



Tsartlip First Nation
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British Columbia Ministry of Forests

VIA EMAIL:

Maheen.Scott@gov.bc.ca
westcoast.landreferrals@gov.bc.ca

Attention: Maheen Scott, Authorizations Technologist, Crown Land Authorizations,
West Coast Natural Resource Region

Re: Commercial Lease Replacement File #0336205 – Comment

Dear Maheen Scott:

I am writing with regard to the Bamberton commercial lease replacement file #0336205 proposed by 0716927 B.C. LTD. and Malahat Nation. The current aquatic foreshore lease and proposed boundary expansion area are located within the traditional territories of Tsartlip First Nation (**Tsartlip**).

Capacity Funding to Support Meaningful Consultation

Tsartlip has requested capacity funding to support our review of the application documents and to assess impacts in greater detail. For a large project, which has a high potential to impact our Douglas Treaty rights, Tsartlip requests capacity funding for a deeper review of materials regarding the project's impacts to the Tsartlip community/Douglas Treaty descendants.

Based on our initial review of the available documents, a high level of consultation is owed to Tsartlip on this application, given the location of the application within Tsartlip traditional territory, the current and historical importance of the Saanich Inlet and foreshore to Tsartlip, and the likely impacts, including cumulative impacts, of the proposed project on our members' constitutionally protected rights under the Douglas Treaties, to hunt over unoccupied lands and to fish as formally. Capacity funding is therefore needed to enable meaningful participation in the project review by Tsartlip.

Concerns and Impacts to Tsartlip

As stated in our letter sent in October 2022, Tsartlip is one of several communities of the WSÁNEĆ Nation. Tsartlip's traditional territory includes (but is not limited to) southern Vancouver Island (the Saanich Peninsula and lands to the west of the Saanich Inlet and around Bamberton, Goldstream and Shawnigan Lake) and extends eastward throughout the Gulf Islands and San Juan Islands and northeast across the Georgia Strait to Boundary Bay. Tsartlip members hold constitutionally protected Aboriginal and Douglas Treaty rights to harvest and fish throughout our territory, as recognized and affirmed by the Supreme Court of Canada. Parts of our traditional territory overlap with that of Malahat Nation.

The area of the proposed lease replacement is historically and traditionally associated with the Tsartlip community, and has been since before the making of the Douglas Treaties. The lands and waters in and around Bamberton and the Saanich Inlet are part of Tsartlip's core hunting and

fishing areas, and remain important for the contemporary land and resource use of Tsartlip members.

The area of the proposed lease replacement has been an important location for fishing, harvesting, hunting, and plant (including medicinal plants) and other resource gathering for generations of Tsartlip people. The area is traditionally called in SENCOTEN, KÉLES (translation: cooking), which refers to the sloping land, foreshore, and sandy beach between Village Point at Malahat south to Shepherd Point. This place name takes in the east facing slope of YOS (Malahat Mountain), which is a sacred mountain to WSÁNEĆ people.

KÉLES is an important hunting area. Prior to the construction of the Bamberton quarry, Tsartlip members hunted deer along the east-facing slope and foreshore from small boats, on foot along the shoreline, or using deer pits. Following the development of Bamberton, Tsartlip hunters had only the lands north of Bamberton in the park and the area south of the quarry remaining in which to hunt. The area is still actively used by Tsartlip harvesters today.

The foreshore located between Bamberton Park and the quarry is an important shellfish harvesting area in the Saanich Inlet, which has become riddled with biotin and regulatory closures. Here, Tsartlip members harvest a variety of clams, geoducks, and oysters. In the waters along the foreshore, including the waters of the proposed berth expansion, Tsartlip members harvest salmon, cod, squid, and, when available, herring eggs. In the forested lands that would be taken up by the related quarry expansion, Tsartlip members harvest medicinal plants and other forest resources. The area is also used for cultural purposes, including sacred bathing and coming-of-age ceremonies. In addition, known and registered heritage sites may be affected by the proposed foreshore lease extension and related quarry expansion.

The commercial lease replacement file #0336205 presents further constraints on Tsartlip's Douglas Treaty rights to hunt, fish, and collect and harvest our resources, and to exercise cultural activities. In addition to Douglas Treaty rights infringement by the commercial lease replacement application, if approved, additional and related environmental concerns include:

- [1] Foreshore area of the project application extension is 100 meters into the Saanich Inlet, covering 25 additional acres of ocean;
- [2] Importing and exporting contaminated soil;
- [3] Hydrocarbon storage – a possibility of a threat to the environment is spilled;
- [4] Barge and vessel maintenance – oil, spills, or parts dropping in the Inlet and contaminating the marine ecosystem;
- [5] Risk of introducing invasive marine species due to increased vessel traffic;
- [6] Negative impacts on the entire marine ecosystem, including the Goldstream salmon;
- [7] Danger to fish, waterfowl, shellfish, and starfish populations;
- [8] Contamination of current and traditional fishing grounds;
- [9] Decimation of spot prawn fishery;
- [10] Airborne pollutants; and
- [11] Barges, water traffic, and marine pollution.

