

Page 001 of 413 to/à Page 035 of 413

Withheld pursuant to/removed as

s.3

## RE: Tsawout question

---

From: Wilcox, Gracie IRR:EX <Gracie.Wilcox@gov.bc.ca>  
To: Chaytor, Wisty IRR:EX <Wisty.Chaytor@gov.bc.ca>, Hill, Edward GCPE:EX <Edward.Hill@gov.bc.ca>  
Sent: August 8, 2018 11:33:19 AM PDT  
Good afternoon,

Unfortunately, I have not had contact with Tsawout either. I was looped into email requests for a meeting from Carina Diller to Tsawout.

Carina reached out to Eva Wilson three times in March of this year, with no response.

Tsawout sent a letter to Minister Fraser (June 2018) regarding disruption and encroachment on their traditional territory demonstrating keen interest in the process of dealing with ancient human remains on public and private lands. Arch Branch is drafting (or has drafted) the response.

Please let me know if you would like more details on the dates or have any further questions.

Kindly,  
Gracie

---

**From:** Chaytor, Wisty IRR:EX  
**Sent:** August 8, 2018 11:20 AM  
**To:** Hill, Edward GCPE:EX <Edward.Hill@gov.bc.ca>  
**Cc:** Wilcox, Gracie IRR:EX <Gracie.Wilcox@gov.bc.ca>  
**Subject:** RE: Tsawout question

Hi Ted,

Yes, Gracie and I are on this file now.

I have had no contact at all with Tsawout. Gracie has been on the file longer.

Gracie do you have any info?

Thanks  
Wisty

### **Wisty Chaytor**

*Negotiator,  
Ministry of Indigenous Relations and Reconciliation  
2957 Jutland Rd. 3<sup>rd</sup> Floor, Victoria, BC*

*Tel: 250 818-6392 (cell)*

---

**From:** Hill, Edward GCPE:EX  
**Sent:** Wednesday, August 8, 2018 11:07 AM  
**To:** Chaytor, Wisty IRR:EX  
**Subject:** Tsawout question

Hi Wisty,

I understand you may be responsible for Tsawout FN.



Tsawout are planning a public paddle event around James Island on September 2, to raise awareness and money for their litigation for James Island. <https://www.facebook.com/events/465166783945217/>

In January when the claim was filed, the minister made a commitment to reach out to Tsawout to try to work this out, outside of the courts. Checking if any outreach or engagement has happened, or is currently happening.

We'd like to update our note and be ready if there's any media pickup on the Tsawout event.

Much thanks,

Ted

## **RE: MEDIA REQUEST - Jack Knox, Times Colonist - James Island**

---

From: McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>  
To: Nash, Laurel IRR:EX <Laurel.Nash@gov.bc.ca>, Plank, Sarah GCPE:EX <Sarah.Plank@gov.bc.ca>, Chan, Debbie AG:EX <Debbie.Chan@gov.bc.ca>, Miles, Barbara S IRR:EX <Barbara.Miles@gov.bc.ca>, Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>, Chaytor, Wisty IRR:EX <Wisty.Chaytor@gov.bc.ca>  
Sent: August 29, 2018 1:51:08 PM PDT

Sarah -

Hugh Gwillim is AG's current expert on Douglas Treaties, so he would be the right MAG contact on this one.

Wisty Chaytor is currently working on Tsawout and is looking into overlapping claims question. She is in the office.

Christie Harvie has some of the general background on recent events with WSANEC and Douglas Treaties. You're probably best to reach Christie on her cell today.

I'm cc'ing both Christie and Wisty. Feel free to reach out to them as needed.

Tom

-----Original Message-----

From: Nash, Laurel IRR:EX  
Sent: Wednesday, August 29, 2018 1:47 PM  
To: McCarthy, Tom IRR:EX; Plank, Sarah GCPE:EX; Chan, Debbie AG:EX; Miles, Barbara S IRR:EX  
Subject: RE: MEDIA REQUEST - Jack Knox, Times Colonist - James Island  
Importance: High

I also think we need to check in with SPB and Debbie on this as we need to be very careful with our messaging.

Barb were you involved in this one or just Francesca?

Any advice appreciated

Thanks

Respectfully,

Laurel Nash  
Assistant Deputy Minister  
Strategic Initiatives and Partnerships Division  
Ministry of Indigenous Relations and Reconciliation  
(t)250 953-4004 or (c)250 508-1670

-----Original Message-----

From: McCarthy, Tom IRR:EX  
Sent: Wednesday, August 29, 2018 1:12 PM  
To: Plank, Sarah GCPE:EX; Nash, Laurel IRR:EX  
Subject: RE: MEDIA REQUEST - Jack Knox, Times Colonist - James Island

Hi Sarah -

I'm reaching out to our team to sort out the best contact for James Island, but s.13

s.13

s.13

s.13

On the second instance - trying to find a contact.

Hoping that helps. More shortly,

Tom

-----Original Message-----

From: Plank, Sarah GCPE:EX

Sent: Wednesday, August 29, 2018 12:34 PM

To: McCarthy, Tom IRR:EX; Nash, Laurel IRR:EX

Subject: MEDIA REQUEST - Jack Knox, Times Colonist - James Island

Hi Tom and Laurel,

Heads up on this media request below. Wondering if you can recommend who I could talk to about this in the ministry? Or if one of you might be able to assist me in crafting a response?

His deadline is tomorrow, so will need to pull this together fairly quickly.

Thanks for your help,  
Sarah.

On Aug 29, 2018, at 11:14 AM, Knox, Jack (Times-Colonist)  
<JKnox@timescolonist.com<mailto:JKnox@timescolonist.com>> wrote:

Hi Sarah. I'm writing a column about the Tsawout claim to James Island and, more broadly, the issue of claims to fee-simple property.

It's a bit of a gooey topic because it pits the Tsawout, who see the island as traditional territory that should have been made into a reserve under the terms of the Douglas treaties, against not only the federal and provincial governments but an owner, billionaire Craig McCaw, who paid \$26 million for the island in 1994, about 120 years after it was first parceled off by the province. It's the kind of case that gives homeowners the heebie-jeebies, the assumption being that if McCaw's property can be claimed, so can their own.

I need to talk to someone about where the province stands on the issue of aboriginal title versus private property (that includes its reaction to last September's court decisions involving the Haida and Cowichan Tribes). I'd also like to clarify whether there are overlapping claims for James Island, official or otherwise.

Thanks  
Jack

Jack Knox  
Columnist  
Victoria Times Colonist  
Office: (250) 380-5206  
Mobile (250) 888-0081  
Twitter: jackknox

## **RE: MEDIA REQUEST - Jack Knox, Times Colonist - James Island**

---

From: Miles, Barbara S IRR:EX  
To: Nash, Laurel IRR:EX <Laurel.Nash@gov.bc.ca>, McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>, Plank, Sarah GCPE:EX <Sarah.Plank@gov.bc.ca>, Chan, Debbie AG:EX <Debbie.Chan@gov.bc.ca>  
Cc: Yearwood, Paul AG:EX <Paul.Yearwood@gov.bc.ca>  
Sent: August 29, 2018 1:53:12 PM PDT

Hi Laurel,

Unfortunately, no, I was not involved in this one - just Francesca. I can check on our LAN to see if we have anything. I'm linking Paul Yearwood as it's possible he may have been involved in statements re: private land and Aboriginal title.

Barb

-----Original Message-----

From: Nash, Laurel IRR:EX  
Sent: Wednesday, August 29, 2018 1:47 PM  
To: McCarthy, Tom IRR:EX; Plank, Sarah GCPE:EX; Chan, Debbie AG:EX; Miles, Barbara S IRR:EX  
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Any advice appreciated  
Thanks

Respectfully,

Laurel Nash  
Assistant Deputy Minister  
Strategic Initiatives and Partnerships Division  
Ministry of Indigenous Relations and Reconciliation  
(t)250 953-4004 or (c)250 508-1670

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Subject: RE: MEDIA REQUEST - Jack Knox, Times Colonist - James Island

Hi Sarah -

I'm reaching out to our team to sort out the best contact for James Island, but I think there are two issues here - s.13

On the second instance - trying to find a contact.

Hoping that helps. More shortly,

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To: McCarthy, Tom IRR:EX; Nash, Laurel IRR:EX

Subject: MEDIA REQUEST - Jack Knox, Times Colonist - James Island

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Or if one of you might be able to assist me in crafting a response?

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Thanks  
Jack

Jack Knox  
Columnist  
Victoria Times Colonist  
Office: (250) 380-5206  
Mobile (250) 888-0081  
Twitter: jackknox

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s.14

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Withheld pursuant to/removed as

s.13 ; s.14



## Re: CFAX - Tsawout claim to James Island

---

From: Plank, Sarah GCPE:EX <Sarah.Plank@gov.bc.ca>  
To: Chaytor, Wisty IRR:EX <Wisty.Chaytor@gov.bc.ca>, Gwillim, Hugh AG:EX  
<Hugh.Gwillim@gov.bc.ca>, Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>, McCarthy, Tom  
IRR:EX <Tom.McCarthy@gov.bc.ca>  
Cc: Wheler, Francesca M MCF:EX <Francesca.Wheeler@gov.bc.ca>, Yearwood, Paul AG:EX  
<Paul.Yearwood@gov.bc.ca>, Nash, Laurel IRR:EX <Laurel.Nash@gov.bc.ca>, Chan, Debbie AG:EX  
<Debbie.Chan@gov.bc.ca>  
Sent: September 2, 2018 7:19:30 PM PDT  
CHEK also ran something on the evening news...

CHEK (Victoria)  
CHEK News at Five  
02-Sep-2018 17:06

Copyright

I will send the full transcript when it comes out.

S.

Sarah Plank  
Communications Director | Ministry of Indigenous Relations & Reconciliation  
Government Communications & Public Engagement  
Mobile: [250.208.9621](tel:250.208.9621) | Email: [sarah.plank@gov.bc.ca](mailto:sarah.plank@gov.bc.ca)

Sent from my iPhone

On Sep 2, 2018, at 7:12 PM, Plank, Sarah GCPE:EX <[Sarah.Plank@gov.bc.ca](mailto:Sarah.Plank@gov.bc.ca)> wrote:

FYI - a story running on Cfax today...

CFAX (Victoria)

02-Sep-2018 12:02

Quoted: Matt Hylan, Mavis Underwood

Copyright

Sarah Plank  
Communications Director | Ministry of Indigenous Relations & Reconciliation  
Government Communications & Public Engagement  
Mobile: [250.208.9621](tel:250.208.9621) | Email: [sarah.plank@gov.bc.ca](mailto:sarah.plank@gov.bc.ca)

Sent from my iPhone

On Sep 1, 2018, at 8:15 AM, Plank, Sarah GCPE:EX <[Sarah.Plank@gov.bc.ca](mailto:Sarah.Plank@gov.bc.ca)> wrote:

Hi everyone,

Here is the article that Jack Knox wrote on the Tsawout claim. Overall not too bad – not particularly inflammatory anyway, which was my worry. And it gives you some idea of the Tsawout intentions with the case, which may be of interest.

Thanks again for your help with the request. Have a great weekend!

