

05-APR-05 07:58AM FROM-ARCHAEOLOGY

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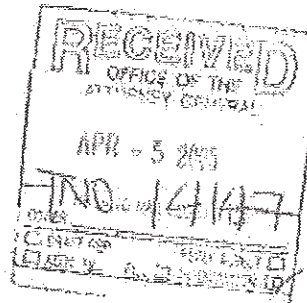
T-506 P 01/02 F-858



April 4, 2005

Ref: 39263

Mr. Robert Morales, Negotiator
Hul'qumi'num Treaty Group
RR #1
12611B Trans Canada Highway
Ladysmith, BC V9G 1M5



Dear Mr. Morales:

**Re: Poets Cove at Bedwell Harbour Development, South Fender Island;
Hul'qumi'num Request for Meeting with the Archaeology Branch and others**

Thank you for your March 25, 2005 letter to Minister Abbott seeking assistance to facilitate a meeting with the Archaeology and Registry Services Branch, and other parties having an interest in archaeological materials currently being recovered under an amendment to *Heritage Conservation Act* permit 2002-388. I have been asked to respond directly on the Minister's behalf.

The Archaeology and Registry Services Branch is certainly willing meet with you and any of the other parties mentioned, whenever you may be collectively available. I appreciate that it is difficult to gauge the size of the gathering at this point however, if we may facilitate this meeting by providing the venue, I am happy to offer use of our meeting rooms. Please let me know when you have a specific date in mind and a better idea of the numbers of those wishing to participate.

Sincerely,

J. Batten
Justine Batten, Director
Archaeology and Registry Services Branch

pc See Distribution List Page 2

TREATY NEGOTIATIONS OFFICE

APR 07 2005

CORRESPONDENCE

Ministry of Sustainable
Resource Management

Reginies and Titles Department
Archaeology and Registry
Services Branch

Mailing Address:
PO Box 9375 Sm Prov Court
Victoria BC V8W 9M5
Phone: (250) 952-5071
Fax: (250) 952-4188

Location:
3400 Davidson Ave
Victoria BC V8Z 3P1

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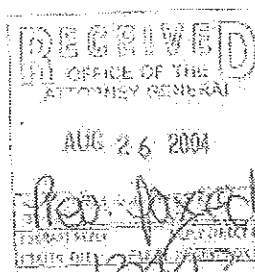
Page 2 -- Distribution List -- V. a. Fax

p.c. Honourable George Abbott, Minister
Honourable Geoff Plant, Minister
Honourable Murray Coell, M.L.A., Saanich North & the Islands
Chief Allan Claxton, Tsawout First Nation
Chief Vern Jacks Sr, Tseycum First Nation
Chief Ivan (Wayne) Morris, Tsartlip First Nation
Bill Wilson, Negotiator, Temexw Treaty Group
Chief Kim Baird, Tsawwassen First Nation

04-AUG-26 04:28PM FROM-ARCHAEOLOGY

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T-605 P 01/03 T-263

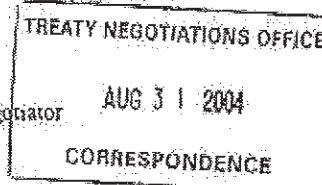


August 26, 2004

File 21100-20/04A238

Hul'qumi'num Treaty Group
12611 B Trans Canada Highway
Ladysmith, B.C. V9G 1M5

Attention: Robert Morales, Chief Negotiator



By Fax: (250) 245-4668

Dear Mr. Morales:

Re: Application 21100-20/04A238; Floyd Underwood, *Heritage Conservation Act*
Site Alteration Permit application, DeRt-004, South Pender Island

Thank you for your August 11, 2004 letter commenting on Tsawout Chief Allan Claxton's August 6 letter to Ray Kenny regarding Floyd Underwood's application for a *Heritage Conservation Act* Site Alteration Permit. You also reference my August 11 letter to Bill Janies of Ports Cove at Bedwell Harbour Ltd., reminding him of the current expiration date of Permit 2002-388 on August 31, 2004.

In my August 13, 2004 letter to the Chiefs of the Hul'qumi'num Treaty Group (regarding the Underwood application, and copied to you), I provided some information relevant to your comments, and will repeat part of this here:

"... the Tsawout First Nation have written (August 6, copied to the HTG's Robert Morales) advising that they "have determined that neither the agreement nor the new permit would be in the best interests of the Tsawout First Nation" and "have therefore requested that Floyd Underwood withdraw his application". The Tsawout further advise (August 11 letter, also copied to the HTG's Robert Morales) that they have been unable to contact Mr. Underwood and have rescinded his status as the Tsawout First Nation representative for the Ports Cove Project, and ask that the Site Alteration Permit application made by Mr. Underwood be rescinded.

