

Consultation and Accommodation Policy - Public

Bonaparte Indian Band
2014

BONAPARTE INDIAN BAND

CONSULTATION AND ACCOMODATION POLICY

Ts'enwecw Te Tmicw

Our Sacred Land

Ri7 ull nu7wi'kt qas ri su7ec-kt en ticwt-kt, ell tsqey en skwestikt. Tselcemtes ri7 ell qas te ck'ultens, ell em yews ri7 cseliken-kt, ell kye7euy-kt, Em te t'upe7-kt, ell ri7 qellemin-kt.¹

Tems qas ri qweselktens kuc yucemins cwecweytes te stem te kult ren tmicw ell ri sewllkwe.²

Ri sumec-kt tsqey re ucemin tem ul me yews, re tmicw, sewllkwe ell ri tsups tem te specec.³

Whereas the Stuctewsemc People (Bonaparte Indian Band) has never ceded, surrendered, abandoned or in any way relinquished rights to our traditional territory, and continue to hold title, exercise rights and jurisdiction over our traditional territory;

Whereas Stuctewsemc People hold Aboriginal Title and Rights over their traditional territory as recognized in section 35 of the *Constitution Act*, 1982 and in the *United Nations Declaration on the Rights of Indigenous People*;

Therefore activities by the Crown or Third Parties within Bonaparte territories are considered infringements of Bonaparte Indian Band's Title.

¹ We are the rightful and traditional owner of our land. Our family members know their ancestors, great grandparents, grandparents, and parents.

² For generations our people managed and used our lands, waters, and resources in a sustainable way.

³ One of our core beliefs is that we are responsible for the protection of our lands, water resources, and the air we breathe.

DEFINITIONS

In this document:

“Activity” means any legislation, regulation, policy, procedure, plan, grant license, permit, restriction, amendment, approval, authorization, transfer, transaction, operation, or other activity, which may have an impact on Stuctewsemc Signatories’ Aboriginal Title and Rights.

“Crown” includes the Crown of Canada, British Columbia, their cabinets, committees, ministries, crown corporations, local governments, regional governments, employees and contracted agents, representatives and delegates, for the purpose of the duties of consultation and accommodation.

“Stuctewsemc” is the Bonaparte Indian Band and includes its members and government.

“Third Party” means any individual, cooperation, firm, municipality, regional district, industry, society or other non-governmental organization carrying on activities in Stuctewsemc lands.

“Tmicw” means the land or territory of the people.

A. PURPOSE

This purpose of this Consultation Policy is to provide guidance and direction to the Crown and Third Parties seeking to use land and/or resources within Stuctewsemc (Bonaparte) territory and therefore may infringe upon Stuctewsemc Title and Rights.

B. BACKGROUND

We the Stuctewsemc (Bonaparte) People have never surrendered or in any way relinquished Aboriginal title and rights to Stuctewsemc Territory. More specifically, Stuctewsemc has never surrendered or in any way relinquished Aboriginal Title and Rights to its Territory and continues to hold Aboriginal Title and Rights over this area and are the decision maker and stewards of the lands and resources located therein.

Stuctewsemc Kuc - we are Secwepemc and our territory is within the larger Secwepculecw. We have provided a map of our core area of use and occupation within the Secwepemc Nation, where ever since time immemorial we have been the primary stewards of our lands and resources. We pixmes, wewelmes, ell tsplukmes⁴ far from outside our core area with other First Nations and therefore our territory is not confined to the map provided.

Engagement by Crown and/or a Third Party with Stuctewsemc should be based on achieving Stuctewsemc's free, prior and informed consent to activities in Stuctewsemc Territory or activities that impact Stuctewsemc Aboriginal title, rights and interests ("Aboriginal Title and Rights"). Whenever possible, Stuctewsemc will work with The Crown and Third Party to express our concerns and help the Crown and Third Party address those concerns and accommodate our Aboriginal Title and Rights.

Stuctewsemc's goals in engagement with Crown and Third Parties are respect and protection of our Aboriginal Title and Rights, maintaining, revitalizing and strengthening our culture, traditions, economy and environment, and advancing reconciliation.

The Guidelines and Procedure set out below have been established to assist the Crown and Third Parties to meaningfully engage with Bonaparte.

⁴ Hunted, fished, and gathered.

C. GUIDELINES

1. Consultation must happen at the earliest possible stages.

The Crown must initiate consultation at the earliest stage of the decision-making process and conclude mutually agreed-to terms of reference for consultation and accommodation negotiations with the Bonaparte Chief and Council before a decision is made which may infringe upon Bonaparte Indian Band Title or Rights. Early engagement will allow for sharing of ideas at the earliest stage which can assist in identifying challenges and issues as well as building relationships.

2. Consultation must be conducted with Bonaparte elected Council, or their appointed representatives.

Chief and Council are the governing body of Bonaparte and represent the members in the consultation process. The Crown must notify Bonaparte Chief and Council of Activities and request consultation in writing. Consultation cannot be conducted through individual Bonaparte members. Chief and Council will, with its own community, determine the processes for its own communication with the Bonaparte members. Member communications may include Crown and/or Third Party participation where requested by Chief and Council.

