



Lil'wat Nation Land Use Referral Consultation Policy

Ratified by Chief and Council February 21, 2012

1.0 INTRODUCTION

We claim that we are the rightful owners of our tribal territory, and everything pertaining thereto. We have always lived in our country; and at no time have we ever deserted it, or left it to others. We have retained it from the invasion of other tribes at the cost of our blood. Our ancestors were in possession of our country centuries before the whites came. It is the same as yesterday when the latter came, and like the day before when the first fur trader came. We are aware the BC government claims our country, like all other Indian territories in BC; but we deny their right to it. We never gave it or sold it to them. They certainly never got the title to the country from us, neither by agreement nor conquest, and none other than us could have any right to give them title.

Declaration of the Lillooet Tribe
May 10, 1911

The Lil'wat Nation has existed as a distinct society from time immemorial. As a consequence, Lil'wat Nation possesses aboriginal title and rights within its traditional territory. Aboriginal title and rights are constitutionally protected rights within the *Constitution Act 1982*. Aboriginal rights include the inherent right to govern within the traditional territory. The Lil'wat Nation (formerly known as the Mount Currie Band) Council is the elected governing body of the Lil'wat Nation and has a fiduciary responsibility to protect these inherent rights.

The Canadian courts have:

- affirmed aboriginal title and rights in British Columbia
- affirmed that aboriginal rights includes the right to govern
- stated that any activity on aboriginal title lands imposes a legal obligation on governments to consult with affected First Nations and accommodate any infringements on aboriginal title and rights
- stated that a First Nation, in order to protect its aboriginal title and rights, must avail itself of the opportunity to consult

Due to the extent of land and resource use and planning activity within the Lil'wat Nation's traditional territory, and the amount of potential infringement of the Nation's aboriginal title and rights resulting from this use and activity, this policy has been created to establish a process by which the Lil'wat Nation Council (the "Council") can consult efficiently and effectively with all levels of governments and any third parties who seek to utilize lands and resources subject to the Lil'wat Nation's aboriginal title and rights (the "Referring Agent")

2.0 CONSULTATION PROCESS

Consultation with Council for a land or resource use or planning referral, including developments and tenured activities of any kind, (the "Referral") is to be initiated by contacting the Lil'wat Nation Land and Resources Department (the "Department"). The Department will guide a Referring Agent through the consultation process. Consultation processes are handled internally by the Department, the Lil'wat Land Use Referral Committee (the "Committee") and the Council as set out herein.

Any Referral and information about a Referral will be accessible to Lil'wat Nation citizens.

2.1 Lil'wat Land and Resources Department

The role of the Department in the Referral consultation process is to:

- (a) provide initial access to the consultation process,
- (b) serve as the ongoing point of contact for the Referring Agent,
- (c) determine whether further information is required from the Referring Agent before an assessment is undertaken,
- (d) determine whether capacity and/or due diligence funding is required from the Referring Agent to assess the Referral,
- (e) carry out all administrative responsibilities,
- (f) communicate regularly with the Committee,
- (g) keep the Council informed as necessary on high priority Referrals, and
- (h) facilitate the information gathering and research activities which is necessary to undertake to effectively and efficiently assess and respond to each Referral.

The Department shall carry out a preliminary assessment of each Referral when it is received. The assessment will include, but not be limited to, an examination of the following:

- (a) Is the land being alienated and/or affecting aboriginal title and rights?
- (b) Is the effect on the land temporary or permanent?
- (c) How much land is being affected?
- (d) What is the proximity of the activity to the Mount Currie community?
- (e) What are the cultural implications of the proposed activity?
- (f) What are the economic implications of the proposed activity?
- (g) How does it impact the Mount Currie community?
- (h) How does it impact Lil'wat cultural resources and values?
- (i) How does it impact Lil'wat aboriginal title and rights?
- (j) Are there any negative impacts on sacred sites, pictographs, petroglyphs, pit house remains, burial sites, traditional use sites, or any other sites that have cultural value to the Lil'wat Nation?
- (k) What are the impacts on traditional use activities?
- (l) What is the timeline for the consultation process?
- (m) How is the area designated (sacred, high value, moderate value, or stewardship zone) within the Lil'wat Cultural Heritage Land and Resource Protection Plan?
- (n) What is the preferred land use according to the Lil'wat Land Use Plan?

