



# Trust Council Addendum

Date: March 12- 14, 2024 (Start time: 10:30 a.m. Tuesday)

Location: Chemainus / Port Alberni Room - Coast Bastion Hotel  
11 Bastion Street, Nanaimo BC, V9R 6E4

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**OPEN LETTER  
ROB BOTTERELL, NAACALUK<sup>1</sup>**

**Via E-mail**

**March 4<sup>th</sup>, 2024**

**Honourable David Eby, Premier of British Columbia**

**Copy To:**

**Honourable Nathan Cullen  
Minister of Land, Water, and Resource Stewardship**

**Honourable Murray Rankin  
Minister of Indigenous Relations and Reconciliation**

**Honourable Minister Anne Kang  
Minister of Municipal Affairs**

**Dear Honourable Premier Eby:**

On Friday, March 1<sup>st</sup> I learned that your government has held high level meetings with First Nations to discuss dock tenures in the Southern Gulf Islands area (300 Islands, 400+ km of shoreline). I also learned that Minister Cullen is commissioning a large-scale cumulative environmental impacts assessment of docks (existing, pending, future) in the Southern Gulf Islands (SGI). The terms of reference, start date, and completion date for this complex assessment are confidential, although I understand that Minister Cullen is considering notifying dock tenure applicants and holders. Until this study is completed, likely 1-2 years, there will be no further dock tenure decisions. Specifically, this environmental impacts assessment will inform future government decisions on:

- Approval or rejection of an estimated 50 pending dock applications, some of which were submitted over 6 years<sup>2</sup> ago,
- Approval or rejection of future dock applications once the current moratorium on new dock applications is lifted, and
- Depending on the study findings, modification and/or removal of existing docks.

(For ease of reference: SGI Dock Reconciliation Initiative)

I am writing to respectfully request your urgent personal intervention in the SGI Dock Reconciliation Initiative.

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<sup>1</sup> For over 25 years, I have focused on indigenous law, land and resource law, governance law, major project negotiations, law drafting, and advocating on behalf of First Nations and other clients. I have negotiated agreements on behalf of First Nations with all levels of government and major resource companies (forestry, energy, mining). The name NAACAŁUK means “always watching” and is an honour I received from Huu-ay-aht First Nations.

<sup>2</sup> For example, the previous owner of our property had approval to build a dock which lapsed. After refreshing all the application materials at considerable expense, I applied for the identical dock on April 12<sup>th</sup>, 2021. It is now almost 3 years later and no decision has been made on our application.

Proceeding with public land tenure policy development in a manner that is not open, transparent and fair to both indigenous and non-indigenous communities is virtually guaranteed to significantly erode support for Reconciliation as well as public trust in government and acceptance for the rule of law.

A further backlash against First Nations and the vitally important work of Reconciliation is the last thing we need right now. I remain hopeful that the flawed engagement process for *Land Act* amendments and the shíshálh swiya Dock Management Plan<sup>3</sup> are not symptomatic of a larger problem.

**I strongly support, along with a unanimous Legislature and a majority of British Columbians, the efforts to achieve true, lasting Reconciliation with First Nations through renewed Government – to – Government relationships based on recognition of rights and respect, cooperation and partnership amongst all interested parties – providing it is accomplished in an open, transparent and fair manner.**

As Supreme Court of Canada Chief Justice Lamer concluded in 1997 in *Delgamuukw*:

Ultimately, it is through negotiated settlements, with good faith and give and take on all sides, reinforced by the judgments of this Court, that we will achieve ...the **Reconciliation** of the pre-existence of aboriginal societies with the sovereignty of the Crown. **Let us face it, we are all here to stay.** [*emphasis added*]

The “good faith” and “give and take on all sides” necessary to achieve meaningful and enduring Reconciliation is jeopardized by taking an approach to public land tenure policy development that is secret, opaque, and unfair to affected communities.

The “how” of Reconciliation matters. I respectfully urge you to direct Minister Cullen to provide the following public assurances before proceeding further with the SGI Dock Reconciliation Initiative:

**1. The terms and conditions of existing dock tenures will be respected and not amended without seeking the prior consent of the tenure holder.**

Rationale – The property rights of existing tenure holders must be respected just as respect must be shown for Indigenous Rights. If the cumulative impacts study results in cancellation or amendments to the terms of a dock tenure, it is a well-accepted tenet of property law that consent should be sought, and in all cases, fair compensation paid.