**Tsawout making a splash in claim for James Island**

Times Colonist (Victoria)

01-Sep-2018

Page A01

By Jack Knox

Copyright



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Copyright

Sarah Plank

Communications Director | Ministry of Indigenous Relations & Reconciliation

Government Communications & Public Engagement

Office: 250.952.1889 | Mobile: 250.208.9621 | Email: [sarah.plank@gov.bc.ca](mailto:sarah.plank@gov.bc.ca)

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s.14



## 48158 - FW: Proposal to Develop James Island

---

From: Fraser.MLA, Scott <Scott.Fraser.MLA@leg.bc.ca>  
To: Minister, IRR IRR:EX <IRR.Minister@gov.bc.ca>  
Sent: September 3, 2019 11:25:08 AM PDT  
Attachments: 19 08 22 MMelman CEO, Discovery Land Co.pdf

-----Original Message-----

From: Cathy Webster <cwebster@tsawout.ca>  
Sent: Friday, August 30, 2019 4:52 PM  
To: rhotsenpiller@islandstrust.bc.ca  
Cc: carolyn bennett <carolyn.bennett@parl.gc.ca>; Fraser.MLA, Scott <Scott.Fraser.MLA@leg.bc.ca>; rcorette@gozzerranchclub.com; bemconchie@islandstrust.bc.ca; dmorrison@islandstrust.bc.ca; lpatrick@islandstrust.bc.ca; John Gailus <john@dgwlaw.ca>; Erica Fritch <erica@dgwlaw.ca>; rhotsenpiller@islandstrust.bc.ca; Nick Claxton <nclaxton@tsawout.ca>; Mavis Underwood <munderwood@tsawout.ca>; Eva Wilson <ewilson@tsawout.ca>  
Subject: Proposal to Develop James Island

Dear Mr. Meldman,

Please see attached letter from Chief Nick Claxton, Tsawout First Nation. Please direct all inquiries or correspondence to Chief Claxton at nclaxton@tsawout.ca. Thank you.

Cathy Webster  
Governance/HR Support Mgr.  
Tsawout First Nation  
7728 Tetayut Road, Saanichton BC V8M 2E4 ph. 250-652-9101 | fx. 250-652-9114

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Withheld pursuant to/removed as

s.16 ; s.18.1

## **48158 - FW: Proposal to Develop James Island (Letter & attachment from Tsawout First Nation)**

---

From: Fraser.MLA, Scott <Scott.Fraser.MLA@leg.bc.ca>  
To: Minister, IRR IRR:EX <IRR.Minister@gov.bc.ca>  
Sent: September 13, 2019 3:34:41 PM PDT  
Attachments: 18 07 05 TFN Notice of Civil Claim.pdf, 19 08 22 MMelman CEO, Discovery Land Co.pdf

-----Original Message-----

From: Cathy Webster <cwebster@tsawout.ca>  
Sent: Friday, September 13, 2019 12:29 PM  
To: mvargas@discoverylandco.com  
Cc: carolyn bennett <carolyn.bennett@parl.gc.ca>; Fraser.MLA, Scott <Scott.Fraser.MLA@leg.bc.ca>; rcorette@gozzerranchclub.com; rhotsenpiller@islandstrust.bc.ca; bemconchie@islandstrust.bc.ca; dmorrison@islandstrust.bc.ca; lpatrick@islandstrust.bc.ca; John Gailus <john@dgwlaw.ca>; Erica Fritch <erica@dgwlaw.ca>; Nick Claxton <nclaxton@tsawout.ca>; Mavis Underwood <munderwood@tsawout.ca>; Eva Wilson <ewilson@tsawout.ca>  
Subject: Re: Proposal to Develop James Island (Letter & attachment from Tsawout First Nation)

Dear Mr. Meldman,

I am re-sending the initial letter from Tsawout First Nation, along with the Amended Notice of Civil Claim:

1. Letter signed by Chief Nick Claxton (same as initial email, dated August 21, 2019) 2. Amended Notice of Civil Claim (VIC-S-S-180472)

Please direct all inquiries or correspondence to Chief Claxton at nclaxton@tsawout.ca. Thank you.

Cathy Webster  
Governance/HR Support Mgr.  
Tsawout First Nation  
7728 Tetayut Road, Saanichton BC V8M 2E4 ph. 250-652-9101 | fx. 250-652-9114

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s.14

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s.13 ; s.14

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s.13 ; s.14

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s.14



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Withheld pursuant to/removed as

s.13 ; s.14

## RE: T'Sou-ke and Tsawout FNs

---

From: Huynh, Mai-Linh TRAN:EX <MaiLinh.Huynh@gov.bc.ca>  
To: Lang, Sandra IRR:EX <Sandra.Lang@gov.bc.ca>  
Cc: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Sent: June 10, 2020 11:43:13 AM PDT  
Hello Sandra,

Yes, they are privately owned parcels. Repatriation of these private parcels will not be part of the accommodation agreement for the Hwy 14 project but MOTI will commit to facilitating discussions between landowners/District of Sooke in another document tool. We're wondering if MIRR has interest in participating in these discussions as well, even though they are outside the treaty process.

s.13; s.14

Thanks!

**Mai-Linh Huynh**  
**Senior Advisor, Indigenous Relations**  
South Coast Region | Ministry of Transportation and Infrastructure  
3rd Floor – 2100 Labieux Road, Nanaimo, B.C. V9T 6E9  
Tel 250-739-8659 | Fax 250-751-3289

---

**From:** Lang, Sandra IRR:EX <Sandra.Lang@gov.bc.ca>  
**Sent:** June 10, 2020 9:17 AM  
**To:** Huynh, Mai-Linh TRAN:EX <MaiLinh.Huynh@gov.bc.ca>  
**Cc:** Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Subject:** RE: T'Sou-ke and Tsawout FNs

Thank you Mai-Linh for this information.

Another question re T'Sou-ke, is there Crown land within those lands that the Nation would like back? Or every piece of land is privately owned?

Take care,

*Sandra Lang*

Phone: (778) 974-2123

Cell: (250) 812-2159

"Life is worth living."

Fulton Sheen.

---

**From:** Huynh, Mai-Linh TRAN:EX <MaiLinh.Huynh@gov.bc.ca>  
**Sent:** June 10, 2020 8:50 AM  
**To:** Lang, Sandra IRR:EX <Sandra.Lang@gov.bc.ca>; Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Subject:** RE: T'Sou-ke and Tsawout FNs

Good morning!

Thanks for your time in chatting with me next week. Here's some context:

1.s.13; s.14; s.16

2.

Kind regards,

**Mai-Linh Huynh**

**Senior Advisor, Indigenous Relations**

South Coast Region | Ministry of Transportation and Infrastructure

3rd Floor – 2100 Labieux Road, Nanaimo, B.C. V9T 6E9

Tel 250-739-8659 | Fax 250-751-3289

---

**From:** Lang, Sandra IRR:EX <[Sandra.Lang@gov.bc.ca](mailto:Sandra.Lang@gov.bc.ca)>

**Sent:** June 9, 2020 4:55 PM

**To:** Huynh, Mai-Linh TRAN:EX <[MaiLinh.Huynh@gov.bc.ca](mailto:MaiLinh.Huynh@gov.bc.ca)>

**Subject:** RE: T'Sou-ke and Tsawout FNs

Hi Mai-Linh,

Can you please give me a little more info so I can prepare for the T'Sou-ke conversation. It also will help me to know who from our ministry should be attending for the Tsowat conversation.

Thanks and take care.

*Sandra Lang.*

Phone: (778) 974-2123

Cell: (250) 812-2159

"Life is worth living."

Fulton Sheen.

-----Original Appointment-----

**From:** Huynh, Mai-Linh TRAN:EX <[MaiLinh.Huynh@gov.bc.ca](mailto:MaiLinh.Huynh@gov.bc.ca)>

**Sent:** June 9, 2020 3:16 PM

**To:** Huynh, Mai-Linh TRAN:EX; Lang, Sandra IRR:EX

**Subject:** T'Sou-ke and Tsawout FNs

**When:** June 16, 2020 3:00 PM-3:30 PM (UTC-08:00) Pacific Time (US & Canada).

**Where:** Skype Meeting

Thanks for taking the time to chat with me!

---

## Join Skype Meeting

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## RE: T'Sou-ke and Tsawout FNs

---

From: Harvie, Christie IRR:EX  
To: Huynh, Mai-Linh TRAN:EX <MaiLinh.Huynh@gov.bc.ca>  
Sent: June 10, 2020 4:19:03 PM PDT  
Thank you Mai-Linh, can you also please invite Wisty Chaytor as the lead for WSANEC.

Christie Harvie (*she/her*)  
Ministry of Indigenous Relations and Reconciliation  
c. 250.361.6640

---

**From:** Huynh, Mai-Linh TRAN:EX <MaiLinh.Huynh@gov.bc.ca>  
**Sent:** June 10, 2020 11:43 AM  
**To:** Lang, Sandra IRR:EX <Sandra.Lang@gov.bc.ca>  
**Cc:** Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Subject:** RE: T'Sou-ke and Tsawout FNs

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s.13; s.14

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Cell: (250) 812-2159  
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s.13; s.14; s.16

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**Senior Advisor, Indigenous Relations**

South Coast Region | Ministry of Transportation and Infrastructure

3rd Floor – 2100 Labieux Road, Nanaimo, B.C. V9T 6E9

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**Sent:** June 9, 2020 4:55 PM

**To:** Huynh, Mai-Linh TRAN:EX <[MaiLinh.Huynh@gov.bc.ca](mailto:MaiLinh.Huynh@gov.bc.ca)>

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*Sandra Lang.*

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Cell: (250) 812-2159

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-----Original Appointment-----

**From:** Huynh, Mai-Linh TRAN:EX <[MaiLinh.Huynh@gov.bc.ca](mailto:MaiLinh.Huynh@gov.bc.ca)>

**Sent:** June 9, 2020 3:16 PM

**To:** Huynh, Mai-Linh TRAN:EX; Lang, Sandra IRR:EX

**Subject:** T'Sou-ke and Tsawout FNs

**When:** June 16, 2020 3:00 PM-3:30 PM (UTC-08:00) Pacific Time (US & Canada).

**Where:** Skype Meeting

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.....

## RE: FW: T'Sou-ke and Tsawout FNs

---

From: Huynh, Mai-Linh TRAN:EX <MaiLinh.Huynh@gov.bc.ca>  
To: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Cc: Chaytor, Wisty IRR:EX <Wisty.Chaytor@gov.bc.ca>  
Sent: June 18, 2020 3:16:55 PM PDT  
Hi Christie:

Thanks for your time in speaking with me last Tuesday.

You asked that I send you a short reminder follow-up on whether there's a contact person that I could speak with regarding the Tsawout-James Island litigation. Looking forward to hearing from you soon.

Cheers,

**Mai-Linh Huynh**  
**Senior Advisor, Indigenous Relations**  
South Coast Region | Ministry of Transportation and Infrastructure  
3rd Floor – 2100 Labieux Road, Nanaimo, B.C. V9T 6E9  
Tel 250-739-8659 | Fax 250-751-3289

-----Original Appointment-----

**From:** Chaytor, Wisty IRR:EX <Wisty.Chaytor@gov.bc.ca>  
**Sent:** June 11, 2020 12:43 PM  
**To:** Huynh, Mai-Linh TRAN:EX  
**Cc:** Harvie, Christie IRR:EX; Lang, Sandra IRR:EX  
**Subject:** Declined: FW: T'Sou-ke and Tsawout FNs  
**When:** June 16, 2020 3:00 PM-3:30 PM (UTC-08:00) Pacific Time (US & Canada).  
**Where:** Skype Meeting

Hi Mai-Linh,

Unfortunately I am not able to join this call on the 16<sup>th</sup>. But if you'd like, we can chat more about the Tsawout portion of your agenda at a different time. I have had no involvement with anything James Island related, but I can help track down who may be more in the know about this.

