4 Tsleil-Waututh will need to engage with government and/or the proponent to canvass the possible opportunities for benefit to come from the project and to negotiate the necessary understanding for those benefits to be realized.

4.3.5 Tseil-Waututh will monitor the environmental performance of the proponent as well as the regulatory performance of government. Tseil-Waututh has only one traditional territory. Critical mistakes with respect to its integrity cannot be allowed to happen as they have in the past.

5. Resourcing Requirements for Tseil-Waututh Engagement

5.1 Introduction

Tseil-Waututh is currently funded only to participate in the management of our reserve lands. That means that at present, we have no resources dedicated or available to participate in the land, water and resource planning and management processes outside our reserve landbase.

This creates a serious imbalance and a basic unfairness. Up to now, we have been participating in dialogue with governments and proponents using borrowed treaty negotiation funding or trying to use other administration or program funding from already overstretched budgets.

Consequently, under this Policy, agencies and proponents will be expected to assist with resourcing needs on a case-by-case basis. Tseil-Waututh has established a fee structure for various levels of consultation. This fee structure is not intended to create a barrier to consultation and accommodation, but is necessary to enable Tseil-Waututh to engage in these processes.

5.2 Principles to Guide Resourcing

5.2.1 There must be complete cost recovery for all Tseil-Waututh activities associated with consultation and accommodation.

5.2.2 Invoices are issued with payment due on receipt.

5.3 Specific Steps for Successful Resourcing

Step 1: Referral set up fee (\$250.00)

This fee establishes a specific project file in the Tseil-Waututh Treaty, Lands and Resources Department. It covers costs of diarizing, distribution, and initial screening by Tseil-Waututh staff and must accompany any letter initiating consultation.

Step 2: Information Sharing

Information sharing may take the form of a meeting, or an exchange of information via other means and is an opportunity for questions of clarification and additional information to be addressed.

During this step, the Tseil-Waututh can assess the need for additional information on the initiative to be proposed, as well as outline any additional resourcing requirements for the analysis and preparation of Tseil-Waututh response.

Additional costs are to be estimated at this stage and the estimated costs are to be submitted with additional information by proponent or decision maker.

A Cultural Heritage Investigation Permits may be required from Tseil-Waututh for certain projects to identify, protect, conserve and manage cultural heritage resources. (Permit fee \$200-\$400)

Step 3: Review of Additional Information and Technical Analysis

If required, this step is dependent on the estimate in Step 2. The estimate may have to be adjusted depending on level of complexity and need for contract technical or professional reviews.

Step 4: Follow-up Meetings

The number of meetings will vary by project. Meetings will be organized to present TWN analysis results, work to resolve any outstanding issues, and to review and provide final remarks with respect to notification by decision maker. This step covers Tseil-Waututh staff time and any contracted technical or professional services.

Fee Schedule Summary

Specific Fees

- Referral Set-up Fee - \$250
- Cultural Heritage Investigation Permit - \$200-\$400

Rates for Tsleil-Waututh Staff

- Resource Technicians and Administration - \$50/hour
- Senior Resource Technicians - \$75/hour
- GIS Technicians and Mappers - \$75/hour
- Resource Managers - \$100/hour

Contracted Technical or Professional Services

- At cost + 12% administration

Travel Expenses

- At cost + 12% administration

All prices are subject to change.





February 20, 2009

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Mr. Julian Paine
Assistant Deputy Minister
Strategic Initiatives Division
Ministry of Aboriginal Relations & Reconciliation
PO BOX 9100 STN PROV GOVT
Victoria, BC, V8W 9B1

Mr. Mike Furey
Assistant Deputy Minister
Local Government
Ministry of Community Development
PO BOX 9490 STN PROV GOVT
Victoria, BC, V8W 9N7

Dear Messrs Paine and Furey,

Re: Tsleil-Waututh Nation Stewardship Policy

On behalf of the *Lower Mainland Treaty Advisory Committee* (LMTAC), I write further to correspondence dated July 25, 2008 (**attached**), following Mr. Paine's delegation to an LMTAC Board meeting, to seek clarification from the Province regarding its mandate on the status of local government lands for treaty settlements, and potential implications of the Crown duty to consult as they might apply to local government.

