



GITXSAN CHIEFS' OFFICE

April 25, 2013

Mark Lofthouse
Chief Negotiator
Ministry of Aboriginal Relations
And Reconciliation
Box 9100 Stn Prov Govt
Victoria, BC,
V8W 9B1

Dear Mr. Lofthouse, Chief Negotiator

Re: Trespass on Gitksan territory by Kitselas and Kitsumkalum AIP land offer

We thank you for your letter dated April 8, 2013 addressed to the three Simgiigyet, Vernon Smith, Art Mathews and Elva Dennonme whom you acknowledge to be the representatives of the rights' holders of the relevant House territories where the overlap exists.

The Simgiigyet request a meeting with you and Mr. Leece in Smithers BC before May 10, 2013 for the Gitksan to formally enter the "engagement stage" of the province's consultation process. Still outstanding from last September 28, 2012 is the Simgiigyet requests for

- a clear terms of reference for what will be considered in the province's consultation process, and
- The provincial policy for offering lands in overlap situations which has been occurring for nearly 19 years.

The Simgiigyet view is without the terms of reference you lack the capability to gain a clear understanding of the Gitksan rights and title in the areas, including the trespass. As a result it may be premature for you to present us with the province's initial view of the Gitksan use and occupancy of the area, including the provincial trespass area. It is unclear what current information the province is relying upon for this review.

In addition, the Simgiigyet find it strange that after this initial review the province:

- will *again* seek Gitksan input to "...gain a clear understanding of Gitksan's asserted aboriginal rights in the overlap areas, their strength and the nature of the potential impact of the AIPs on those rights", and
- "...continue consultation and to hear more about Gitksan specific interests and concerns".

This brings into question the adequacy of the initial and current information –including the ethno-historical report - which the province is relying upon.

At the requested meeting, the Simgiigyet will also address, their concern that British Columbia and in particular, the provincial bureaucracy lacks the authority to:

1. offer lands in these circumstances,
2. make unilateral decisions regarding Gitksan rights and title,

3. Rely on the province's internal document referenced as the *March 2009 ethno-historical report on the Gitksan Nation*. In the circumstances this document is self-serving. Apparently there are hidden policies and internal terms of reference for decision making and requesting of internal reports.

The Gitksan propose that *before* we enter your perceived "engagement stage", we jointly develop a terms of reference for the consultation process. The Gitksan are very anxious to enter this stage of the process as we do have information to share and I provide for reference:

- Transcript Evidence from the trial in *Delgamuukw et al v. HMQ*
- Commissioned Evidence for the trial in *Delgamuukw et al v. HMQ*
- Territorial maps and affidavits for trial in *Delgamuukw et al v. HMQ*
- Various court decisions relevant to the lands in question
- Data from various Traditional Use Studies
- Clear and current mandate of the Framework Agreement (1995) that is producing meaningful and practical progress
- 2008 Gitksan proposal to transition out of the *Indian Act* programs and services that would facilitate Gitksan transition to full and equal participation in Canadian society, stimulate economic development and correspondingly reduce federal expenditures and fiduciary responsibilities.
- 1985 Fisheries Agreement with Canada
- Forestry Agreements: 2003 Interim Forest Agreement and 2006 Short Term Forest Agreement.

Without a Terms of Reference, we do not understand where, what and how this information will be considered once the Gitksan become engaged. As a result, we re-confirm our request for this meeting to be held before May 10, 2013 at Smithers, BC so that all parties can review the Gitksan proposed terms of reference.

We acknowledge that BC is *unilaterally* prepared to be in the engagement process:

- Having shared the AIPs and maps of the Kitselas and Kitsumkalum land offers
- Having conducted meetings to explain the consultation process, AIP provisions and status of negotiations. (However you are yet to respond since September 28, 2012 to the Gitksan requests and concerns about the AIP land offers and the consultation process)
- Having shared the provinces internal March 2009 ethno-historical report on the Gitksan Nation. (A self serving document prepared internally by the Province)

We are prepared to meet in Smithers BC to address these concerns and the Gitksan proposed Terms of Reference for the Province's and Canada's consultation process.

Yours sincerely



Luutkudziiwus (Gordon Sebastian)