Thanks,

Wisty

**Wisty Chaytor**  
*A/Senior Negotiator,  
Ministry of Indigenous Relations and Reconciliation  
2957 Jutland Rd. 3<sup>rd</sup> Floor, Victoria, BC*  
  
*Tel: 250 818-6392 (cell)*

## **WSANEC MO Briefing Dec 3 2020 (003)**

---

From: Chaytor, Wisty IRR:EX <Wisty.Chaytor@gov.bc.ca>  
To: Balcaen, Trish L IRR:EX <Trish.Balcaen@gov.bc.ca>  
Cc: Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>, Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Sent: December 1, 2020 3:54:01 PM PST  
Attachments: WSANEC MO Briefing Dec 3 2020 (003).docx

Hi Trish,

Edits look good.

I corrected one small item clarifying that it is the actual ownership of the Woodwynn property that will transfer to Tsartlip on Dec 16th (not the completion of the negotiations).

Also to your question about James Island... the litigation is a specific claims process. The assertion is that the island should have been included as reserve lands, not sold for private ownership.

Hope that helps. Talk more tomorrow,

Wisty

Wisty Chaytor  
Senior Negotiator,  
Ministry of Indigenous Relations and Reconciliation  
2955 Jutland Rd. 4rd Floor, Victoria, BC

Tel: 250 818-6392 (cell)



## BRIEFING NOTE FOR INFORMATION

**DATE:** December 1, 2020

**PREPARED FOR:** Honorable Murray Rankin

**MEETING:** Introductory meetings with Chiefs of Tsartlip, Tseycum, Tsawout and Pauquachin (W̱SÁNEĆ Nation)

### BACKGROUND:

The W̱SÁNEĆ Nation is comprised of four First Nations; Tsartlip, Tseycum, Tsawout, and Pauquachin, located on Southern Vancouver Island, all of whom are signatories to the historic Douglas Treaties.

The Douglas Treaties, and how they should be implemented are heavily debated. Factors such as urbanization and the lack of Crown land to exercise rights have limited W̱SÁNEĆ's ability to take their part in the local economy and also poses some legal risk to the Province.

In 2019, Canada signed a letter of understanding with three of the four bands - Tsartlip, Tseycum, and Tsawout agreeing to explore priorities that would support the eventual negotiation of a nation to nation agreement. BC has been invited to these preliminary conversations that will commence early in the New Year.

The Province's commitment to share gaming revenue with First Nations represented a much-needed, stable revenue source for W̱SÁNEĆ people who don't have benefit of other revenue share sources like mining or forestry.

### CURRENT DISCUSSIONS:



Tsawout First Nation (Chief Nicholas Claxton):

2018, Tsawout filed litigation against Canada and the Province seeking the return of James Island. Tsawout asserts that James Island was a village site and should have been reserved for Tsawout, per their Douglas Treaty. This action is ongoing.

MIRR has had limited direct engagement with Tsawout since 2018.

s.16

**PREPARED BY:**

**Wisty Chaytor  
Negotiator  
778 974-2157**

## 51424 - Tsawout First Nation Letter, re. James Island Subdivision Plan

---

From: Cathy Webster <cwebster@tsawout.ca>  
To: Minister, IRR IRR:EX <IRR.Minister@gov.bc.ca>  
Cc: Fleming.MLA, Rob LASS:EX <Rob.Fleming.MLA@leg.bc.ca>, Transportation, Minister  
TRAN:EX <Minister.Transportation@gov.bc.ca>, Tsawout First Nation Chief & Council  
<council@tsawout.ca>, Band Manager <bandmanager@tsawout.ca>, Becky Wilson  
<bwilson@tsawout.ca>, John Gailus <john@dgwlaw.ca>, Tanner Doerges  
<tanner@dgwlaw.ca>, Erica Fritch <erica@dgwlaw.ca>  
Sent: February 8, 2021 3:41:21 PM PST  
Attachments: 21 02 08 TFN Let to BC MIRR, re James Island Subdivision v2.pdf, 19 02 21 James Island  
Preliminary Lot Layout Plan.pdf, TFN Traditional Placenames Map2 with Legend.pdf

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Good afternoon,

Please see attached letter signed by Chief Nick Claxton, Tsawout First Nation. Chief Claxton would like to coordinate a meeting date, so please provide 2-3 options and I will follow-up with Council. Thank you.

Cathy Webster  
Gov/HR Support  
Tsawout First Nation

Page 197 of 413 to/à Page 200 of 413

Withheld pursuant to/removed as

s.16 ; s.18.1

## Tsawout First Nation Letter, re. James Island Subdivision Plan

---

From: Cathy Webster <cwebster@tsawout.ca>  
To: Hon. Murray Rankin <abr.minister@gov.bc.ca>, Minister, IRR IRR:EX  
<IRR.Minister@gov.bc.ca>  
Cc: Hon. Rob Fleming <rob.fleming.mla@leg.bc.ca>, Hon. Rob Fleming  
<minister.transportation@gov.bc.ca>, Tsawout First Nation Chief & Council  
<council@tsawout.ca>, Band Manager <bandmanager@tsawout.ca>, Becky Wilson  
<bwilson@tsawout.ca>, John Gailus <john@dgwlaw.ca>, Tanner Doerges  
<tanner@dgwlaw.ca>, Erica Fritch <erica@dgwlaw.ca>, Transportation, Minister TRAN:EX  
<Minister.Transportation@gov.bc.ca>, Fleming.MLA, Rob LASS:EX  
<Rob.Fleming.MLA@leg.bc.ca>  
Sent: February 8, 2021 3:41:21 PM PST  
Attachments: TFN Traditional Placenames Map2 with Legend.pdf, 19 02 21 James Island Preliminary Lot  
Layout Plan.pdf, 21 02 08 TFN Let to BC MIRR, re James Island Subdivision v2.pdf

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Good afternoon,

Please see attached letter signed by Chief Nick Claxton, Tsawout First Nation. Chief Claxton would like to coordinate a meeting date, so please provide 2-3 options and I will follow-up with Council. Thank you.

Cathy Webster  
Gov/HR Support  
Tsawout First Nation

## FW: MO MTG advice: 51424 - Email from Chief Nick Claxton

---

From: Harvie, Christie IRR:EX  
To: Wisty Chaytor <Wisty.Chaytor@gov.bc.ca>  
Sent: March 9, 2021 3:50:56 PM PST  
Attachments: TFN Traditional Placenames Map2 with Legend.pdf, 19 02 21 James Island Preliminary Lot Layout Plan.pdf, 21 02 08 TFN Let to BC MIRR, re James Island Subdivision v2.pdf  
Advice on this one pretty please?

Almost there I swear, today is the last day of interviews and we'll get someone in and start transitioning this stuff.

I can see the light at the end of the tunnel!!!

Christie Harvie (*she/her*)  
Ministry of Indigenous Relations and Reconciliation  
c. 250.361.6640

---

**From:** IRR Correspondence Unit IRR:EX <IRRCorrespondenceUnit@gov.bc.ca>  
**Sent:** March 9, 2021 10:44 AM  
**To:** Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>; Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Subject:** MO MTG advice: 51424 - Email from Chief Nick Claxton

Good Morning Mark and Christie

We are looking for advice on the attached meeting request for Minister Rankin.

Seeking advice on the below meeting request.

Advice to meet - yes or no:  
Reasoning for advice:  
Is this something staff could take on Minister's behalf:  
When does this need to happen by:  
What are the implications if it does not happen by specified time?

Thanks,

---

**From:** Cathy Webster <cwebster@tsawout.ca>  
**Sent:** February 8, 2021 3:41 PM  
**To:** Minister, IRR IRR:EX <IRR.Minister@gov.bc.ca>  
**Cc:** Fleming, MLA, Rob LASS:EX <Rob.Fleming.MLA@leg.bc.ca>; Transportation, Minister TRAN:EX <Minister.Transportation@gov.bc.ca>; Tsawout First Nation Chief & Council <council@tsawout.ca>; Band Manager <bandmanager@tsawout.ca>; Becky Wilson <bwilson@tsawout.ca>; John Gailus <john@dgwlaw.ca>; Tanner Doerges <tanner@dgwlaw.ca>; Erica Fritch <erica@dgwlaw.ca>  
**Subject:** 51424 - Tsawout First Nation Letter, re. James Island Subdivision Plan

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Good afternoon,

Please see attached letter signed by Chief Nick Claxton, Tsawout First Nation. Chief Claxton would like to coordinate a meeting date, so please provide 2-3 options and I will follow-up with Council. Thank you.

Cathy Webster



## FW: MO MTG advice: 51424 - Email from Chief Nick Claxton

---

From: Chaytor, Wisty IRR:EX <Wisty.Chaytor@gov.bc.ca>  
To: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>, Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>  
Sent: March 9, 2021 5:35:18 PM PST  
Attachments: 21 02 08 TFN Let to BC MIRR, re James Island Subdivision v2.pdf, 19 02 21 James Island Preliminary Lot Layout Plan.pdf, TFN Traditional Placenames Map2 with Legend.pdf, IN\_Tsawout James Island 08Aug2018.docx

Hi,

I have attached is an advice to minister note from 2018 which was drafted in response to a media request related to Tsawout's claim to James Island.

Tsawout has filed legal action against BC and Canada in the past for a specific claim to this island. I am not sure if that action is ongoing.

MIRR has had no engagement at all with Tsawout in the last several years (prior to my time on the file)

MOTI is engaging / consulting on a development plan for the island; Island is privately owned

Tsawout is considered to be a member of the Wsanec Leadership Council. I do not know how engaged Chief Claxton is but that may be a venue for conversation on this item.

As conversation with the Minister will not likely result in a different outcome. There might be opportunities for MIRR to work with MOTI on engagement with the Nation

### **Wisty Chaytor**

*Senior Negotiator,  
Ministry of Indigenous Relations and Reconciliation  
2955 Jutland Rd. 4<sup>th</sup> Floor, Victoria, BC*

*Tel: 250 818-6392 (cell)*

---

**From:** Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Sent:** March 9, 2021 3:51 PM  
**To:** Chaytor, Wisty IRR:EX <Wisty.Chaytor@gov.bc.ca>  
**Subject:** FW: MO MTG advice: 51424 - Email from Chief Nick Claxton

Advice on this one pretty please?

Almost there I swear, today is the last day of interviews and we'll get someone in and start transitioning this stuff.

I can see the light at the end of the tunnel!!!

Christie Harvie (*she/her*)  
Ministry of Indigenous Relations and Reconciliation  
c. 250.361.6640

---

**From:** IRR Correspondence Unit IRR:EX <IRRCorrespondenceUnit@gov.bc.ca>  
**Sent:** March 9, 2021 10:44 AM  
**To:** Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>; Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Subject:** MO MTG advice: 51424 - Email from Chief Nick Claxton

Good Morning Mark and Christie



We are looking for advice on the attached meeting request for Minister Rankin.

Seeking advice on the below meeting request.

Advice to meet - yes or no:

Reasoning for advice:

Is this something staff could take on Minister's behalf:

When does this need to happen by:

What are the implications if it does not happen by specified time?