3. Consultation must be conducted in good faith and based on mutual respect.

Bonaparte is committed to engaging in consultation with the Crown and Third Parties in good faith and in a respectful manner and expects the same in return. For Crown and Third Parties to show good faith and respect in the consultation process, Bonaparte's perspectives, traditional knowledge and laws, and decision making processes must be respected. This also means that Bonaparte must be engaged in determining the level of engagement, consultation and accommodation required for each project and or decision that may affect our Aboriginal Title and Rights.

4. Consultation must be based on Bonaparte having adequate information and knowledge.

Bonaparte is only able to meaningfully assess impacts to its Aboriginal Title and Rights if it has all relevant information and adequate time and resources to analyze and evaluate such information. Full and ongoing disclosure of information with respect to a project or decision and potential impacts, including cumulative impacts, is expected. In the event that Bonaparte identifies potential impacts on its rights, then we may require further information. In some cases, Bonaparte may need to undertake environmental, socioeconomic and cumulative impacts assessments. This may require a Traditional Use Study and/or evaluations of oral histories, land management plans, land use and occupation maps, archaeological and bio-physical research and other studies. Only Bonaparte can determine the information that is necessary for us to make informed decisions about impacts to our Aboriginal Title and Rights.

5. Bonaparte must be provided with adequate funding to meaningfully participate in consultation processes.

Bonaparte requires a no-cost model, where the costs of the consultation process and the negotiation of agreements are born by those seeking to benefit from the lands and resources within the Bonaparte Territory. Crown is responsible for providing immediate, agreed-upon, and on-going funding to cover Bonaparte's costs to meaningfully participate in land resource decision-making, including costs for the following:

- Time and expense of staff and other experts;
- Travel and honoraria costs for elders and community resources people;
- Costs for planning, assessments, studies and research;
- Training of Bonaparte Band members; and
- Community meetings and other forms of communication.

Third parties may be required to contribute to Bonaparte capacity in relation to consultation and accommodation through measures such as application fees, and/or providing jobs, training and work experience opportunities within their organizations to Bonaparte Indian Band members.

6. Engagement by Crown and Third Parties must be aimed at identification of potential impacts to Bonaparte's Title and Rights and with the intention to meaningfully address Bonaparte's concerns.

The Crown and Third Parties should be committed to working with Bonaparte to identify and analyze impacts; to ensure that impacts are avoided where possible and mitigated where avoidance is not possible; to provide compensation for impacts, including environmental, cultural, social and economic; and to ensure that Bonaparte fairly benefits from the use of its land and resources. Mitigation may include changes to the timing, location or scope of an activity, preventative measures, changes in project design, and monitoring by Bonaparte Band members. Compensation is based on attempting to put Bonaparte in the same position as if no impacts had occurred. Benefits may include things such as, resource revenue sharing, royalties, equity participation, support for community infrastructure, and employment, contracting and training opportunities.

7. Consultation agreements and participation or impact benefit agreements with a Third Party, or benefits received from a Third Party do not discharge the Crown from its duty to consult and accommodate Bonaparte.

While the Crown may delegate procedural aspects of consultation to Third Parties, it remains responsible for discharging its duty to consult and accommodate Bonaparte. Depending on the scope of the potential activity, Bonaparte may expect the Crown to negotiate revenue sharing, joint decision making, and other government to government agreements. These negotiations must proceed separately between the Crown and Bonaparte, but can proceed at the same time as negotiations with Third Parties.

8. Engagement in a consultation or negotiation process does not indicate that Bonaparte agrees to or supports a project or activity.

Participation in a consultation or negotiation process never obligates Bonaparte to consent to any activity nor limits any future position Bonaparte may take in negotiations or litigation or in any other process.

9. Negotiation with Bonaparte must be based on open and transparent sharing of information.

Bonaparte requires all relevant financial, business, environmental and other information to engage in negotiations. This may include information such as, financial models, corporate policies and long term plans. Where appropriate, Bonaparte will consider the use of confidentiality agreements to facilitate negotiation.

D. SUMMARY OF PROCEDURE

Step 1 - Notification and Information Sharing by Crown and/or Third Party

The Crown and/ will provide the Bonaparte Chief and Council in writing (c/o the Director of Lands and Resources) with an Information Package at the earliest possible stage. The Information Package should include sufficient information for the Chief and Council to fully consider the proposed activity. See Schedule A for list of the minimum information requirements of the Information Package.

Step 2 – Payment of Referral Fee and/or Confirmation of Funding for Initial Review

Bonaparte contacts the Crown to acknowledge receipt of the proposal and advise of administration fees and costs to undertake the initial review. Depending on the scope of the proposal, a written capacity funding agreement may be required at this stage.

