



STÓ:LO TRIBAL COUNCIL
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MINISTRY OF ENVIRONMENT
CORRESPONDENCE UNIT
JUN 01 2010
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Fax: 1-250-387-1356

May 26, 2010

Honourable Barry Penner
Ministry of Environment
PO Box 9047 Stn Prov Govt
Rm 028, Parliament Buildings
Victoria BC
V8W 9E2

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MINISTER'S OFFICE - RECEIVED
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Dear Minister Penner

RE: Stó:lo Tribal Council response to British Columbia's Water Act Modernization Discussion Paper

The Stó:lo Tribal Council [STC] was incorporated on July 21, 2004 by eight First Nations communities which include: Cheam, Chawathil, Scowiltz, Seabird, Shw'ow'hamel, Soowahlie, Kwaw'kwaw'apilt and Kwantlen. Sumas First Nation is also an affiliate of STC. The Stó:lo have existing aboriginal rights and title to S'olh Temexw, our land, and have never ceded any our rights, title or interests within S'olh Temexw.

On March 29, 2010 a Stó:lo Tribal Council representative attended the Water Act Modernization Workshop at the Coast Hotel & Convention Centre in Langley. We appreciate that The Ministry of Environment is taking a proactive approach to engaging First Nations to participate in sharing information, and discussing water related issues. Our position is that this engagement must be meaningful and in line with contemporary case law, including the *Haida* [2004] and *Kwikwetlen* [2009] decisions. Where a representative of the Crown contemplates an action or decision which has the potential to infringe on Aboriginal Rights and Title, and the legal Duty to Consult is triggered. In this case, the BC Minister of Environment will ultimately make a decision to support or reject The Water Act Modernization; a decision which has the potential to affect the interests and rights of STC communities.

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Enclosed with this letter is a copy of STC's Consultation and Accommodation Policy. For The Ministry of Environment's engagement with STC to be considered meaningful it must:

1. Start at the strategic planning stages;
2. Include adequate capacity funding for our participation;
3. Have an initial information-sharing phase followed by consultation meetings; and
4. Leadership must be engaged in consultation meetings; staff participation does not constitute consultation.

According to The Water Act Modernization Workshop Invitation, you have asked for First Nations input on the interest and issues related to water. In accordance with our Consultation and Accommodation Policy, we would like to invite you to our office to have an initial meeting to discuss our interest in the water resource; and provide an opportunity for shared decision-making in the spirit of the 'new relationship'.

We look forward to further communication on the Water Act Modernization. Our contact person is Frank Andrew, Land and Resource Coordinator. Mr. Andrew can be reached at 604-796-0627 or by Email at Frank.Adrew@stolotribalcouncil.ca.

Sincerely,

STO:LO TRIBAL COUNCIL

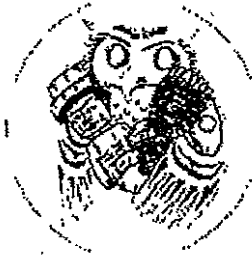


Grand Chief Clarence Pennier
President

cc:

Premier Gordon Campbell

John Slater
Parliamentary Secretary
For Water Supply and Allocation



STÓ:LŌ TRIBAL COUNCIL'S POLICY ON CONSULTATION AND ACCOMODATION

1) Preamble

The Stó:lō have existing aboriginal rights and title to S'olh Temexw, our land, and have never ceded any of our rights, title or interests within S'olh Temexw.

In November, 2004, the Supreme Court of Canada, in the Haida Nation and Taku River cases confirmed that the Crown in Right of Canada and British Columbia as part of the "honor of the Crown" has a duty to consult and accommodate the rights, title and interests of the Stó:lō.

This Consultation and Accommodation policy for the Stó:lō Tribal Council and its members represent the minimal requirements for compliance with the legal Crown and on occasion third party obligations.

2) Purpose of the Policy Guidelines

The purpose of these guidelines is to clearly set out the requirements of the Crown and other Third parties to consult and, when necessary, to accommodate the rights, title and interests of the Stó:lō Tribal Council and its members.