Thanks,

---

**From:** Cathy Webster <[cwebster@tsawout.ca](mailto:cwebster@tsawout.ca)>

**Sent:** February 8, 2021 3:41 PM

**To:** Minister, IRR IRR:EX <[IRR.Minister@gov.bc.ca](mailto:IRR.Minister@gov.bc.ca)>

**Cc:** Fleming.MLA, Rob LASS:EX <[Rob.Fleming.MLA@leg.bc.ca](mailto:Rob.Fleming.MLA@leg.bc.ca)>; Transportation, Minister TRAN:EX <[Minister.Transportation@gov.bc.ca](mailto:Minister.Transportation@gov.bc.ca)>; Tsawout First Nation Chief & Council <[council@tsawout.ca](mailto:council@tsawout.ca)>; Band Manager <[bandmanager@tsawout.ca](mailto:bandmanager@tsawout.ca)>; Becky Wilson <[bwilson@tsawout.ca](mailto:bwilson@tsawout.ca)>; John Gailus <[john@dgwlaw.ca](mailto:john@dgwlaw.ca)>; Tanner Doerges <[tanner@dgwlaw.ca](mailto:tanner@dgwlaw.ca)>; Erica Fritch <[erica@dgwlaw.ca](mailto:erica@dgwlaw.ca)>

**Subject:** 51424 - Tsawout First Nation Letter, re. James Island Subdivision Plan

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Good afternoon,

Please see attached letter signed by Chief Nick Claxton, Tsawout First Nation. Chief Claxton would like to coordinate a meeting date, so please provide 2-3 options and I will follow-up with Council. Thank you.

Cathy Webster  
Gov/HR Support  
Tsawout First Nation

**52056 - [Xref - 51424] Tsawout First Nation Letter, to request a meeting (re. pending approval of James Island Subdivision Plan)**

---

From: Cathy Webster <cwebster@tsawout.ca>  
To: Minister, IRR IRR:EX <IRR.Minister@gov.bc.ca>  
Cc: Transportation, Minister TRAN:EX <Minister.Transportation@gov.bc.ca>, Tsawout First Nation Chief & Council <council@tsawout.ca>, Band Manager <bandmanager@tsawout.ca>, John Gailus <john@dgwlaw.ca>, Erica Fritch <erica@dgwlaw.ca>  
Sent: April 16, 2021 4:41:22 PM PDT  
Attachments: 21 04 15 TFN Let to Min Rankin, MOTI.pdf

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Good afternoon,

Please see attached letter from Chief Nick Claxton. Please advise of your availability. Thank you.

Cathy Webster  
Governance/HR Support  
Tsawout First Nation



# TSAWOUT FIRST NATION

7728 Tetayut Road, Saanichton, BC V8M 2E4

April 15, 2021

Sent by email: IRR.Minister@gov.bc.ca  
Honourable Murray Rankin  
Minister of Indigenous Relations and Reconciliation  
Parliament Buildings, Victoria, BC  
V8V 1X4

**Re. Pending Approval of James Island Subdivision Plan**

Dear Minister Rankin:

We write further to our letter of February 8, 2021 (copy enclosed) to yourself and Minister Fleming.

Please advise when we might be in receipt of a response to our meeting request.

Regards,

Chief Nicholas Claxton  
Tsawout First Nation

Encl.

cc. Minister Rob Fleming, MOTI  
(via email: Minister.Transportation@gov.bc.ca)  
Tsawout First Nation Council

Page 208 of 413 to/à Page 209 of 413

Withheld pursuant to/removed as

s.16 ; s.18.1

## 52056 - Re: Tsawout First Nation Letter, to request a meeting (re. pending approval of James Island Subdivision Plan)

---

From: Mavis Underwood <munderwood@tsawout.ca>  
To: Cathy Webster <cwebster@tsawout.ca>, Minister, IRR IRR:EX <IRR.Minister@gov.bc.ca>  
Cc: Transportation, Minister TRAN:EX <Minister.Transportation@gov.bc.ca>, Tsawout First Nation Chief & Council <council@tsawout.ca>, Band Manager <bandmanager@tsawout.ca>, John Gailus <john@dgwlaw.ca>, Erica Fritch <erica@dgwlaw.ca>  
Sent: April 16, 2021 4:51:15 PM PDT

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

I am so involved with collective bargaining next week but may periodically be free.

Get [Outlook for iOS](#)

---

**From:** Cathy Webster  
**Sent:** Friday, April 16, 2021 4:41:22 PM  
**To:** irr.minister@gov.bc.ca  
**Cc:** Hon. Rob Fleming ; Tsawout First Nation Chief & Council ; Band Manager ; John Gailus ; Erica Fritch  
**Subject:** Tsawout First Nation Letter, to request a meeting (re. pending approval of James Island Subdivision Plan)  
Good afternoon,

Please see attached letter from Chief Nick Claxton. Please advise of your availability. Thank you.

Cathy Webster  
Governance/HR Support  
Tsawout First Nation

## MO MTG advice: 51424 - Email from Chief Tanya Jimmy

---

From: Campbell, Kari IRR:EX <Kari.Campbell@gov.bc.ca>  
To: Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>, Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Sent: April 19, 2021 12:05:36 PM PDT  
Attachments: 51424 - Tsawout First Nation Letter, re. James Island Subdivision Plan, Tsawout First Nation Letter, to request a meeting (re. pending approval of James Island Subdivision Plan)

Good Morning Mark

We have received a second email requesting this meeting.

Seeking advice on the below meeting request.

Advice to meet - yes or no:

Reasoning for advice:

Is this something staff could take on Minister's behalf:

When does this need to happen by:

What are the implications if it does not happen by specified time?

Thx

Kari

---

**From:** Campbell, Kari IRR:EX  
**Sent:** April 7, 2021 8:06 AM  
**To:** Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>  
**Subject:** MO MTG advice: 51424 - Email from Chief Tanya Jimmy

Good Morning Mark

Can you please provide advice, then send back to me for processing.

Thanks

Kari

---

**From:** McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>  
**Sent:** April 6, 2021 10:39 PM  
**To:** Campbell, Kari IRR:EX <Kari.Campbell@gov.bc.ca>  
**Cc:** McCarley, Mariah IRR:EX <Mariah.McCarley@gov.bc.ca>  
**Subject:** RE: MO MTG advice: 51424 - Email from Chief Tanya Jimmy

Sorry Kari, just going through this now. I think this is different than the previous one (is it not?) or is it the same issue?

This one could also use Mark's advice first before going to Trish.

---

**From:** Campbell, Kari IRR:EX <Kari.Campbell@gov.bc.ca>  
**Sent:** April 6, 2021 9:25 AM  
**To:** McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>  
**Cc:** McCarley, Mariah IRR:EX <Mariah.McCarley@gov.bc.ca>  
**Subject:** FW: MO MTG advice: 51424 - Email from Chief Tanya Jimmy

Hi Tom

With Christie being away and needing advice as soon as possible, can you please fill in the meeting advice so we can forward to ADM for approval.

Seeking advice on the below meeting request.

Advice to meet - yes or no:  
Reasoning for advice:  
Is this something staff could take on Minister's behalf:  
When does this need to happen by:  
What are the implications if it does not happen by specified time?

Thank you

**Kari Campbell**

Incoming Correspondence Clerk  
Correspondence Unit - Deputy Minister's Office  
Ministry of Indigenous Relations & Reconciliation

---

**From:** Harvie, Christie IRR:EX <[Christie.Harvie@gov.bc.ca](mailto:Christie.Harvie@gov.bc.ca)>  
**Sent:** March 16, 2021 11:34 AM  
**To:** Campbell, Kari IRR:EX <[Kari.Campbell@gov.bc.ca](mailto:Kari.Campbell@gov.bc.ca)>  
**Subject:** Re: MO MTG advice: 51424 - Email from Chief Tanya Jimmy

All good. Mark could probably use a reminder anyway, lol.

Christie Harvie  
250.361.6640

---

**From:** [Kari.Campbell@gov.bc.ca](mailto:Kari.Campbell@gov.bc.ca)  
**Sent:** March 16, 2021 10:27 AM  
**To:** [Christie.Harvie@gov.bc.ca](mailto:Christie.Harvie@gov.bc.ca)  
**Subject:** RE: MO MTG advice: 51424 - Email from Chief Tanya Jimmy

Well would you look at that. Ignore my email then lol.

---

**From:** Harvie, Christie IRR:EX <[Christie.Harvie@gov.bc.ca](mailto:Christie.Harvie@gov.bc.ca)>  
**Sent:** March 15, 2021 5:35 PM  
**To:** IRR Correspondence Unit IRR:EX <[IRRCorrespondenceUnit@gov.bc.ca](mailto:IRRCorrespondenceUnit@gov.bc.ca)>  
**Subject:** RE: MO MTG advice: 51424 - Email from Chief Tanya Jimmy

Thanks! I think there is a reply to the letter in the eapprovals system and it's with Mark Lofthouse.

Christie Harvie (*she/her*)  
Ministry of Indigenous Relations and Reconciliation  
c. 250.361.6640

---

**From:** IRR Correspondence Unit IRR:EX <[IRRCorrespondenceUnit@gov.bc.ca](mailto:IRRCorrespondenceUnit@gov.bc.ca)>  
**Sent:** March 15, 2021 11:43 AM  
**To:** Harvie, Christie IRR:EX <[Christie.Harvie@gov.bc.ca](mailto:Christie.Harvie@gov.bc.ca)>  
**Subject:** MO MTG advice: 51424 - Email from Chief Tanya Jimmy

Good Morning Christie

We are looking for advice on the attached meeting request for Minister Rankin.

Seeking advice on the below meeting request.

Advice to meet - yes or no:  
Reasoning for advice:

Is this something staff could take on Minister's behalf:  
When does this need to happen by:  
What are the implications if it does not happen by specified time?

Thanks

**Kari Campbell**

Incoming Correspondence Clerk  
Correspondence Unit - Deputy Minister's Office  
Ministry of Indigenous Relations & Reconciliation

---

**From:** Olsen.MLA, Adam <Adam.Olsen.MLA@leg.bc.ca>

**Sent:** February 26, 2021 12:04 PM

**To:** McNish, James IRR:EX <James.McNish@gov.bc.ca>

**Cc:** Olsen, Adam <A.Olsen@leg.bc.ca>; Karen Harry <s.22  
<IRR.Minister@gov.bc.ca>

>; Minister, IRR IRR:EX

**Subject:** 51710 - Meeting Request

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Good afternoon James,

I hope you are well.

MLA Olsen and the Premier's office received the letter (attached below) from Chief Tanya Jimmy on January 29th. It has now been almost a month and there has not been a response from the Premier's office nor acknowledgement of receipt of the letter.

We are requesting a meeting between Tseycum and Minister Rankin to further discuss the issues Chief Jimmy highlights in her letter.

I recognize that this is a busy time so I look forward to working with you to find a time that works for everyone.

All the best,

**Kate O'Connor / Constituency Assistant**

Constituency Office of Adam Olsen, MLA

#215-2506 Beacon Avenue, Sidney, BC V8L 1Y2

Phone: 250-655-5600 | Fax: (250) 655-7398

---

**From:** Karen Harry

**Sent:** January 29, 2021 12:40 PM

**To:** Olsen.MLA, Adam



## BRIEFING NOTE FOR INFORMATION

**DATE:** May 12, 2021

**PREPARED FOR:** Honorable Murray Rankin, Minister of Indigenous Relations and Reconciliation

**PURPOSE:** W̱SÁNEĆ Nations Overview

### BACKGROUND:

The W̱SÁNEĆ Nation (W̱SÁNEĆ) is comprised of five *Indian Act* bands: Tsartlip, Tseycum, Tsawout, Pauquachin, and Malahat First Nations; however, in general, Malahat negotiates separately from the others.

W̱SÁNEĆ is party to the North Saanich and South Saanich Treaties of 1852 (Douglas Treaties). The federal and provincial governments and the W̱SÁNEĆ Nations have differing perspectives on the interpretation and implementation of the Douglas Treaties which has challenged relationships between the W̱SÁNEĆ Nations, neighbouring Indigenous nations, and the Crown.