- (o) What is the land use zone under the Provincial Sea-to-Sky Land and Resource Management Plan?
- (p) What are the management directions under the Land Use Planning Agreement between the Lil'wat Nation and the Province of British Columbia?
- (q) What are the overall impacts on the environment and ecosystems?

It must be noted that, as every Referral is unique, it is difficult to predict the range and type of issues that will be raised. Any Referral will raise a distinct list of issues for consideration; therefore, the list of issues that will need investigation must be developed on a case by case basis.

The Department may provide an initial response to the Referring Agent, for the purposes of responding to the Referral in a timely manner. This response will include an assertion of Lil'wat aboriginal title and right to its traditional territory and may request from the Referring Agent the following:

- (a) due diligence or capacity funding;
- (b) funding for research and / or information gathering;
- (c) confirmation that planning and approval decisions on the Referral will not be made until the consultation process with the Lil'wat Nation is completed; or
- (d) an extension of a deadline for a response.

The Department will use the information gathered from its preliminary assessment and any correspondence with the Referring Agent to determine which Referrals require direction from the Referral Committee. Where there is clear policy direction from the Lil'wat Land Use Plan and the Land Use Planning Agreement with regard to how to respond to a Referral, the Department will follow through with the Referral correspondence and provide the Referral Committee with an update. Further information on any referral can be provided to the Referral Committee upon request.

For those Referrals that require further attention, and where existing policy does not provide clear direction on how to respond, the Department will prepare a summary of the Referral and provide it to the Committee. The summary will include, but not be limited to, the following:

- (a) an overview of the Referral;
- (b) the potential for negative impacts on the Lil'wat Nation Traditional Territory and Mount Currie community;
- (c) the potential economic or other benefits for the Lil'wat Nation and the Mount Currie community; and
- (d) a recommended assessment of the Referral as a high, medium or low priority.

The Department will follow up on the direction provided by the Committee regarding the response to be provided to the Referring Agent and/or the need to update Council on the Referral.

2.2 Lil'wat Land Use Referral Committee

The Committee is mandated by Council to review, assess and respond to any Referral that the Department brings to its attention.

The composition of the Committee is outlined in its Terms of Reference, approved by Council.

The Committee will review the summaries for each Referral provided by the Department and, based on the level of impacts or benefits that may result from the Referral, determine whether the Referral is high, medium or low priority.

The Committee will inform Council of all Referrals that it has determined to be high priority, and provide ongoing updates to Council on these Referrals.

The Committee will provide direction to the Department on how to respond to a Referral.

In making its decision on how to respond to a Referral, the Committee may seek input from the community through a community meeting or in other ways it determines sufficient and/or recommended by Chief and Council.

2.2.1 Committee Consultation with the Referring Agent

The Committee will welcome opportunities to meet with the Referring Agents, however these meetings shall not be construed as a finalization of the consultation process. Meetings with Referring Agents are only one aspect of the entire consultation process.

The objectives of the Committee when engaging in meetings or other correspondence with the Referring Agent are to:

- (a) ensure that all the necessary information from the Referring Agent has been provided so that the Committee may make an informed decision;
- (b) enquire about opportunities for benefits to the Lil'wat Nation, for example through revenue sharing, employment opportunities and training, equity interest in the business, business partnership, recognition and others;
- (c) find opportunities to mitigate any potential impacts that the plan or activity may have on Lil'wat territory, cultural and traditional use sites, and/or aboriginal title and rights; and
- (d) determine the compatibility of the proposed plan or activity with Lil'wat values, interests, plans for, and use of its territory and resources.

2.3 Mount Currie Band Council

The Council will receive ongoing updates on high priority files from the Committee.

The Council will use its discretion to determine when it will take the lead on the consultation process over high priority Referrals.

In making its decision on how to respond to the Referral, Council may determine that it is necessary to seek direction from the community through a community meeting, a General Assembly or through a referendum.