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<sup>3</sup> <https://comment.nrs.gov.bc.ca/applications?clidDtid=2412772&id=655fd3540d24d60022df6ee3#details>

- 2. Pending dock tenure applications will be processed before October 1<sup>st</sup>, 2024 under the policy, legislation, and approval criteria applicable when the application was made<sup>4</sup>.**

Rationale – It is well accepted that every effort should be made to avoid retroactively changing the rules applicable to evaluation of land tenure applications after an application has been made. By analogy, imagine fulfilling the requirements for a building permit in good faith, then waiting up to 6 years, only to be advised that it has been decided to undertake a complex study that could retroactively change the applicable approval criteria. It would be hard to imagine a better way to undermine support for Reconciliation, public trust, and the rule of law.

- 3. A steering and oversight committee (“SOC”) for the cumulative environmental impact study will be established with equal indigenous and non-indigenous representation<sup>5</sup> with review and decision-making authority.**

Rationale – Cumulative environmental impacts analysis is a complex area of scientific study. As a First Nations lawyer I can attest to the importance of achieving consensus on the terms of reference for such studies and the choice of environmental consultant to conduct the work. Without proper oversight the end result is all too often a “battle of the experts”, incomplete assessment of positive and negative impacts & viable mitigation measures, and accusations that the study is in service of a pre-determined agenda. For this reason, it is essential that a broadly representative steering and oversight committee is established.

- 4. The cumulative environmental impact study terms of reference and the name of the consultant will be publicly released, along with unredacted updates and reports.**

Rationale – Openness, transparency and indigenous and non-indigenous support for the findings depends on nothing less.

- 5. Proposed new policy, legislation and government-to-government agreements resulting from the SGI Dock Reconciliation Initiative will be the subject of meaningful engagement and consultation with First Nations and SGI residents at the same time.**

Rationale – We cannot afford to get Reconciliation wrong. Success depends on meaningful consultation and engagement with those with the most local knowledge who will be most impacted by proposed policy, legislation, and agreements regarding dock tenures. The appearance of preferential engagement must be avoided – all interested parties need to be engaged at the same time.

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<sup>4</sup> This completion deadline allows 6 months to fulfil the duty to consult with First Nations and engage with other interested parties. Current policies regarding dock applications are located at <https://www2.gov.bc.ca/gov/content/industry/crown-land-water/crown-land/crown-land-uses/residential-uses/private-moorage>

<sup>5</sup> Representatives could be appointed by the Islands Trust and First Nations with a balance between citizen and expert backgrounds in environmental impacts studies.

6. **All future decisions on dock applications in the Southern Gulf Islands will include provision for a timely & fair appeal process, including arbitration, so applicants and those affected by a dock tenure decision will have a timely remedy if they wish to dispute the dock tenure decision<sup>6</sup>.**

Rationale – It is not possible to capture all of the site-specific considerations in general public policy regarding dock tenures, even if informed by a large scale, complex cumulative environmental impacts study. Moreover, indigenous and non-indigenous support for dock tenure decisions will be enhanced by ensuring there is provision for timely appeal. This is an accepted part of the legal landscape in Canada.

In the circumstances I request an early response.

**Respectfully,**

**ROB BOTTERELL, NAACALUK**

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<sup>6</sup> While pending applications need to be addressed, applicants and those affected including affected First Nations, should still have recourse to timely dispute resolution.

## **Xwe'etay/Lasqueti Archaeology Project - Report to Trust Council March 2024**

written by Dana Lepofsky and Sean Markey, submitted by Peter Johnston

The Xwe'etay/Lasqueti Archaeology Project (XLAP; <https://www.sfu.ca/rem/lasqueti.html>) began in 2019 with the overall goal of exploring ways to better honour Indigenous heritage on Xwe'etay and elsewhere. We do this through a multi-pronged approach that brings together archaeological investigations, research on local heritage policy and its relationship to planning, and inter-community outreach and education (<https://theconversation.com/how-community-engaged-archaeology-can-be-a-pathway-to-reconciliation-193695>). The project is co-lead by Simon Fraser University professors Dana Lepofsky (archaeologist) and Sean Markey (policy, planning) and brings together five First Nations who have historical connections to the island: Qualicum, Tla'amin, Ko'omks, Halat, and Wei wei kum. Both Sean and Dana bring to the project their extensive experience in and commitment to community engaged research. They are guided by the project advisory board and helped along by several SFU planning and archaeology students and island community members (<https://www.sfu.ca/rem/lasqueti/our-team.html>).