Factors such as urbanization and the lack of Crown land have limited the W̱SÁNEĆ members Nations access to economic and revenue sharing opportunities as well as wildlife harvesting opportunities.

### W̱SÁNEĆ LEADERSHIP COUNCIL:

In 2018, three of the five W̱SÁNEĆ Nation bands, Tsartlip, Tseycum, and Tsawout formed the W̱SÁNEĆ Leadership Council (WLC) which seeks to promote the interests of a united W̱SÁNEĆ Nation. Pauquachin may be considering joining the WLC, while Malahat is currently negotiating a modern treaty as part of the Te'mexw Treaty Association.

The WLC is comprised of a chief and councillor from each of the three Nations. The representatives bring forward issues to the WLC and an assessment is made if the issue should be dealt with at the band level or the WLC level.



Ministry of  
Indigenous Relations  
and Reconciliation

s.16

Tsawout First Nation (Chief Nicholas Claxton):



In 2018, Tsawout filed litigation against Canada and the Province seeking the return of James Island. Tsawout asserts that James Island was a village site and should have been reserved for Tsawout, per their Douglas Treaty. This action is ongoing.

MIRR has had limited direct engagement with Tsawout since 2018 but a meeting is being planned for late May 2021 to be attended by Tsawout Chief Claxton, MIRR Minister Rankin, MOTI Minister Fleming and potentially MLA Adam Olsen.

MOTI has been engaged in consultations with Tsawout since 2019 regarding the proposed subdivision on James Island.

s.16

**PREPARED BY:**

James Rogers  
Assistant Negotiator  
778.974.2095

## De-brief: call with MOTI re Tsawout/James Island Ministers mtg

---

From: Rogers, James IRR:EX <James.Rogers@gov.bc.ca>  
To: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Sent: May 18, 2021 12:24:41 PM PDT  
Attachments: 301048 BN Tsawout\_James Island Subdivision.docx  
Hi Christie,

I spoke with Michael Pearson and Janelle Staite regarding the upcoming mtg between Ministers Fleming and Rankin with Tsawout regarding MOTI's consultation on the James Island subdivision application.

- The developer is no longer JI Properties Inc. the new owner is called Discover Island Company
- s.13; s.16; s.17

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- 
- 

I'm happy to amend our draft bullets as you see fit.

### James Rogers

Assistant Negotiator  
Negotiations and Regional Operations Division  
Ministry of Indigenous Relations and Reconciliation  
2957 Jutland Rd, V8T 5J9, Victoria  
C: 250.208.4406 W: 778.974.2095



## MEETING BRIEFING NOTE

**DATE:** May 17, 2021  
**PREPARED FOR:** Honourable Rob Fleming, Minister of Transportation and Infrastructure  
**ISSUE:** Tsawout First Nation concerns over proposed James Island Subdivision  
**MEETING:** Tsawout First Nation, May 27, 2021

### PROPOSED KEY MESSAGES:

- Ministry staff appreciate the concerns raised by the Tsawout First Nation (TFN) about the proposed subdivision on James Island and have been in consultation with TFN since 2019.
- Ministry staff have shared these concerns with the Ministry's Provincial Approving Officer (PAO) who has the final approval authority on this subdivision.
- Evaluation of the subdivision proposal is underway by the ministry's PAO and no decisions have been made.

### PAST INTERACTIONS:

- None.

### BACKGROUND:

James Island is a 780-acre private island (owned by Discover Land Company) located off of the Saanich Peninsula and falls within the Island Trust in the North Pender Local Trust Area. It can only be accessed by water and air. The island currently has a 5,000 square-foot principal residence, as well as six guest cottages, private docks, an airstrip, pool house, 18-hole golf course and the manager's residence.

A subdivision application was originally received by MOTI in 2009. An updated Preliminary Layout Review (PLR) was granted in 2014. One of the conditions of the 2014 PLR included the need to hire a qualified archeologist to determine AIA requirements, as records indicated the presence of Archeological Sites protected under the Heritage Conservation Act. The current development proposal is for a 79 lot bare land strata development (76 residential lots and three commercial lots).

Consultation with the TFN has been underway since 2019, following a request from the TFN for a referral package for the subdivision application. The ministry provided the referral package and has responded to questions and met with the TFN to discuss the file.

### DISCUSSION:

s.13; s.16; s.17



s.13; s.16

The ministry expressed ongoing willingness to the presentation of new information from the Nation regarding impacts. Subsequent meetings with TFN occurred on April 13<sup>th</sup> and 27<sup>th</sup> 2021, s.13; s.16

s.13; s.16

s.13; s.16

On April 1, 2021, the North Pender Local Trust Committee (NPLTC) passed a resolution to not approve the subdivision as they do not believe it is in the public interest. The concerns expressed by the TFN as well as the resolution of the NPLTC will be shared with the ministry's PAO who is typically the final approving authority on whether or not this development can proceed.

The PAO's decision is guided by the following legislation: the Local Government Act, the Land Title Act, the Strata Property Act and Bare Land Strata Regulations. Under this legislation, it is a requirement that a PAO must consider and may hear from any parties who may be affected by the subdivision. A final decision on the subdivision has not been made at this time.

On rare occasion, there is an alternate approval process in which the Lieutenant Governor of British Columbia could be asked to consider the subdivision under Section 90 of the Land Title Act (LTA).

*Land Title Act Section 90 - Power of Lieutenant Governor in Council to prohibit deposit of plan*

- (1) The Lieutenant Governor in Council may, when it appears that the deposit of a subdivision plan is against the public interest, order the registrar not to receive the plan for deposit.

Given this proposed subdivision is a strata, the approval is subject to the Bare Land Strata Regulations. There is nothing specific in those regulations that are similar to Section 90 of the LTA; however the BC Government is able to submit an opinion to the PAO regarding the public's interests, which would be considered by the PAO in their review of the file.

**GBA+ OR DIVERSITY AND INCLUSION IMPLICATIONS:**

The ministry is aware of the presence of Archeological Sites protected under the Heritage Conservation Act and has been engaging with the TFN to ensure their interests and concerns are fully understood. This information will form an important aspect of the materials the PAO considers in making a final decision on the file.

**FINANCIAL IMPLICATIONS:**

- None.

**Attachments:** (if applicable)

1. James Island Location Map and Aerial Photo



PREPARED BY:	REVIEWED BY:	DATE:
Mike Pearson, P. Eng. District Manager Vancouver Island District (250) 713-2815	Kevin Richter, Associate Deputy Minister Highway Operations Nancy Bain, Executive Financial Officer Finance and Management Services Department	Click or tap to enter a date.
Janelle Staite, P.Eng Deputy Director, SCR (250) 713-8763	Kaye Krishna, Deputy Minister	Click or tap to enter a date.
		Click or tap to enter a date.



Figure 1: James Island Location Map



*Figure 2: James Island Arial Photo*



## RE: De-brief: call with MOTI re Tsawout/James Island Ministers mtg

---

From: Harvie, Christie IRR:EX  
To: Rogers, James IRR:EX <James.Rogers@gov.bc.ca>  
Sent: May 18, 2021 1:29:42 PM PDT  
Thanks James, I'll send the bullets back your way for updating.

Thanks again!

Christie Harvie (*she/her*)  
Ministry of Indigenous Relations and Reconciliation  
c. 250.361.6640

---

**From:** Rogers, James IRR:EX <James.Rogers@gov.bc.ca>  
**Sent:** May 18, 2021 12:25 PM  
**To:** Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Subject:** De-brief: call with MOTI re Tsawout/James Island Ministers mtg

Hi Christie,

I spoke with Michael Pearson and Janelle Staite regarding the upcoming mtg between Ministers Fleming and Rankin with Tsawout regarding MOTI's consultation on the James Island subdivision application.

- The developer is no longer JI Properties Inc. the new owner is called Discover Island Company
- s.13; s.16; s.17

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I'm happy to amend our draft bullets as you see fit.

### James Rogers

Assistant Negotiator  
Negotiations and Regional Operations Division  
Ministry of Indigenous Relations and Reconciliation  
2957 Jutland Rd, V8T 5J9, Victoria  
C: 250.208.4406 W: 778.974.2095



## MEETING BULLETS

**DATE:** May 11, 2021

**PREPARED FOR:** Honourable Murray Rankin, Minister of Indigenous Relations and Reconciliation and Honourable Rob Fleming, Minister of Transportation and Infrastructure

**REGARDING:** Meeting with Chief Nicholas Claxton, Tsawout First Nation, regarding consultation on LEL,TOS / James Island subdivision

### PURPOSE:

- Familiarize Ministers with Tsawout First Nation's concerns regarding LEL,TOS / James Island (LEL,TOS) and proposed subdivision.

### BACKGROUND:

- LEL,TOS is located off the Saanich Peninsula and is privately owned by American billionaire Craig McCaw, through JI Properties Inc.
- In January 2018, Tsawout First Nation (Tsawout) (pronounced "Tsa-woot") filed an action in the Supreme Court of British Columbia against the provincial and federal Crown for a declaration that LEL,TOS should have been reserved by the Crown for Tsawout's use and benefit pursuant to the North Saanich Treaty, as well as a declaration of Aboriginal title (the "Litigation").
- JI Properties Inc. has filed an application with the Ministry of Transportation and Infrastructure (MOTI) for an 83 Lot Bare Land Strata Subdivision (the "Application") on LEL,TOS. MOTI is consulting Tsawout on the propose subdivision.
- Tsawout maintains that the subdivision, if approved, would adversely impact and infringe upon Tsawout Douglas Treaty rights and have requested a meeting with Minister Fleming, MOTI and Minister Rankin, Minister of Indigenous Relations and Reconciliation (MIRR) to discuss the matter further.
- MIRR has had limited direct engagement with Tsawout since 2018.

**Commented [HC11]:** Please ensure format is consistent with template, either 11 or 12 point

### DISCUSSION:

#### MOTI Consultation on Subdivision

- s.13; s.16
- Tsawout has been clear that they would consider the approval of the Application to be a further breach of the Aboriginal and Treaty rights that they are pursuing in the Litigation and the development of LEL,TOS would prejudice their ability to gather necessary evidence to support their claims.
- s.13; s.16



s.13; s.16

- s.13; s.16

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**Key Message:**

- The Ministry of Indigenous Relations and Reconciliation believes that the most appropriate venue to discuss Tsawout's asserted Douglas Treaty rights is at the newly formed, tripartite WSÁNEĆ Leadership Council Recognition of Indigenous Rights and Self-Determination table. [see WSÁNEĆ Leadership Council Membership section below]
- To date, MIRR has not been involved in the proposed LEL,TOS subdivision consultation process but would be available to provide support if requested by Tsawout and the Ministry of Transportation and Infrastructure.

Litigation regarding LEL,TOS

- s.14

- 

- 

**Commented [HC12]:** So they will if there is a recognition of Douglas Treaty?

**Commented [RJI3R3]:** Added note to verify with MOTI. I have not been privy to the consultations between MOTI and Tsawout but that is what I have been led to believe.

**Commented [HC14]:** Good call 😊 I'd verify the other statements as well, esp if this is going to be a joint note

**Commented [HC15]:** Ongoing with us? Or while we understand, please clarify

**Commented [HC16]:** I disagree on this point. This is an MOTI issue and the WLC is not set up to deal with this type of spec claim type discussion

**Commented [RJI7R7]:** Quote from WLC's mandate: "As an organization focused on self-determination, the WLC works to enhance recognition of, and respect for, WSÁNEĆ Douglas Treaty rights and WSÁNEĆ Aboriginal rights and title."



s.14

▪

▪

• s.14

**Key messages:**

- The Provincial government respects and recognizes the Indigenous rights of the Tsawout First Nation as a signatory to the historic Douglas treaty.