Step 3 – Initial Review by Bonaparte

Subject to financial considerations, Bonaparte undertakes an initial review of the proposed activity. This review will identify any gaps in the information required as set out in Schedule A and a request may be made for further information related to the proposed activity such as background information referenced by the agency, site or area visits, or further studies and assessments. Once all the relevant information is provided to complete an initial review, the Bonaparte Band Council or its designate will provide a time frame for response and indication of the financial/human capacity required to accommodate them. Depending on the scope and nature of the proposal, discussions about capacity funding (or further capacity funding) and steps and timelines in the process may take place or there may be a need to enter into agreements to facilitate the review process.

Step 4 – Further Information Gathering and Analysis

Subject to financial considerations and based on the results of the initial analysis, further information gathering and analysis will be completed if required. Bonaparte will work with the Crown and Third Parties to complete the information gathering and analysis. Where there are concerns or objections that the Band Council believes may be resolved with further review, the Crown or Third Party will be notified of an estimated time and cost to conduct further review.

Step 5 – Analysis of Impacts to Bonaparte Rights

Bonaparte will share information with the Crown and/of the Third Party to assist the parties in understanding any potential impacts and infringement to Bonaparte's Aboriginal Title and Rights. This will include indentifying relevant concerns and recommendations for resolution through avoidance, and/or mitigation.

Step 6 – Negotiation of Mitigation, Benefits and Accommodation

Provided that Bonaparte is not opposed to the proposal and its concerns may be addressed, then Bonaparte will request negotiations with the Crown and/or the Third Party to address mitigation, compensation for impacts, and benefits to Bonaparte. This may include negotiation of an impact benefit agreement with Third Parties and negotiation of revenue sharing, joint decision making, or other agreements with the Crown.

Step 7 – Implementation and Monitoring

Where an activity proceeds, either as initially planned or modified pursuant to this process, Crown or the Third Party will implement accommodation in a timely manner. Implementation will include monitoring by Bonaparte appointed monitors. Crown and/or Third Parties will cover the cost of monitoring.

E. NO PREJUDICE TO BONAPARTE

1. Nothing in this Consultation Policy obligates Bonaparte to consent to any activity within its Territory.
2. Nothing in this Consultation Policy shall limit or take away from the Crown's obligation to consult with and accommodate Bonaparte.
3. Neither the process set out in this Consultation Policy nor any agreements concluded with the Crown or third parties may be used to define or in any way limit Bonaparte's Aboriginal Title and Rights.
4. This document is subject to periodic review by the Bonaparte Indian Band Chief and Council and is in effect until further notice.

Schedule A: Information for Review by Bonaparte

1. The names and full contact information for the Crown and Third Party contact, including a recent corporate registration search for any companies acting as a Third Party.
2. The names and full contact information for any Crown decision-makers related to the proposed activities.
3. The nature and scope of the proposed activity.
4. The nature and scope of all related activities, such as applications for related infrastructure, water use, future growth phases related to a proposed project, etc.;
5. The rationale for or purpose of the proposed activities.
6. Clearly drawn or reproduced referenced maps of the area (including a small scale locator map with the relevant British Columbia map-sheet and a larger scale map showing land forms) as well as digital maps.
7. The economic benefits of the proposed activity to Bonaparte.
8. The timing of the proposed activities, including all applicable regulatory timelines.
9. The duration and anticipated life-cycle of the proposed activities.
10. Identification of possible alternatives to the proposed activities.
11. A summary of known traditional use information and traditional ecological knowledge relevant to the proposed project area.
12. A preliminary environmental risk assessment of the proposed activities;
13. Relevant ethnographic, archaeological, hydrological, ecological and bio-physical reports, studies and assessments available to be reviewed in relation to the proposed project;
14. Relevant land and resource management plans, legislation, policy, guidelines and regulations available to be reviewed in relation to the proposed project.
15. Relevant resource conservation, remediation, and reclamation plans.
16. Identification of who, in addition to the Third Party, will be involved in carrying out the proposed activities, including agents and contractors working for the Crown and the Third Party.

Schedule B: Terms of Reference

Agreed to Terms of Reference include, at a minimum:

1. A schedule for consultation and accommodation negotiations,
 - that prioritizes concluding negotiations about strategic level decisions between the Crown and Stuctewsemc before operational decisions are made;
 - that includes up front time and resources to conduct archaeological and traditional use studies, land use planning and community consultations where requested by the Stuctewsemc Signatories;
 - that accommodates timeframes proposed by Stuctewsemc Signatories or its representatives in recognition of present Bonaparte Indian Band limitations in capacity and resources.
2. The Names and positions of authorized representatives of the Crown and the Stuctewsemc Signatories who have the mandate/authority to participate in negotiations and make the decision(s) in question.
3. The timing and nature of required engagement of Third Parties.
4. Resourcing for the process consistent with Guideline 5 of the Consultation and Accommodation Policy Guidelines listed above.
5. Requirements for the Crown and Third Parties to provide complete information about a proposed Activity necessary to understand its potential impacts on Bonaparte Tile and Rights, without cost to Stuctewsemc members or organizations, and in a timely, manageable, and understandable format, including information package described in Schedule A.
6. Dispute resolution mechanisms that are consistent with Consultation and Accommodation Policy Guidelines.