Council has the final authority to approve accommodation agreements on high priority Referrals.

3.0 Appeal Process

In the event that a Lil'wat Nation citizen wishes to appeal a decision of the Committee the following appeal process will apply.

- (a) The Lil'wat Nation citizen will submit its appeal in writing to the Committee care of the Land and Resources Department.
- (b) The Committee will review the letter in light of existing Lil'wat Nation Policies, including the Lil'wat Land Use Plan, the Land Use Planning Agreement between the Province and the Lil'wat Nation, the Lil'wat Heritage Policy, and the Lil'wat Nation Strategic Plan.
- (c) If the Committee decision under appeal is inconsistent with existing Lil'wat Nation policy, then the Committee will reconsider their decision in light existing policy and the information brought forward by the appellant. The Committee will provide a written response to the appellant and inform him or her of any changes to its decision.
- (d) If the Committee decision is consistent with existing policy then the Committee will maintain its decision and inform the appellant in writing of its reasons for its decision.
- (e) If the appellant is not satisfied with the final decision of the Committee, he or she may then bring its appeal to Chief and Council.

4.0 RESPONSE TO REFERRAL

Upon engaging in consultation with the Referral Agent, the Department, the Committee or the Council will be required to provide a response. The following are possible responses, depending on the circumstances of the Referral, the interests of the community that are affected by the Referral, and the assessment of the impacts that will result from the Referral, among other things:

- a) further information and consultation is required;
- b) mitigation measures and/or economic measures for impacts on aboriginal title and rights interests are required, as part of an accommodation agreement;
- c) approval, with or without conditions; or
- d) no approval in its current form due to immitigable impacts on Lil'wat Nation values and interests and/or the inability or refusal of the Referring Agent to adequately accommodate the Lil'wat Nation's interests.

5.0 ACCOMMODATION AGREEMENTS

The Committee or Council may negotiate an accommodation agreement with the Referring Agent. A framework for an accommodation agreement is provided in Appendix A.

The Committee has the authority to approve an accommodation agreement except for those Referrals that have been determined to be high priority, in which case the Council has the final approval authority.

APPENDIX A

Template Consultation Agreement

BETWEEN:

The Lil'wat Nation, also known as the Mount Currie Band
(the "Nation")

AND:

[Proponent]
(the "Proponent")

(Collectively, the "Parties")

WHEREAS:

- A. The Nation asserts aboriginal rights, including aboriginal title, throughout its traditional territory, which is comprised of the outlined area on the map attached as Schedule "A" to this Consultation Agreement ("Agreement");
- B. The Proponent is proposing [a project] (the "Project") in the territory of the Nation;
- C. The Project is consistent with the land use vision expressed by the Nation in its Land Use Plan: Phase 1, August 1, 2006.
- D. The Proponent acknowledges that the Nation is entitled to meaningful consultation and accommodation regarding the effects of the Project on the aboriginal rights, including title, of the Nation;
- E. The Proponent acknowledges that meaningful consultation requires that Nation receive full information on the Project;
- F. The Proponent acknowledges that to engage in meaningful consultation the Nation requires adequate funding.
- G. The Parties have agreed to engage in meaningful consultation regarding the Project, and to establish and maintain a respectful and cooperative relationship.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

PURPOSE:

- 1. The purpose of this Consultation Agreement is to:
 - a) establish the process for the Parties to follow to engage in meaningful consultation regarding the Project; and
 - b) secure the necessary funding for the Nation to engage in consultations with the Proponent regarding the Project.

CONSULTATION PROCESS:

2. The first step in the consultation process is the signing of this Agreement. Once this Agreement has been signed and the Nation receives its first funding installment, the Parties will then work together to develop a Letter of Intent.

LETTER OF INTENT:

3. The Letter of Intent will:
- a) Outline the due diligence work to be conducted to assess the potential impacts and benefits from the Project;
 - b) Include a confidentiality agreement between the Parties to allow for the necessary exchange of information;
 - c) Set out the schedule and timeline for the due diligence work, exchange of information, and, if appropriate, negotiation of an Impact Benefits Agreement; and
 - d) Outline the general content of an Impact Benefits Agreement.
4. Once the Letter of Intent has been signed, the Parties will proceed with conducting the due diligence work as outlined in the Letter of Intent.