**WSÁNEĆ Leadership Council Membership**

- Tsawout is a member of the WSÁNEĆ Leadership Council (WLC) and a Douglas Treaty signatory. WSÁNEĆ is pronounced "WH-sah-nuch".
- WLC is comprised of three of the five WSÁNEĆ Nations, representing the interests of Tsartlip, Tseycum and Tsawout First Nations on specified topics. The other two Nations, Pauquachin and Malahat are not currently represented by WLC. Malahat is currently negotiating a modern treaty as part of the Te'mexw Treaty Association.
- The Ministry of Indigenous Relations and Reconciliation (MIRR) has recently joined the WLC and federal Recognition of Indigenous Rights and Self-Determination (RIRSD) table to work to address member Nation's reconciliation interests, including land acquisitions and economic development.

s.13; s.18.1

**Key Message:**

- I am optimistic that the new line of dialogue created at the WSÁNEĆ Leadership Council tripartite table will provide a venue for us to work collaboratively to discuss Tsawout interests at "LEL,TOS" / James Island.
- The Province is committed to working with Tsawout to deepen our relationship.

**Attachments:**

Attachment 1 – Map of Proposed JI Properties Inc. Subdivision

**PREPARED BY:**

James Rogers, Assistant Negotiator



Ministry of  
Indigenous Relations  
and Reconciliation

CLIFF 51962

Negotiations and Regional Operations Division  
(778) 974-2095

Page 4 of 4

## FW: Materials for May 27 meeting w/Tsawout FN and Adam Olsen

---

From: Costa, Sarina IRR:EX <Sarina.Costa@gov.bc.ca>  
To: Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
Cc: Yeung, Lucinda IRR:EX <Lucinda.Yeung@gov.bc.ca>, Loubert, Leslie IRR:EX <Leslie.Loubert@gov.bc.ca>, Hold - 210607 - Nirwan, Pavan IRR:EX <Pavan.Nirwan@gov.bc.ca>  
Sent: May 20, 2021 4:09:27 PM PDT  
Attachments: image001.jpg, 2021-05-19\_301048\_MRF MBN\_James Island Subdivision.pdf, image002.jpg  
Please see attached note provided by MOTI for the Joint Ministers' meeting with Tsawout FN and Adam Olsen on May 27th at 2:00pm.

Have attached copy to MMR's calendar entry.

Sarina

---

**From:** Grant, Lisa TRAN:EX <Lisa.Grant@gov.bc.ca>  
**Sent:** May 20, 2021 3:36 PM  
**To:** Costa, Sarina IRR:EX <Sarina.Costa@gov.bc.ca>  
**Subject:** Materials for May 27 meeting

Hi Sarina,

My DMO has made the attached BN for our joint meeting on May 27, just wanted to share with your office.

Cheers,

**Lisa Grant** (she/her)  
Administrative Coordinator



The Office of the Hon. Rob Fleming  
Minister of Transportation  
Legislative Assembly of British Columbia  
P: 250-387-1978 | E: [Lisa.Grant@gov.bc.ca](mailto:Lisa.Grant@gov.bc.ca)

## RE: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

---

From: Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
To: Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>, Chaytor, Wisty IRR:EX <Wisty.Chaytor@gov.bc.ca>, Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Cc: Bellefontaine, Katherine IRR:EX <Katherine.Bellefontaine@gov.bc.ca>, Midiang'a, Josie IRR:EX <Josie.Midianga@gov.bc.ca>  
Sent: May 21, 2021 3:29:55 PM PDT  
Attachments: 2021-05-19\_301048\_MRF MBN\_James Island Subdivision.pdf  
Here are MOTI's materials for the May 27 meeting.

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Bellefontaine, Katherine IRR:EX <Katherine.Bellefontaine@gov.bc.ca>  
**Sent:** May 10, 2021 1:42 PM  
**To:** Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
**Subject:** RE: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Thanks! Mark, Christie and Wisty to attend. Trish said she will pass.

-Katherine

---

**From:** Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
**Sent:** May 10, 2021 9:42 AM  
**To:** Bellefontaine, Katherine IRR:EX <Katherine.Bellefontaine@gov.bc.ca>  
**Cc:** Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
**Subject:** RE: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Hi Katherine,

This meeting is now confirmed for May 27. I've updated the chart and new deadline below.

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
**Sent:** May 5, 2021 3:45 PM  
**To:** Bellefontaine, Katherine IRR:EX <Katherine.Bellefontaine@gov.bc.ca>  
**Cc:** Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
**Subject:** (TBC) May 25 or 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Hi Katherine,

Our MO is holding a couple of dates for this meeting. In the meantime, please assign materials and confirm what staff will attend. I'll follow up with you once the MO has confirmed a date. Thanks.

Meeting Details:	Thurs, May 27, 2:00 – 3:00 PM via Zoom
Pre-Brief Details:	n/a (no pre-brief)
Which Minister(s)?	1. Minister Murray Rankin 2. Minister Rob Fleming (MOTI)
Who is the Meeting With?	Tsawout First Nation & MLA Adam Olsen (Greens)
Subject:	Pending Approval of James Island Subdivision Plan
What Staff Need to Attend?	
Meeting Materials Cliff/E-Approval #	52193 / 2450
Meeting Materials Due to MO:	Tues, May 25, 3:00 PM
Background:	<< File: 21 04 15 TFN Let to Min Rankin, MOTI.pdf >>  Matt Howie in DMO will inform ADMO when the meeting is confirmed. MIRR is leading on materials. If MOTI needs to provide input, MIRR can work with MOTI staff (let Matt in DMO know if MIRR staff need help finding a MOTI contact, and Matt can reach out to MOTI DMO).

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Cathy Webster <cwebster@tsawout.ca>  
**Sent:** April 16, 2021 4:41 PM  
**To:** Minister, IRR IRR:EX <IRR.Minister@gov.bc.ca>  
**Cc:** Transportation, Minister TRAN:EX <Minister.Transportation@gov.bc.ca>; Tsawout First Nation Chief & Council <council@tsawout.ca>; Band Manager <bandmanager@tsawout.ca>; John Gailus <john@dgwlaw.ca>; Erica Fritch <erica@dgwlaw.ca>  
**Subject:** 52056 - [Xref - 51424] Tsawout First Nation Letter, to request a meeting (re. pending approval of James Island Subdivision Plan)

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Good afternoon,

Please see attached letter from Chief Nick Claxton. Please advise of your availability. Thank you.

Cathy Webster  
Governance/HR Support  
Tsawout First Nation



## RE: FOR REVIEW: IRR Media Request: Tsawout return of James Island

---

From: Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
To: Yeung, Lucinda IRR:EX <Lucinda.Yeung@gov.bc.ca>, Costa, Sarina IRR:EX <Sarina.Costa@gov.bc.ca>, French, Shawna IRR:EX <Shawna.French@gov.bc.ca>, Plank, Sarah EAO:EX <Sarah.Plank@gov.bc.ca>  
Cc: Hold - 210607 - Nirwan, Pavan IRR:EX <Pavan.Nirwan@gov.bc.ca>, Loubert, Leslie IRR:EX <Leslie.Loubert@gov.bc.ca>  
Sent: May 26, 2021 11:43:55 AM PDT  
Attachments: 2021-05-19\_301048\_MRF MBN\_James Island Subdivision.pdf  
Hi Lucinda,

Sorry but can you please clarify what information MO is looking for? Are you looking for staff to confirm whether Tsawout has active litigation? You're correct that MOTI's BN (attached) doesn't seem to mention this.

I see in Cale's email he mentioned that GCPE will provide an IN. I presume that IN will provide any information you need. That said, if you'd like, you can reach out to the lead CN on this file (who will attend tomorrow), Mark Lofthouse. His cell is 250-480-8899. He's available until 12:30 and then again from 3-3:30.

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Yeung, Lucinda IRR:EX <Lucinda.Yeung@gov.bc.ca>  
**Sent:** May 26, 2021 9:26 AM  
**To:** Costa, Sarina IRR:EX <Sarina.Costa@gov.bc.ca>; French, Shawna IRR:EX <Shawna.French@gov.bc.ca>; Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
**Cc:** Nirwan, Pavan IRR:EX <Pavan.Nirwan@gov.bc.ca>; Loubert, Leslie IRR:EX <Leslie.Loubert@gov.bc.ca>  
**Subject:** FW: FOR REVIEW: IRR Media Request: Tsawout return of James Island

Good morning,

MMR is meeting with MLA Olsen and the Tsawout tomorrow—MOTI has led the development of meeting materials. Currently no mention of the litigation below, can we find more info to groundtruth this?

Thank you,  
Lucinda

---

**From:** Cowan, Cale GCPE:EX  
**Sent:** May 25, 2021 3:52 PM  
**To:** Yeung, Lucinda IRR:EX <Lucinda.Yeung@gov.bc.ca>; Loubert, Leslie IRR:EX <Leslie.Loubert@gov.bc.ca>; Nirwan, Pavan IRR:EX <Pavan.Nirwan@gov.bc.ca>  
**Cc:** Plank, Sarah GCPE:EX <Sarah.Plank@gov.bc.ca>; Mulholland, Lauren GCPE:EX <Lauren.Mulholland@gov.bc.ca>  
**Subject:** FOR REVIEW: IRR Media Request: Tsawout return of James Island

Hi, Lucinda.

Looking for review and approval of this media response regarding James Island. Trish has signed off.

We're also working on a quick update of background on issues note and will share shortly.

Thanks,

Cale

=====

Cale Cowan  
Public Affairs Officer  
Government Communications and Public Engagement  
Ministry of Indigenous Relations and Reconciliation  
250-356-7324 o  
250-812-4510 c

**Ministry response:**

We make every effort to resolve any potential claims in collaboration with Indigenous peoples outside of the courts. Because this matter is still before the courts, it would not be appropriate to comment further on the specifics of this case.

When privately owned land is involved, ministry staff have always been guided by the principle that private property is not on the negotiation table, except on a willing-buyer, willing-seller basis.

**Reporter**

Elizabeth Nolan, Reporter  
Driftwood Gulf Islands Media  
[enolan@gulfislands.net](mailto:enolan@gulfislands.net)  
250-537-9933

**Deadline** Friday, May 21, 2021 3:00 PM

**Request**

Looking for information about James Island, which the owner is applying to subdivide.

Tsawout First Nation had included it in a claim and then entered a civil suit in BC Supreme Court in 2018 to have the island returned to them. In addition, the Island Trust (North Pender Island Local Trust Committee) recently voted to recommend the province not allow the subdivision because it is not in the public interest.

Not clear on the present status of the civil suit since nothing appears to have happened since 2018.

Looking for update on what is happening and whether the province would entertain subdivision of property that's subject to a land claim?

**Recommendation**

**Background**

## RE: FOR REVIEW: IRR Media Request: Tsawout return of James Island

---

From: Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
To: Yeung, Lucinda IRR:EX <Lucinda.Yeung@gov.bc.ca>, Costa, Sarina IRR:EX <Sarina.Costa@gov.bc.ca>, French, Shawna IRR:EX <Shawna.French@gov.bc.ca>, Plank, Sarah EAO:EX <Sarah.Plank@gov.bc.ca>  
Cc: Hold - 210607 - Nirwan, Pavan IRR:EX <Pavan.Nirwan@gov.bc.ca>, Loubert, Leslie IRR:EX <Leslie.Loubert@gov.bc.ca>  
Sent: May 26, 2021 2:24:46 PM PDT  
Attachments: 52193 Meeting Bullets Tsawout meg MIRR, MOTI.docx  
Hi Lucinda,

I had completely forgot that MIRR is also preparing bullets for tomorrow's meeting. They're still with Mark Lofthouse for approval but here's the current draft. There's mention of the litigation.