As we await a response, LMTAC was informed of the **attached** *Tsleil-Waututh Nation Stewardship Policy* that, once again, highlights a local government need for clarification regarding the potential implications of the Crown duty to consult with First Nations.

Specifically, an LMTAC member jurisdiction participating in the Canada-BC *Municipal Rural Infrastructure Fund* (MRIF) was recently advised by the *Tsleil-Waututh Nation* that the terms of their *Stewardship Policy* must be followed by any government interested in conducting activities within the *Tsleil-Waututh Nation's* defined Consultation Area; including payment of fees for consultation referrals. The MRIF process poses a challenging scenario for the local government involved; whereby, during the environmental assessment phase of the project, the Federal government delegated its Crown duty to consult with First Nations to the applicant local government without guidance on how that requirement may be satisfied.

LMTAC understands that the *Tsleil-Waututh Nation Stewardship Policy* is but one example of a province-wide issue and will receive an inter-agency response. LMTAC respectfully submits the **attached** questions and comments regarding the *Stewardship Policy* for your consideration, in developing a response.

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Mr. Paine & Mr. Furey
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The *Tsleil-Waututh Nation Stewardship Policy*, as now implemented, presents significant implications for Lower Mainland local governments. For this reason, the LMTAC Executive Committee requests an opportunity to meet, at the earliest convenience, with staff representatives from both the *Ministry of Aboriginal Relations and Reconciliation* (MARR) and the *Ministry of Community Development* (MCD) to further discuss the *Stewardship Policy* and assess potential implications for local government.

The *Tsleil-Waututh Nation* offered to present their *Stewardship Policy* to the LMTAC Board on March 25th, 2009. Following, I propose meeting jointly with each of your Ministry staff at the next scheduled LMTAC Executive Committee meeting on **Wednesday, March 11th, 2009 (2:30pm- 4:30pm)**; however, LMTAC would be pleased to accommodate your availability.

We look forward to meeting with you in the near future. Please contact Ms. Regan Schlecker, LMTAC Managing Director, directly at (604) 451-6198 to schedule a meeting.

Sincerely,



Mayor Ralph Drew
Chair, Lower Mainland Treaty Advisory Committee

Attachments

cc: Jonathan Rayner, Director, Third Party Engagement, Strategic Initiatives Division,
Ministry of Aboriginal Relations & Reconciliation
Deborah Bowman, Executive Director, Implementation and Lands, Negotiations
Division, Ministry of Aboriginal Relations & Reconciliation.
Glenn Ricketts, Chief Negotiator, Strategic Initiatives Division, Ministry of Aboriginal
Relations & Reconciliation
Catherine Panter, Chief Negotiator, Ministry of Aboriginal Relations & Reconciliation
George McRae, Senior Negotiator, Ministry of Aboriginal Relations & Reconciliation
Gary Paget, Executive Director, Governance and Structure Division, Ministry of
Community Development.
Cathy Watson, Director, Local Government-First Nation Relations, Ministry of
Community Development
Peter Jones, Manager, First Nations Initiatives, South Coast Service Centre, Integrated
Land Management Bureau, Ministry of Agriculture and Lands
Chair Robert Hobson, President, Union of BC Municipalities (UBCM)
Councillor Corinne Lonsdale, Chair, UBCM First Nations Relations Committee
LMTAC Members

LMTAC Executive Committee Questions Addressed to the Province re *Tsleil-Waututh Nation Stewardship Policy*

Consultation and Accommodation (pgs 6-8)

- The *Stewardship Policy* places the duty to consult on government; however, case law has placed the duty to consult with the Crown. Local and regional governments are not representatives of the Crown. What are the consequences to local government for failing to consult within the parameters described in the *Tsleil-Waututh Nation (TWN) Stewardship Policy*?
- Will the Province create consultation guidelines for project proponents, including local government, and what assurances are there that the Province's guidelines will be sufficient to satisfy the requirements of the *TWN Stewardship Policy*?
- How does the Province reconcile the differences between the *TWN Consultation Area* and the *Statement of Intent area*, and what are the implications for local government? For example, will local governments have to consult with all First Nations overlapping the *TWN consultation area* in the manner set out in the *Stewardship Policy*?
- How does the *TWN Stewardship Policy* fit into the greater context of the provincial Government's *New Relationship*?