Cumulative Effects

Tsartlip members face significant, compounding barriers to both access and availability of wildlife and marine resources required to exercise our constitutionally protected Aboriginal rights and Douglas Treaty rights to hunt and fish as formerly. Tsartlip's rights have been adversely affected by the cumulative impacts of urbanization, private land ownership, commercial and industrial

development, marine vessel traffic, overfishing, declining fish habitat, and pollution. These cumulative impacts and compounding barriers to access have already diminished Tsartlip's ability to hunt, harvest, fish and undertake cultural activities, including in areas close to Tsartlip reserves. These impacts and barriers already constitute a violation of Tsartlip's liberty to exercise their Douglas Treaty rights to hunt and fish as formerly.

The health of the Saanich Inlet, as a marine and terrestrial environment, is of the utmost importance for Tsartlip members. Tsartlip has engaged in ongoing discussion with Crown governments for many decades about cumulative effects in the Saanich Inlet and its surrounding landscape. Tsartlip has often expressed concern about our ongoing ability to exercise our Douglas Treaty rights and sustain our way of life in the face of increasing urban and commercial development, on the one hand, and the failure of successive governments to invest in habitat restoration, on the other. Tsartlip began expressing these concerns in the early 1980s, in the face of the proposed growth of the Westshore communities. Most recently, we have expressed them in the context of the proposed expansion of the Hartland Landfill; the proposed relocation of the CVRD sewage outfall to Satellite Channel; and the proposed expansion of the Roberts Bank Terminal 2, to name a few.

In *Yahey v. British Columbia*, 2021 BCSC 1287 ("*Yahey*"), the BC Supreme Court recognized that the cumulative effects of interferences with treaty rights could constitute a breach of a treaty, even if each individual development in the area could be "justified" on its own merits and impacts. *Yahey* sets a precedent requiring the Crown, and therefore Crown agencies, to consider the cumulative effects of development on the meaningful exercise of treaty-protected rights in decision-making processes. The Crown must exercise decision-making processes in ways that uphold the promises and protections of the Treaty in issue, and must consider the cumulative effects of such decisions.

The effects of the foreshore lease replacement, together with the related Bamberton quarry expansion application (Quarry Application/Mine File #0800407), would further impact the ability of Tsartlip members to practice their constitutionally protected rights in and around the Bamberton area and in the Saanich Inlet, which is part of Tsartlip's core marine territory. These further effects would constitute an unjustified interference with the meaningful exercise of Tsartlip members' section 35 rights. To date, the Crown has not adequately considered the significant and compounding impacts of either of these applications on Tsartlip's rights.

Environmental Assessment

Given the potential magnitude of project impacts, including cumulative impacts on Tsartlip, Tsartlip is requesting that the foreshore lease replacement application, together with the associated Bamberton quarry expansion application, be designated as a reviewable project under section 11 or section 12 of the *Environmental Assessment Act* and that the Environmental Assessment Office conduct an environmental assessment of the project. The two applications are interconnected and the combined impacts of these projects should therefore be considered as a whole.

Tsartlip also requests that this assessment should include a robust cumulative effects study and the development, together with Tsartlip, of a cumulative effects management plan for the Saanich Inlet.

Summary of Tsartlip's Position and Requests

It is Tsartlip's position that what little remains of access to, and availability of, preferred land and marine resources, must be protected. Tsartlip members already struggle to sustain their physical and community social health as a result of diminishing access to traditional resources and sites.

Tsartlip has not yet been provided with the opportunity to be adequately or meaningfully consulted regarding the commercial lease replacement application in the Saanich Inlet or the related quarry expansion application project. To date, there has been no discussion with Tsartlip by either the Crown or the proponent regarding any potential accommodation (such as mitigation or avoidance measures) to reduce the anticipated project impacts on Tsartlip and our Douglas Treaty rights.

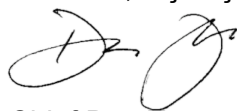
Given the above concerns, and until such concerns are addressed, at this time Tsartlip is unable to support the project and will not provide consent to any authorizations or approvals in respect of the project. Tsartlip is willing to engage in meaningful dialogue with government to better understand the potential project impacts and to find solutions, but this requires reciprocal commitments, undertaken in good faith, by Crown decision-makers.

By way of this letter, Tsartlip is requesting:

- 1. Meaningful consultation with Tsartlip regarding the project and potential project impacts on Tsartlip's Douglas Treaty rights, including an exploration of potential accommodation measures to reduce project impacts on Tsartlip;**
- 2. Capacity funding to support Tsartlip's meaningful participation in consultation;**
- 3. Designation of the project as a reviewable project under the *Environmental Assessment Act*; and**
- 4. Cumulative effects study and development of a cumulative effects management plan for the Saanich Inlet with Tsartlip.**

We look forward to your response.

HÍSKWE, SI,ÁM,



Chief Don Tom
Tsartlip First Nation

cc.

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