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Howie, Matthew IRR:EX  
**Sent:** May 26, 2021 11:44 AM  
**To:** Yeung, Lucinda IRR:EX <Lucinda.Yeung@gov.bc.ca>; Costa, Sarina IRR:EX <Sarina.Costa@gov.bc.ca>; French, Shawna IRR:EX <Shawna.French@gov.bc.ca>; Plank, Sarah GCPE:EX <Sarah.Plank@gov.bc.ca>  
**Cc:** Nirwan, Pavan IRR:EX <Pavan.Nirwan@gov.bc.ca>; Loubert, Leslie IRR:EX <Leslie.Loubert@gov.bc.ca>  
**Subject:** RE: FOR REVIEW: IRR Media Request: Tsawout return of James Island  
**Importance:** High

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Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

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**Cc:** Nirwan, Pavan IRR:EX <Pavan.Nirwan@gov.bc.ca>; Loubert, Leslie IRR:EX <Leslie.Loubert@gov.bc.ca>  
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Lucinda

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**From:** Cowan, Cale GCPE:EX

**Sent:** May 25, 2021 3:52 PM

**To:** Yeung, Lucinda IRR:EX <[Lucinda.Yeung@gov.bc.ca](mailto:Lucinda.Yeung@gov.bc.ca)>; Loubert, Leslie IRR:EX <[Leslie.Loubert@gov.bc.ca](mailto:Leslie.Loubert@gov.bc.ca)>; Nirwan, Pavan IRR:EX <[Pavan.Nirwan@gov.bc.ca](mailto:Pavan.Nirwan@gov.bc.ca)>

**Cc:** Plank, Sarah GCPE:EX <[Sarah.Plank@gov.bc.ca](mailto:Sarah.Plank@gov.bc.ca)>; Mulholland, Lauren GCPE:EX <[Lauren.Mulholland@gov.bc.ca](mailto:Lauren.Mulholland@gov.bc.ca)>

**Subject:** FOR REVIEW: IRR Media Request: Tsawout return of James Island

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=====

Cale Cowan  
Public Affairs Officer  
Government Communications and Public Engagement  
Ministry of Indigenous Relations and Reconciliation  
250-356-7324 o  
250-812-4510 c

**Ministry response:**

We make every effort to resolve any potential claims in collaboration with Indigenous peoples outside of the courts. Because this matter is still before the courts, it would not be appropriate to comment further on the specifics of this case.

When privately owned land is involved, ministry staff have always been guided by the principle that private property is not on the negotiation table, except on a willing-buyer, willing-seller basis.

**Reporter**

Elizabeth Nolan, Reporter  
Driftwood Gulf Islands Media  
[enolan@gulfislands.net](mailto:enolan@gulfislands.net)  
250-537-9933

**Deadline** Friday, May 21, 2021 3:00 PM

**Request**

Looking for information about James Island, which the owner is applying to subdivide.

Tsawout First Nation had included it in a claim and then entered a civil suit in BC Supreme Court in 2018 to have the island returned to them. In addition, the Island Trust (North Pender Island Local Trust Committee) recently voted to recommend the province not allow the subdivision because it is not in the public interest.

Not clear on the present status of the civil suit since nothing appears to have happened since 2018.

Looking for update on what is happening and whether the province would entertain subdivision of property that's subject to a land claim?

**Recommendation**

**Background**

## MEETING BULLETS

**DATE:** May 19, 2021

**PREPARED FOR:** Honourable Murray Rankin, Minister of Indigenous Relations and Reconciliation

**REGARDING:** Meeting with Minister Rob Fleming, Minister of Transportation and Infrastructure and Chief Nicholas Claxton, Tsawout First Nation, regarding consultation on ŁEL,TOS / James Island subdivision

### PURPOSE:

- Tsawout First Nation (Tsawout) is seeking action on their concerns with regarding a proposed subdivision on ŁEL,TOS / James Island (James Island).

### BACKGROUND:

- James Island is a 780 acre privately owned island located off the Saanich Peninsula, within the Tsawout territory.
- The Ministry of Transportation and Infrastructure (MOTI) received a subdivision application in 2009 for an approximately 80 lot subdivision on James Island and a preliminary layout review was granted, as a next step in approval, in 2014.
- In 2018, Tsawout filed an action in the Supreme Court of British Columbia against the provincial and federal Crowns for a declaration of Aboriginal title to James Island and recognition that it should have been reserved for Tsawout's under the North Saanich Treaty (Douglas Treaty).
- Consultation with Tsawout on the application commenced in September 2019 and is ongoing.

### DISCUSSION:

#### WSÁNEĆ Leadership Council

- Tsawout is a member of the WSÁNEĆ Leadership Council (WLC), which also includes Tseycum and Tsartlip First Nations, and is a Douglas Treaty signatory. MIRR staff have had limited direct engagement with Tsawout; however, had previously tried to reach out over the years.
- MIRR recently joined a tripartite reconciliation table with the federal government and the WLC, to work to address member Nations' interests, including land acquisitions and economic development.
  - Discussions are currently preliminary and focused on a joint statement of recognition of Douglas Treaties in the territory, identification of lands and priority interests and next steps.
  - MIRR staff do not have the capacity for a stand-alone table with Tsawout and are seeking to engage through the tripartite WLC table wherever possible.

s.13; s.16

s.13; s.16

#### *Key Messages*

- *MIRR has recently joined the reconciliation table with the WLC and the federal government and I understand they are working on priority land and economic interest identification for each Nation. I wonder if there is an opportunity for more engagement in that forum?*

#### Consultation on Subdivision

- s.13; s.16

•

•

•

#### *Key Messages*

- *Consultation on the subdivision application remains the responsibility of MOTI, so I defer to my colleague from the Ministry of Transportation on that matter.*
- *We are interested in further developing our relationship and advancing reconciliation with Tsawout and have joined the tripartite WLC table where we are looking at land and economic opportunities for the Nations. I would recommend raising any land concerns at that table.*

#### Douglas Treaties and Litigation

- Tsawout is a decedent Nation to the North Saanich Treaty signatory.<sup>s.16</sup>  
s.16
- Tsawout states that James Island is a former village and burial site previously occupied exclusively by Tsawout, was used for hunting, fishing and gathering, and was not included in lands purchased under their Douglas Treaty. s.16
- Tsawout is seeking a declaration of Aboriginal title or recognition of James Island as a village site under their Douglas Treaty, as well as compensation for loss of use, breach of treaty, and return of ownership of James Island with compensation to the fee simple owner.
- The litigation is not currently active, and the pleadings stage is complete. There has been no document discovery and there is no abeyance agreement.

*Key Messages*

- *While I would defer to the Ministry of Attorney General specifically regarding the litigation, the province continues to be interested in engaging with Tsawout on your land and economic interests; I would recommend bringing this to the WLC table.*

Longhouse

- s.13; s.16

*Key Messages*

- *Thank you for bringing this important initiative to our attention, staff are looking into possible ways the province may be able to contribute.*

**CLOSING:**

*Key Messages:*

- *I hear the frustration regarding recognition of Douglas Treaties and the differing interpretation by the governments and the Nation.*
- *We continue to be interested in advancing our relationship with Tsawout and exploring opportunities to improve our understanding of your land and economic interests.*
- *I am optimistic about the new line of dialogue established with the W̱SÁNEĆ Leadership Council and the work being undertaken at that tripartite table and encourage you to raise these issues at that table.*

**PREPARED BY:**

Christie Harvie, Senior Negotiator  
Negotiations and Regional Operations Division  
(250) 361-6640



## **Fwd: FYI North Pender Trustees Back Tsawout In Subdivision Delay**

---

From: Balcaen, Trish L IRR:EX <Trish.Balcaen@gov.bc.ca>  
To: Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>, Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Sent: May 26, 2021 8:16:31 PM PDT  
Attachments: IN\_Tsawout James Island\_26May2021\_final.docx  
Lucinda and I spoke and she didn't need more detail. She did send this article and appreciated the advice you gave on the IN and BN.

Sent from my iPhone  
Trish Balcaen  
ADM, Negotiations and Regional Operations  
Indigenous Relations and Reconciliation  
(250) 896-1902

Begin forwarded message:

**From:** "Yeung, Lucinda IRR:EX" <Lucinda.Yeung@gov.bc.ca>  
**Date:** May 26, 2021 at 8:06:21 PM PDT  
**To:** "Balcaen, Trish L IRR:EX" <Trish.Balcaen@gov.bc.ca>  
**Subject:** FYI North Pender Trustees Back Tsawout In Subdivision Delay

For your interest! I found this an interesting summary of Tsawout's history and issue re: James Island  
Lucinda

---

**From:** Mulholland, Lauren GCPE:EX <Lauren.Mulholland@gov.bc.ca>  
**Sent:** May 26, 2021 3:21 PM  
**To:** Yeung, Lucinda IRR:EX <Lucinda.Yeung@gov.bc.ca>; Loubert, Leslie IRR:EX <Leslie.Loubert@gov.bc.ca>; Nirwan, Pavan IRR:EX <Pavan.Nirwan@gov.bc.ca>  
**Cc:** Costa, Sarina IRR:EX <Sarina.Costa@gov.bc.ca>; Plank, Sarah GCPE:EX <Sarah.Plank@gov.bc.ca>; Binder, Stephen GCPE:EX <Stephen.Binder@gov.bc.ca>; Cowan, Cale GCPE:EX <Cale.Cowan@gov.bc.ca>  
**Subject:** FOR REVIEW: IN & Media Request: Tsawout claim of James Island

Hello;  
Please find attached the updated IN on the Tsawout claim to James Island.  
s.14

Here's the article the reporter wrote for Monday's issue of the Driftwood...

<https://www.gulfislandsdriftwood.com/news/north-pender-trustees-back-tsawout-in-subdivision-delay/>

**North Pender Trustees Back Tsawout In Subdivision Delay**  
**By Elizabeth Nolan**  
**Last updated May 25, 2021**

Copyright

Page 239 of 413

Withheld pursuant to/removal as

Copyright

**Reporter**

Elizabeth Nolan, Reporter  
Driftwood Gulf Islands Media  
[enolan@gulfislands.net](mailto:enolan@gulfislands.net)  
250-537-9933

**Deadline** Friday, May 21, 2021 3:00 PM

**Request**

Looking for information about James Island, which the owner is applying to subdivide.

Tsawout First Nation had included it in a claim and then entered a civil suit in BC Supreme Court in 2018 to have the island returned to them. In addition, the Island Trust (North Pender Island Local Trust Committee) recently voted to recommend the province not allow the subdivision because it is not in the public interest.

Not clear on the present status of the civil suit since nothing appears to have happened since 2018.

Looking for update on what is happening and whether the province would entertain subdivision of property that's subject to a land claim?

**Recommendation:** Ministry response

We make every effort to resolve any potential claims in collaboration with Indigenous peoples outside of the courts. Because this matter is still before the courts, it would not be appropriate to comment further on the specifics of this case.

When privately owned land is involved, ministry staff have always been guided by the principle that private property is not on the negotiation table, except on a willing-buyer, willing-seller basis.