As Mr. Underwood also represents the Tseyicum First Nation in this application, we have requested that the Tseyicum also provide written advice as to Mr. Underwood's status and their wishes with respect to the application.

In the interim, as a result of the advice from the Tsawout First Nation, processing of the application has been suspended. A final decision will not be made until receipt of the

Ministry of Sustainable
Resource Management

Regineries and Titles Department
Archaeology and Registry
Services Branch

Mailing Address:
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Location:
1400 Davidson Ave.
Victoria BC V8Z 3P8

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Tseycum First Nation's advice and our having made a formal reasonable effort to reach Mr. Underwood. Your comments will be carefully considered, and we will advise you when the decision is made."

I have received verbal advice on this matter from Tseycum Chief, Vern Jacks, and have requested written confirmation, but as yet, have not received this. I have contacted Mr. Underwood by registered mail and, in recent conversation with him, was informed that a response has been mailed, but again, I have not received this.

Thus, in response to your request for confirmation:

- 1) Mr. Underwood has not formally withdrawn his permit application. Mr. Underwood has been notified in my letter that if no response has been received by August 31, 2004, I will recommend that the application be considered abandoned and recorded as "withdrawn".
- 2) The Ministry has not yet made the decision in regard to Mr. Floyd Underwood's permit application. As noted above, we will advise you when the decision is made.

The August 11 letter to Mr. Bill James is simply a reminder notice as to the approach of the permit expiration date, with additional text specific to the unique circumstances of the project. I assure you that the requirement for basic compliance to existing permit conditions continues and is in no way affected if a corresponding statement does not appear in the reminder notice.

Please note that the initial application for permit, which ultimately led to issuance of permit 2002-388, was referred to the Hul'qumi'num Treaty Group, and that changes were made in response to HTG comments. Similarly, the application to amend the scope of permit 2002-388 (to allow screening of the displaced midden) was also referred and HTG comments were carefully considered and responded to. Extensions to the term of a permit are not referred to First Nations for comment. As with a similar previous notice, interested parties were copied on the reminder letter as a courtesy, and not as a referral inviting comments.

As also mentioned in my August 13 letter, extensions to the term of permit 2002-388 have been granted to provide the HCA authorization necessary for the screening work to continue. If we agree that recovery of the displaced remains and artifacts is desirable, the extensions seem preferable to simply allowing the permit to lapse.

For your information, Poets Cove at Bedwell Harbour Limited Partnership has formally requested that the permit expiry date be extended to November 30, 2004. I have recommended that the permit term be amended as requested.

In response to your final point, you may recall that the branch has attempted to facilitate further dialogue between the interested First Nations and the developer. Part of our early effort to resolve the issue of the unauthorized displacement of large volumes of midden was in providing a forum for dialogue - held at our offices on the afternoon of February 6, 2003, and attended by

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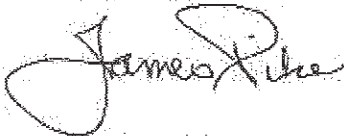
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the developer, consulting archaeologist, Tseycum First Nation, HTG staff (Eric McLay and Joey Caro) and member band, Cowichan Tribes. The branch has also consistently and repeatedly reminded the proponent and other First Nations of the HTG's asserted interest in the project area, and of our intention to continue providing HTG (and member groups) with the opportunity to comment on proposed changes to the scope of existing permits and/or new permit applications. Throughout this challenging process and the reality of overlapping or competing interests, the branch endeavors to maintain a neutral and objective stance.

Sincerely,



James Pike
Project Officer

cc Hon. Geoff Plant, Attorney General and Minister for Treaty Negotiations (250-387-6411)
Hon. George Abbott, Minister of Sustainable Resource Management (250-356-8273)
Dan Goodleaf, Chief Negotiator, Federal Treaty Negotiation Office (604-775-7149)
Nancy Douglas, Negotiator, British Columbia Treaty Negotiations Office (250-356-0366)
Cst. G. Hepner, Outer Gulf Islands RCMP Detachment (250-629-3625)
Steve Salmond, Administrative Crown Counsel (250-387-2828)
Chief Allan Claxton, Tsawout First Nation (250-652-9114)
Chief Vern Jacks, Tseycum First Nation (250-656-0868)
Chief Ivan (Wayne) Morris, Tsartlip First Nation (250-652-3788)
Chief Kim Baird, Tsawwassen First Nation (604-943-9226)
Bill Wilson, Negotiator, Te'mexw Treaty Group (250-360-2206)
Hul'qumi'num Treaty Group Chiefs and Council
Floyd Underwood
Bill James

2005 10:47 250-358-2213
 ON THU 22:06 FAX 403 201 3335

TNO COMMUNICATIONS
 3111 Roberts

PAGE 02/05
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**POETS COVE AT
 BEDWELL HARBOUR
 LIMITED PARTNERSHIP**

July 30, 2005

David Podmore, President
 Urban Development Institute - Pacific Region
 3rd Floor, 717 West Pender Street
 Vancouver, BC
 V6C 1G9

Resort Office:
 9101 Esplanade Road
 Pender Island, B.C.