IMPACT BENEFITS AGREEMENT:

5. Following the completion of the due diligence work, and provided the Parties have agreed that potential impacts of the Project on the Nation's rights, including title, can be mitigated or accommodated through the provision of benefits, the Parties will commence discussions on the development of an Impact Benefits Agreement.
6. The Impact Benefits Agreement will:
- a) Confirm that the Proponent and the Nation have engaged in meaningful consultations, set out the specific impacts of the Projects, and the means of mitigating and/or accommodating for the identified impacts;
 - b) Confirm that the Parties will implement agreed upon mitigation measures;
 - c) Provide a process for as yet unidentified impacts to be addressed through consultation, mitigation, or accommodation;
 - d) Provide economic and social benefits to the Nation in relation to the Project, which may include, but not be limited to, revenue sharing or equity participation by the Nation in the Project;
 - e) Confirm the Nation's support for the Project, including support for all necessary government or Crown agency approvals; and
 - f) Recognize the economic value of the Nation's support for the Project.
7. The signing of the Impact Benefits Agreement by the Nation is subject to the approval of the Mount Currie Band Council, as evidenced by the delivery of a Band Council Resolution.
8. The signing of the Impact Benefits Agreement by the Proponent is subject to [insert Proponent process for approval].

TERM:

9. The term of this Agreement will commence upon the signing of this Agreement and will continue until either the provision of 30 days notice in writing or upon the finalization of an Impact Benefits Agreement.

FUNDING:

10. The Proponent is committed to provide the Nation with funding to cover the cost incurred by participating in the consultation contemplated in this Agreement and required with the Province as a result of this Project.

11. The Proponent agrees to make the following non-refundable, one-time payments to the Nation:

- a) \$ - - - payable at the time this Consultation Agreement is signed to cover the cost of negotiating a Letter of Intent;
- b) \$ - - - payable at the time the Letter of Intent is signed to cover the cost of due diligence work; and
- c) \$ - - - upon commencement of the Impact Benefit Agreement negotiations.

12. The Proponent agrees to pay for reasonable costs for studies or reviews of technical reports that may be required for the Lil'wat Nation to carry out its due diligence work. Proposals and cost estimates for costs can be provided to the Proponent for approval upon request.

13. The Nation will provide the Proponent with detailed accounting of expenditures upon request.

14. If the Nation identifies that additional funding is required, the Parties agree to discuss and attempt to reach agreement on a revised funding level.

15. The Nation will accept government funding made available to cover the cost of its involvement in an Environmental Assessment process.

WITHOUT PREJUDICE:

16. Nothing in this Agreement signifies or represents the Nation's approval of the Project. This Agreement contemplates a process to develop an Impact Benefits Agreement. It is clearly understood by both Parties that the Nation may determine that the impacts of the Project cannot be addressed through an Impact Benefits Agreement, and that the Nation may provide notice to terminate this Agreement prior to the development of an Impact Benefits Agreement.

17. Nothing in this Agreement creates any legal partnership, co-venture, or principal and agent relationship between the Parties.

18. This Agreement and the discussions held pursuant to this Agreement are without prejudice to the Aboriginal Rights, including Aboriginal Title, of the Nation. Nothing in this Agreement or the discussions held pursuant to this Agreement is intended to

create, define, diminish, abrogate or extinguish the Nation's Aboriginal Rights, including Aboriginal Title.

19. Nothing in this Agreement indicates acceptance by the Nation of federal or provincial Crown's jurisdiction over or ownership of land, water or other resources within the Nation's asserted traditional territory.

20. Unless otherwise agreed by the Parties in writing, this Agreement and discussions held pursuant to this Agreement do not displace the duty of British Columbia and Canada to consult with the Nation with respect to the Project.

This Agreement is hereby accepted and agreed to this _____ day of [insert date].

By:

[Chief]
Lil'wat Nation

[Proponent]