3) Definitions

The following definitions are used in these Policy guidelines:

"Accommodate" and "Accommodation" means:

- a) fulfilling the honour of the Crown and negotiating in good faith the interest of the Stó:lō Tribal Council and its members in the proposed plan or Activity of the Crown or the third party;
- b) integrating the interests of the Stó:lō Tribal Council and its members into the plan or Activity to ensure fair and maximum benefit to the Stó:lō Tribal Council and its members;
- c) to negotiate and conclude fair and equitable resource sharing agreements with the Stó:lō Tribal Council ;

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- d) to incorporate mutually acceptable terms and conditions on the Activity through the environmental protection and/or assessment processes; and
- e) to include such other matters as the Parties may agree upon.

"Activity" or "Activities" means any legislation, regulation, policy, procedure, plan, tenure, grant, license, permit, restriction, amendment, approval, authorization, transfer, transaction, operation, renewal or other activity or decision which may have an impact on Stó:lō aboriginal title, rights or interests within S'olh Temexw.

"Consult" and "Consultation" means provision to a Party:

- a) notice of a matter to be decided, in sufficient detail to permit the Party to prepare its interests on the matter;
- b) sufficient information in respect of the matter to permit the Party to prepare its interests on the matter,
- c) a reasonable period of time to permit the Party to prepare its interests on the matter;
- d) an opportunity for the Party to present its interests on the matter;
- e) a full and fair consideration of any interests on the matter so presented by the Party and to demonstrably integrate the interests presented into the proposed plan of action;
- f) a full disclosure by the Crown of the proposed measure or action and its effect on the Members and other user groups;
- g) made in good faith; and
- h) adequate financial and other resources to ensure equity of bargaining strength.

"Crown" means the Crown in Right of Canada, Crown in Right of British Columbia or both and includes municipalities and any of their agents, employees, contractors, agents, representatives and delegates.

"Members" means the First Nation members of the Stó:lō Tribal Council.

"Policy" or "Policies" means these Stó:lō Tribal Council policy guidelines.

"S'olh Temexw" means the land of the Stó:lō as filed with the British Columbia Treaty Commission as part of its Statement of Intent.

"Third Party" means any person, corporation, firm, industry, society or other organization carrying on or proposing any Activity in S'olh Temexw.

"Parties" means the Stó:lō Tribal Council and the Crown.

4) Application of the Policy

- a) These Policy guidelines, as amended from time to time, applies to all Activities of the Crown and/or Third Parties within S'olh Temexw.

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5) Underlying Conditions of the Policy

- a) Nothing in this Policy shall be construed in a manner which infringes upon, abrogates, derogates or denies Stó:lō aboriginal title, rights or interests within Section 35(1) of the Constitution Act, 1982.
- b) Nothing in this Policy shall be construed as consent by the Stó:lō Tribal Council or any of its members for any past, existing, new, renewed or ongoing Activity within S'olh Temexw.
- c) Nothing in this Policy limits or erodes the honor of the Crown or its fiduciary obligations to the Stó:lō Tribal Council or its members.
- d) Nothing in this Policy shall be construed so as to prejudice any legal or other positions taken, or may be taken by the Stó:lō Tribal Council or its members in any court, tribunal or administrative proceeding, process, treaty negotiation, specific claim negotiation or otherwise.
- e) This Policy sets out the minimum requirements for Consultation and Accommodation by the Crown and/or the Third Party.