ABORIGINAL RELATIONS
 AND RECONCILIATION

AUG 08 2005

CORRESPONDENCE Box (504) 689-8691

Re: Hul'qumi'num Treaty Group response to Poet Cove Resort's UDI Award of Excellence.

Dear Mr. Podmore,

I would like to express my regret that the UDI has been placed in the position where it has to defend an award given to Poets Cove Resort. We are honoured to be recognized for the over 14 years of hard work and dedication by numerous BC professionals, which has gone into the creation of this world-class resort. I appreciate this opportunity to provide you with background on the allegations that the Hul'qumi'num Treaty Group has made against Poets Cove, which we feel are unfounded.

Poets Cove is built on a site that has hosted a resort for over fifty years (formerly Bedwell Harbour Resort) and, being located on a midden, it is inevitable that we would come across buried artefacts and bones of various species. It was for this reason the management team took over 14 years to ensure the proper permits were in place and regulations adhered to prior to construction. Throughout this period, all required agency and First Nation correspondence were complied with and Poets Cove never received any notification or warning regarding the possible discovery of First Nation archaeological remains. The management team remains convinced that from the beginning all work that was undertaken was covered by the appropriate permits, and the Archaeology Branch of BC and the onsite-consulting archaeologists approved all activity in advance.

Immediately upon learning of the exposure of the midden in certain places of the development, Poets Cove contacted the proper authorities. In response to Poets Cove management's behaviour, Jim Pike, project manager for the Provincial Ministry of Sustainable Resource Management stated;

"I understand that this information has come as a surprise to you, and I very much appreciate the prompt and professional manner in which you have proposed to address the concerns..."

07/22/2005 10:47 250-356-2213

TND COMMUNICATIONS

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07/21/05 THU 22:08 FAX 403 201 0156

Bill Roberts

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In spite of these precautions, certain midden material was disturbed during construction. The question of whether that disturbance was authorized by the permit in place is currently before the courts. Poets Cove's position is that the permit did authorize all the work that was done.

Poets Cove's position, which we expect to be vindicated in Court, is that we followed all the proper procedures, received all the proper permits and that all the activities were approved in advance by all governmental agencies.

I would like to correct allegations made by Robert Morales in his letter:

- Mr. Morales' statement that Poets Cove is the scene of "one of the worst desecrations of an aboriginal burial ground by developers in the recent history of Canada" is grossly inaccurate and is not supported by either of the First Nations who have vested interests in this matter; our neighbours, the Tseycum First Nation and the Tsawout First Nation.
- Mr. Morales also claims that construction was "shut down" by the RCMP when the midden was first discovered. In truth, Poets Cove immediately volunteered to cease all construction while the investigation took place.
- Although not legally required to do so, Poets Cove undertook at its own expense to screen and catalogue as well as rebury all archaeological material that was uncovered. Throughout the two-year recovery and screening process, Poets Cove worked hard to ensure there was constant collaboration between all parties and we invested a considerable amount of time and money to ensure all screening and recovery work was done appropriately and professionally within the parameters and guidance of the Provincial Ministry of the Sustainable Resource Management while respecting the concerns of our First Nations neighbours.
- Mr. Morales also states that "thousands of human remains" have been salvaged. However onsite reports indicate that there are fewer than a thousand bone artefacts, some of which are animal bones, and at no time were these materials used as "new road bed", but were protected until appropriate screening could take place.
- In addition, Poets Cove volunteered to address all concerns relating to this material, including changing construction plans to relocate buildings to protect sensitive areas, and also providing protective covering as needed. Poets Cove also paid a crew of 10 archaeologists and 20 First Nations workers to sift, screen and perform cleansing ceremonies of the remains. The aggregate cost to Poets Cove for these initiatives was over \$3 million. Mr. Morales failed to consider these

costs when he accuses Poets Cove of profiting "from the desecration of our aboriginal cemeteries." The midden area has not been officially designated as "aboriginal cemeteries".