Land Alienation (pgs 8-9)

- Does the Provincial Government expect that local government must adhere to the *TWN Stewardship Policy 2.2.3* when disposing of municipal or regional district lands?

Land Resource and Other Planning Initiatives (pgs 10-11)

- What differences are to be expected in the applicability of the *Stewardship Policy* between municipal and regional district planning processes?
- How do the expectations of the *TWN* compare to forthcoming guidelines from the Ministry of Community Development for local government engagement with First Nations?

Assessment of Proposed Developments (pgs 12-14)

- *TWN* goals (page 5) for the *Stewardship Policy* include preferential employment and contracting with *TWN* members and corporations. This outcome, while perhaps desirable may conflict with local government labour contracts and procurement policies, as well as the Trade Industry and Labour Mobility Agreement (TILMA). How should these potential differences in policies be reconciled?

Resourcing Requirements for Tsleil-Waututh Engagement (pgs 14-15)

- As a matter of principle, governments at all levels do not charge each other for consultation. Do the Federal and Provincial Governments expect local government to participate in consultations if fees are deemed a prerequisite by First Nations?
- If local government does not pay *TWN* fees for consultation, is the consultation process still valid?
- Who is responsible to provide resource funding to First Nations to facilitate consultations?
- Does the *Tsleil-Waututh Band and Council* need to enact a bylaw in order to charge consultation fees, and would the bylaw require the approval of *Indian and Northern Affairs Canada*?



July 25, 2008

Mr. Julian C. Paine
Assistant Deputy Minister
Strategic Initiatives Division
Ministry of Aboriginal Relations & Reconciliation
PO BOX 9100 STN PROV GOVT
Victoria, B.C. V8W 9B1

Dear Mr. Paine,

Re: Delegation to the LMTAC Board July 23, 2008

On behalf of the *Lower Mainland Treaty Advisory Committee* (LMTAC), I would like to thank you and Ministry representatives, Mr. Ricketts and Mr. Rayner, for attending the LMTAC Board meeting on July 23, 2008, to provide a briefing on provincial activities related to the Common Table.

LMTAC Board members greatly appreciated your willingness to engage in an extensive dialogue about the Common Table process and the six key policy issues identified by Parties. I believe this opportunity to receive the Ministry's perspective on both mandate and procedural issues provided our members with a better understanding of provincial objectives at the Common Table.

Further to your request, I would also like to clarify a specific local government concern that was raised by the LMTAC Board regarding land selection for urban treaty and reconciliation agreements. In particular, some Lower Mainland First Nations are expressing the view that local government is an extension of the Province of British Columbia and, therefore, lands held by a local government should be treated similar to Provincial Crown land and available for treaty or reconciliation agreements. Following, this raises another significant concern regarding a First Nation expectation that the Crown duty to consult and accommodate First Nation interests on land and resource decisions also extends to local government.

It is LMTAC's understanding that the Provincial principles for treaty negotiations continue to include: *Private property should not be expropriated for treaty settlements and The Terms and conditions of leases and licenses should be respected; fair compensation for unavoidable disruption of commercial interests should be insured.* Following, the LMTAC Board requests confirmation from the Province on its mandate regarding the status of local government lands.

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Mr. Julian C. Paine

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We look forward to the next opportunity to meet with you. Please accept this letter as a standing invitation for you to return to a future meeting of the LMTAC Board to provide an update on the Common Table and provincial analysis of the six key policy issues.

If you have any questions, please don't hesitate to contact Regan Schlecker, LMTAC Managing Director, at (604) 451-6198.

Sincerely,



Mayor Ralph Drew

Chair, Lower Mainland Treaty Advisory Committee

Cc Hon. Michael de Jong, Minister of Aboriginal Relations & Reconciliation
Lorne Brownsey, Deputy Minister, Ministry of Aboriginal Relations & Reconciliation
Glenn Ricketts, Chief Negotiator, Strategic Initiatives Division, Ministry of Aboriginal Relations & Reconciliation
Jonathan Rayner, A/Director, Third Party Engagement, Strategic Initiatives Division, Ministry of Aboriginal Relations & Reconciliation
Director Terry Raymond, Chair, UBCM First Nations Relations Committee
LMTAC Members