6) Principles of Consultation and Accommodation

- a) The following principles shall inform the Crown and Third Parties' obligations to Consult and Accommodate the rights, title and interests of the Stó:lō within S'olh Temexw:
 - i) The Crown is required to Consult and Accommodate the Stó:lō Tribal Council and its members on any proposed Activity within S'olh Temexw in a manner that is consistent with this Policy.
 - ii) The Crown and the Stó:lō Tribal Council may at its discretion include the affected Third Parties but such involvement does not remove or affect the government to government decision making of the Crown and the Stó:lō Tribal Council.
 - iii) The negotiations respecting Consultation and Accommodation must be flexible and be premised on good faith.
 - iv) Consultation must occur at all stages of the Activity where there is any infringement of any rights, title and interests of the Stó:lō.
- b) The Crown and the Stó:lō Tribal Council understand that the obligation to Consult and Accommodate must occur at the earliest stages of the decision making process respecting the Activity and that the following terms apply to the negotiations:
 - i) the Crown and the Stó:lō Tribal Council will agree to an acceptable table respecting the schedule of Consultation and Accommodation negotiations;
 - ii) the parties will provide the names and positions of the authorized representatives of the Crown and the Stó:lō Tribal Council having the mandate to participate in the Consultation and Accommodation negotiations;
 - iii) the Crown will provide the Stó:lō Tribal Council with the necessary time and resources as to enable the Stó:lō Tribal Council to conduct heritage, archaeological, and traditional use studies, related land use planning and tribal and community consultations on the proposed Activity;
 - iv) the Crown will provide full disclosure of any proposed Activity within S'olh Temexw and such disclosure must be sufficient as to allow the Stó:lō Tribal Council to fully understand the direct and indirect impacts of the proposed Activity on the Stó:lō

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- rights, title and interests within S'olh Temexw, such disclosure must be timely and understandable and without costs to the Stó:lō Tribal Council;
- v) the Stó:lō Tribal Council may propose timelines for the Consultation and Accommodation negotiations in conformity with its Stó:lō Tribal Council government commitments and resources;
 - vi) both Parties will determine the involvement of Third Parties and determine the timing and nature of Third Party engagement; and
 - vii) both Parties will consider alternative dispute resolution mechanisms to facilitate good faith negotiations and outcome.
- c) The Stó:lō Tribal Council and its Members and the Crown anticipate that the Consultation and Accommodation negotiations may result in any or all of the following terms and conditions respecting the proposed Activity:
- i) canceling the proposed Activity;
 - ii) modifying the proposed Activity;
 - iii) conducting joint land use planning, environmental assessment and protection measures or reconciliation of Stó:lō Tribal Council land use plans with Crown land use plans;
 - iv) revenue sharing;
 - v) resource allocation to the Stó:lō Tribal Council and its members;
 - vi) compensating the Stó:lō Tribal Council and its members for any infringement of Stó:lō rights, title and interests by the proposed Activity;
 - vii) providing economic rights or measures to the Stó:lō Tribal Council and its members;
 - viii) providing training;
 - ix) considering impact/benefit agreements, partnerships or joint ventures with Third Parties;
 - x) limiting resource extraction and harvesting related to the proposed Activity;
 - xi) posting bonds or obtaining clear commitments for any environmental damages;
 - xii) considering compensation for the Stó:lō Tribal Council and its members for cumulative impacts and past infringements;
 - xiii) provision of outcome of Consultation and Accommodation negotiations and agreed upon terms in any Crown grant of interest for the proposed Activity; and
 - xiv) such other terms as the Parties may agree upon.

7) Respective Obligations

- a) Subject to funding and capacity, the Stó:lō Tribal Council will:
 - i) provide the Crown and Third Parties with names of its Representative(s) for the purpose of the Consultation as required for the different types of proposed Activity;
 - ii) work on a government to government basis;
 - iii) provide timely and detailed responses to Consultations made pursuant to these Policy guidelines;
 - iv) manage funds obtained for the purpose of Consultations in an accountable and transparent manner;
 - v) provide clear and timely reasons for objections to a proposed Activity;