Due to the myriad effects of European colonization, today there are no descendent First Nations on the island who have specific ancestral connections to Xwe'etay. As a result, prior to XLAP, islanders did not fully understand that there is a long and rich history of Indigenous settlement of Xwe'etay. This settlement is reflected throughout the island in the dense and varied archaeological record. Part of XLAP is helping settlers and First Nations alike see this evidence of past lives lived.

The archaeological component of the project has several parts. Our work builds on a relatively quick archaeological survey of the island's coast conducted in 1972. Although the results of that study have limitations in terms of locating sites (especially in the intertidal), mis-mapping the location of the sites (prior to access to GPS), and vastly underestimating site size – all of which are issues with other surveys of that time – this baseline data was hugely helpful in locating sites and estimating information of sites that have since been disturbed or destroyed and/or that we don't have access to today.

To re-locate already recorded coastal sites, locate new sites, and map site boundaries, we surveyed the entire island coastline, accessing areas either by boat during low tides or on-foot. Our on-foot surveys were limited to private properties on which we were invited to work and to public lands (Crown, Parks, Nature Reserves, right-of-ways). For properties for which we did not have access, our investigations were limited to estimates of site boundaries made by walking below the high tide line and recording landforms and visible shell exposures. For properties to which we had access, we assessed site boundaries and degree of disturbance by examining exposures, digging shovel tests, and extracting long soils cores with a soil probe from archaeological deposits (up to 4 meters deep!). These cores provided charcoal and other material for top and bottom radiocarbon dates that allowed us to assess initial occupancy (bottom dates) and abandonment (top dates). Our ability to collect top dates was limited because of recent disturbance.

In addition to our coastal surveys, we visited “in-land” sites that people told us about or that we observed in our own explorations. We further documented the extensive use of the island by collating the locations of all the isolated artifacts/belongings people have found on the island. These latter results show Indigenous occupation of the entire island. We are currently analyzing these belongings to determine where the materials come from (to understand ancient trade relations) and also to understand the kinds of activities these artifacts were used for.

Bringing all the lines of knowledge and evidence together, we can show that the island was occupied

by at least 7000 years ago. By 4000 years ago there were lots of people and settlements. The settlements continued to grow in size and number over the next two thousand years or so. We believe that by 1000 years ago, the entire island was at full human capacity – with some areas being "hot spots" of settlement and activity (e.g., False Bay, Maple Bay).

To bring communities together and to celebrate the rich Indigenous history of the island, XLAP has sponsored several large and small inter-community events. There has been much excitement and active involvement in these events by both our Indigenous partners and the island settler community. We are also in the midst of producing an exhibit on the project at the Ingenium Museum of Food and Agriculture in Ottawa. This will have a travelling component that will allow small coastal communities to learn about the project. We are also creating a "Layered Histories" data base and eventually an interactive website, that allows us to collate all the archival, interview, and field data we are compiling and then to share that in compelling and inviting ways.

In addition to this "bottom-up" approach of engaging communities, we are also actively working with planners to propose top-down changes in the way Indigenous heritage is managed and to support processes of decolonization in local and regional planning. We have gathered important information by interviewing local planners, landowners, and First Nations heritage managers about how Indigenous heritage could be better managed. For example, opaque and inconsistently applied Provincial heritage regulations creates fear in landowners who have archaeological heritage on their property. Working with local First Nation heritage managers, and creating pathways for government planners to support Indigenous-led management heritage management, are productive ways to protect Indigenous heritage. They also provide ways to create clarity for landowners about how they can participate in reconciliation by more fully respecting Indigenous heritage on their private property.

If anyone has questions or comments, please contact [pjohnston@lasquet.ca](mailto:pjohnston@lasquet.ca)