- Mr. Morales also neglects to mention that through out the screening activities, The Tseycum and Tsawout First Nations were responsible for directing the process, including the speed in which midden material was being screened. The screening process and methodology was completed as per the permit approved and issued by the Archaeology Branch and under the guidance of a certified archaeologist, who reported to all parties working on the site. As well, activities such as blessing ceremonies to address the cultural needs of the First Nations were encouraged and often contractors along with Poets Cove employees were invited to participate. Further, the First Nations arranged cultural cleansing ceremonies respecting the disturbed ancestors, which were funded by Poets Cove. Mr. Morales fails to mention that an elder of the Hul'qumi'num Treaty Group, Ms. Ruby Peters, had performed certain ceremonies and was paid for her time by Poets Cove, as our respect for the First Nations beliefs and tradition.

- Another allegation by the Hul'qumi'num Treaty Group is with regards to the inappropriate relocation of the midden material. It is important to note that our First Nations neighbours lobbied the Federal Government to move the midden onto their property, and while an agreement was struck between all parties, with the Government party to all meetings and agreements, the Provincial Government rendered this agreement impossible to perform by refusing to permit relocation and resulted in the Tsawout First Nation requesting the cancellation of this agreement.

As Chief Vern Jacks states in his September 2004 letter to the local RCMP:

"...our representatives were also under the clear impression that all the terms of the agreement had been met with acceptance by all groups...including the Archaeology Branch. As a result, we honestly believed we were doing the right thing by proceeding with our work. Poet's Cove is considered for charges here as they are the current permit holder.... We ask that you recommend to Crown Counsel that no charges be contemplated against Poet's Cove on the above matter. As a group, Poet's Cove and the First Nations involved were acting in good faith throughout this time."

This is just one indication of the constructive working relationship that Poets Cove has been committed to building with the First Nations. It is fair to say that in his efforts to use Poets Cove as a platform to further the cause of the Hul'qumi'num Treaty Group, Mr. Morales has failed to take into consideration or respected the mutually supportive and

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Bill Roberts

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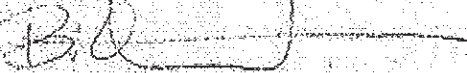
collaborative relationship that the Tsayocum First Nation and Tsawout First Nation have created with Poets Cove, and continue to enjoy as we build for the future.

Mr. Morales also fails to mention that we are continuing to work together with the First Nations on the next steps of ensuring all artifacts and human remains that were found are catalogued and that the reburial is done in a manner that is respectful to First Nations' cultures and traditions.

In closing, I would like to add once again how honoured we were to be awarded with a *Partnerships in Community Building 2005 Award of Excellence* by the UDI. While the creation of Poets Cove has not been without its challenges, we feel we have worked hard at building community partnerships with First Nations. It is our hope that once the reburial is complete, Poets Cove, the Tsawout First Nation and Tsayocum First Nation may assist other communities, developers and First Nations stakeholders to learn from our experience so that BC can continue to grow under the code of ethics as outlined by the UDI.

Please do not hesitate to contact me directly at (403) 256-2446 should you require additional information on this matter.

Sincerely,



Bill Roberts
Project Manager
Poets Cove Resort & Spa

CC: Right Excellency the Right Honourable Adrienne Clarkson, Governor General (613-998-1664)
Honourable Liz Fritts, Department of Canadian Heritage (613-993-6404)
Honourable Andy Sorn, Department of Indian and Northern Affairs (613-905-9953)
Dan Goodleaf, Chief Negotiator, Federal Treaty Negotiation Office (604-775-7149)
Pat Martin, MP, NDP, Aboriginal Affairs Critic (613-992-2890)
Iain Crowder, MP, NDP, Nanaimo-Cowichan (613-993-3577)

Honourable Iona Campagnolo, Lieutenant Governor of British Columbia (250-387-2077)
Honourable Gordon Campbell, Premier of British Columbia (250-387-0087)
Ian Bailey, Negotiator, British Columbia Treaty Negotiations Office (250-355-0366)
Carol James, Leader, NDP, British Columbia (604-432-9517)

Honourable Olga Mücke, Ministry of Tourism, Sports and Art (250-933-4450)
Honourable Colin Hansen, Ministry of Economic Development (250-952-0102)
Honourable Tom Christenson, Ministry for Aboriginal Reconciliation (250-356-2210)
Justine Betten, Archaeology and Registry Services Branch (250-932-4188)
Victoria Court Registry - Administrative Crown Counsel (250-356-6279)
Outer Gulf Island RCMP (250-356-6279)
David Essig, Chair, Islands Trust (250-495-5155)

Pages 10 through 46 redacted for the following reasons:

S14, S16