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- vi) provide clear and timely suggestions, if any, on proposed conditions or alternatives to the proposed Activity;
- vii) advise on its views on appropriate Accommodation of a proposed Activity;
- viii) provide assistance to the Crown on reconciling conflicting land use plans; and
- ix) advise the Consulting Party of its decision with respect to the proposed Activity.
- x)
- b) The Crown will:
 - i) work with the Stó:lō Tribal Council and its members on a government to government basis;
 - ii) uphold the honor of the Crown
 - iii) provide the necessary funding to the Stó:lō Tribal Council to allow it to carry out its obligations; and
 - iv) amend or adopt any policy or legislative action to give effect to this Policy guideline.
- c) Third Parties will:
 - i) recognize the constitutional and governmental status of the Stó:lō Tribal Council and its rights and obligations to protect Stó:lō rights, title and interests;
 - ii) recognize that in certain circumstances it may incur liability for its failure to Consult and Accommodate; and
 - iii) work co-operatively with the Crown and the Stó:lō Tribal Council respecting its proposed or existing activity within S'olh Temexw.

8) Funding and Capacity

- a) The Crown will provide the funding necessary to enable the Stó:lō Tribal Council and its members to fully participate in the Consultation and Accommodation negotiations and in any ancillary processes, and will provide funding for:
 - i) travel and honoraria costs for Stó:lō Elders, Stó:lō representatives and community resource people;
 - ii) time and costs of staff and other experts;
 - iii) costs for Stó:lō assessment of the proposed Activity including planning, independent study and research;
 - iv) training of Stó:lō citizens; and
 - v) such other costs as the Crown and the Stó:lō Tribal Council may agree upon.

9) Government to Government Institutions

- a) Prior to the implementation of the Stó:lō Tribal Council Final Agreement, the Stó:lō Tribal Council and the Crown will establish a "S'olh Temexw Land and Resources Board" which will be responsible for all government to government decision making on lands and resources within S'olh Temexw.
- b) The S'olh Temexw Land and Resources Board will be equally comprised of members of the Stó:lō Tribal Council and government and will be responsible for advising all governments on the following matters:
 - i) names and contact addresses of designated officials of all governments;
 - ii) applicable decision making and planning processes respecting any proposed Activity;

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- iii) applicable Stó:lō policies, laws and processes;
- iv) methods of resolving and reconciling any land use conflicts and land and resource process conflicts;
- v) recommend methods to reduce future conflicts;
- vi) evaluate the effectiveness of the Committee and recommend ways to incorporate the outcome of the review;
- vii) complete a review of and catalogue of all existing Land and Resource Activities within S'olh Temexw;
- viii) facilitating compliance with the Consultation and Accommodation processes as requested by the parties from time to time; and
- ix) such other matters as the parties may agree upon.

10) Suggested Steps for Consultation and Accommodation

- a) The parties will consider the following as the expected process in complying with the common law and these Policy guidelines:
 - i) Step 1 will include the negotiation of mutually agreed upon terms of reference for Consultation and Accommodation negotiations;
 - ii) Step 2 will include full disclosure by the Crown and/or the Third Party of the proposed Activity;
 - iii) Step 3 will include the initial community review of the disclosed material and following the review, the Stó:lō Tribal Council could seek additional information and provide an estimate of a timeframe for a response to the proposed Activity and an indication of the funding required to achieve Consultation;
 - iv) Step 4 will include a timely written response by the Stó:lō Tribal Council outlining any concerns and objections and suggestions on how the concerns and objections could be met or accommodated;
 - v) Step 5 will include any reconsideration by the Crown or Third Party respecting the recommendations of the Stó:lō Tribal Council and the Crown will undertake to meet the Stó:lō Tribal Council to resolve outstanding concerns or objections;
 - vi) Step 6 will include negotiations between the Stó:lō Tribal Council to reach agreement on proposed Activity and the meeting will determine either:
 - (1) an agreement to proceed with the Activity;
 - (2) an agreement to proceed with conditions of accommodation;
 - (3) an agreement to cancel or postpone the Activity;
 - (4) an agreement to review further the Activity; or
 - (5) no agreement.
- b) Step 7 will include a Dispute Resolution Process which will include final arbitration of the matter between the Parties; and
- c) Step 8 will include the implementation of the Activity, if approved or amended, and the Stó:lō Tribal Council and the Crown will undertake a monitoring of the approved Activity and all costs in this Step will be paid for by the Crown.