## Confidential Issues Note - ADVICE TO MINISTER

<b>Ministry of Indigenous Relations and Reconciliation</b> <b>Updated:</b> May 26, 2021 <b>Minister Responsible:</b> Hon. Murray Rankin	<b>Tsawout First Nation claim for James Island</b>
---	--

### RECOMMENDED RESPONSE:

- **The Provincial government respects and recognizes that Tsawout First Nation has a historic Douglas treaty.**
- **Government must interpret the treaty in ways that are fair and provide what was promised to the people of Tsawout First Nation.**
- **The Province was required to respond to Tsawout's notice of claim through the court.**
- **However, as part of our commitment to reconciliation, the Province has reached out to Tsawout to seek to resolve these issues outside of the court, government-to-government, based on building a respectful relationship.**
- **The Province is committed to building relationships with Indigenous peoples based on respect and recognition of rights, as guided by the United Nations Declaration on the Rights of Indigenous Peoples, the Truth and Reconciliation Commission Calls to Action and case law.**

### KEY FACTS:

- On Jan. 24, 2018, Tsawout First Nation filed a notice of claim seeking the return of James Island. Tsawout assert the island was a village site and should have been set aside as per its Douglas Treaty.
- B.C. and Canada are named as defendants. B.C. filed its response on May 1, 2018, and Canada filed on May 14, 2018. No dates are set.
- In July 2018, Tsawout removed JI Properties Inc., the owner of James Island, as a defendant. James Island is private property located off the Saanich Peninsula currently owned by U.S. telecom billionaire Craig McCaw, through JI Properties Inc. On Nov. 29, 2018, Tsawout hosted a fundraiser for its legal costs.
- Ministry of Indigenous Relations and Reconciliation has reached out to Tsawout, but no discussions have taken place. MIRR has no agreements and has had little engagement with Tsawout.
- Tsawout organized a public event on Sept. 2, 2018, to highlight their claim, with a breakfast, a paddle around the island, followed by a feast in the Tsawout community. The event precipitated a column by Jack Knox in the *Times Colonist*.
- Tsawout is one of the successors of the Saanich Tribes which concluded two treaties in February 1852 with James Douglas, governor of the Colony of Vancouver Island. Douglas treaties provide signatory First Nations and their successors the right to hunt over unoccupied lands and to fish "as formerly," as well as reserving enclosed fields and village sites for the First Nations' use and benefit.
- The notice of claim states that "LEL,TOS" (James Island) held a village site exclusively occupied by

## Confidential Issues Note - ADVICE TO MINISTER

Tsawout, and was used by members for hunting, fishing and foraging. It also had a burial site.

- The claim states James Island was not included in lands purchased by James Douglas, was never surrendered, and, and as per their Douglas treaty, should have been properly surveyed and set aside for the benefit of the Tsawout. Tsawout's reserve is directly across from James Island.
- Tsawout is seeking:
  - A declaration that James Island in whole or part is a village site or enclosed field of Tsawout; or alternatively that Tsawout has Aboriginal title to James Island in whole or part;
  - Compensation from Canada for a breach of its treaty obligation to set aside James Island;
  - Damages for loss of use and enjoyment of James Island.
- The Province's response includes:
  - The Saanich Tribes through their Douglas treaties surrendered lands as described in the treaties, "entirely and forever," including James Island, except for villages and enclosed fields;
  - The Saanich Tribes did not maintain villages or enclosed fields on James Island; and if they did, such villages and fields were abandoned prior to the treaties;
  - Saanich Tribes did not seek possession of James Island through two federal commissions on Indigenous peoples, nor through colonial officials (federal commissions did set aside several other lands on nearby islands for the use and benefit of Saanich Tribes);
  - If dispossession of James Island is an infringement of a Douglas treaty, (which B.C. denies) it pre-dates B.C.'s entry into Confederation with Canada, and thus is the sole responsibility of the federal government (known as a "pre-Confederation liability").
- In a release, Tsawout Councillor Mavis Underwood said: "The Crown has not honoured the Douglas Treaties, which has forced us to take court action. We have many village sites that were not reserved for our benefit and our rights to hunt and fish 'as formerly' have been diminished to the point of extinction."
- Media stories state that Tsawout has made several claims to gain ownership or possession of James Island, however no such claims have been filed in provincial or federal court. Tsawout has filed three federal Specific Claims, but James Island is not among them.
- s.16

- Tsawout is a signatory to a protective writ, in which the WSANEC (Saanich) First Nations are seeking Aboriginal title to their traditional territories, which includes James Island. The protective writ preserves the ability for the First Nations to reactivate their Aboriginal title claim.
- The Douglas Treaties are 14 historic treaties with Vancouver Island First Nations signed by the colonial government between 1850 and 1854 and involve a series of 14 land purchases. Successor nations include: Songhees; Esquimalt; Beecher Bay; T'sou-ke; Malahat; Tsawout; Tsartlip; Pauqhachin; Tseycum; Kwakiutl; and Snuneymuxw.

Communications contact: Stephen Binder

Program Area Contact: Hugh Gwillim (JAG), Wisty Chaytor, Gracie Wilcox

## **Fw: Fwd: FYI North Pender Trustees Back Tsawout In Subdivision Delay**

---

From: Harvie, Christie IRR:EX  
To: Rogers, James IRR:EX <James.Rogers@gov.bc.ca>  
Sent: May 27, 2021 7:05:25 AM PDT  
Attachments: IN\_Tsawout James Island\_26May2021\_final.docx  
Fyi

Christie Harvie  
250.361.6640

---

**From:** Trish.Balcaen@gov.bc.ca  
**Sent:** May 26, 2021 8:16 PM  
**To:** Mark.Lofthouse@gov.bc.ca; Christie.Harvie@gov.bc.ca  
**Subject:** Fwd: FYI North Pender Trustees Back Tsawout In Subdivision Delay

Lucinda and I spoke and she didn't need more detail. She did send this article and appreciated the advice you gave on the IN and BN.

Sent from my iPhone  
Trish Balcaen  
ADM, Negotiations and Regional Operations  
Indigenous Relations and Reconciliation  
(250) 896-1902

Begin forwarded message:

**From:** "Yeung, Lucinda IRR:EX" <Lucinda.Yeung@gov.bc.ca>  
**Date:** May 26, 2021 at 8:06:21 PM PDT  
**To:** "Balcaen, Trish L IRR:EX" <Trish.Balcaen@gov.bc.ca>  
**Subject:** FYI North Pender Trustees Back Tsawout In Subdivision Delay

For your interest! I found this an interesting summary of Tsawout's history and issue re: James Island  
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**From:** Mulholland, Lauren GCPE:EX <Lauren.Mulholland@gov.bc.ca>  
**Sent:** May 26, 2021 3:21 PM  
**To:** Yeung, Lucinda IRR:EX <Lucinda.Yeung@gov.bc.ca>; Loubert, Leslie IRR:EX <Leslie.Loubert@gov.bc.ca>; Nirwan, Pavan IRR:EX <Pavan.Nirwan@gov.bc.ca>  
**Cc:** Costa, Sarina IRR:EX <Sarina.Costa@gov.bc.ca>; Plank, Sarah GCPE:EX <Sarah.Plank@gov.bc.ca>; Binder, Stephen GCPE:EX <Stephen.Binder@gov.bc.ca>; Cowan, Cale GCPE:EX <Cale.Cowan@gov.bc.ca>  
**Subject:** FOR REVIEW: IN & Media Request: Tsawout claim of James Island

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Please find attached the updated IN on the Tsawout claim to James Island.

s.14

Here's the article the reporter wrote for Monday's issue of the Driftwood...

<https://www.gulfislandsdriftwood.com/news/north-pender-trustees-back-tsawout-in-subdivision-delay/>

**North Pender Trustees Back Tsawout In Subdivision Delay**





**Reporter**

Elizabeth Nolan, Reporter  
Driftwood Gulf Islands Media  
[enolan@gulfislands.net](mailto:enolan@gulfislands.net)  
[250-537-9933](tel:250-537-9933)

**Deadline** Friday, May 21, 2021 3:00 PM

**Request**

Looking for information about James Island, which the owner is applying to subdivide.

Tsawout First Nation had included it in a claim and then entered a civil suit in BC Supreme Court in 2018 to have the island returned to them. In addition, the Island Trust (North Pender Island Local Trust Committee) recently voted to recommend the province not allow the subdivision because it is not in the public interest.

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**Recommendation:** Ministry response

We make every effort to resolve any potential claims in collaboration with Indigenous peoples outside of the courts. Because this matter is still before the courts, it would not be appropriate to comment further on the specifics of this case.

When privately owned land is involved, ministry staff have always been guided by the principle that private property is not on the negotiation table, except on a willing-buyer, willing-seller basis.

## RE: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

---

From: Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
To: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>, Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>  
Cc: Bellefontaine, Katherine IRR:EX <Katherine.Bellefontaine@gov.bc.ca>, Midiang'a, Josie IRR:EX <Josie.Midianga@gov.bc.ca>  
Sent: May 27, 2021 8:53:48 AM PDT  
Attachments: 52193 Meeting Bullets Tsawout meg MIRR, MOTI.docx  
Hi everyone,

Here are the Trish-approved final bullets.

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Sent:** May 21, 2021 4:35 PM  
**To:** Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>; Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>; Chaytor, Wisty IRR:EX <Wisty.Chaytor@gov.bc.ca>  
**Cc:** Bellefontaine, Katherine IRR:EX <Katherine.Bellefontaine@gov.bc.ca>; Midiang'a, Josie IRR:EX <Josie.Midianga@gov.bc.ca>  
**Subject:** Re: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Thanks Matt!

Wisty is going to pass on this one, she's working her way off this file, so I'm good to go.

Thanks!

Christie Harvie  
250.361.6640

---

**From:** [Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)  
**Sent:** May 21, 2021 3:29 PM  
**To:** [Mark.Lofthouse@gov.bc.ca](mailto:Mark.Lofthouse@gov.bc.ca); [Wisty.Chaytor@gov.bc.ca](mailto:Wisty.Chaytor@gov.bc.ca); [Christie.Harvie@gov.bc.ca](mailto:Christie.Harvie@gov.bc.ca)  
**Cc:** [Katherine.Bellefontaine@gov.bc.ca](mailto:Katherine.Bellefontaine@gov.bc.ca); [Josie.Midianga@gov.bc.ca](mailto:Josie.Midianga@gov.bc.ca)  
**Subject:** RE: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Here are MOTI's materials for the May 27 meeting.

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Bellefontaine, Katherine IRR:EX <[Katherine.Bellefontaine@gov.bc.ca](mailto:Katherine.Bellefontaine@gov.bc.ca)>  
**Sent:** May 10, 2021 1:42 PM  
**To:** Howie, Matthew IRR:EX <[Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)>  
**Subject:** RE: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Thanks! Mark, Christie and Wisty to attend. Trish said she will pass.

-Katherine

---

**From:** Howie, Matthew IRR:EX <[Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)>  
**Sent:** May 10, 2021 9:42 AM  
**To:** Bellefontaine, Katherine IRR:EX <[Katherine.Bellefontaine@gov.bc.ca](mailto:Katherine.Bellefontaine@gov.bc.ca)>  
**Cc:** Howie, Matthew IRR:EX <[Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)>  
**Subject:** RE: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Hi Katherine,

This meeting is now confirmed for May 27. I've updated the chart and new deadline below.

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Howie, Matthew IRR:EX <[Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)>  
**Sent:** May 5, 2021 3:45 PM  
**To:** Bellefontaine, Katherine IRR:EX <[Katherine.Bellefontaine@gov.bc.ca](mailto:Katherine.Bellefontaine@gov.bc.ca)>  
**Cc:** Howie, Matthew IRR:EX <[Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)>  
**Subject:** (TBC) May 25 or 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Hi Katherine,

Our MO is holding a couple of dates for this meeting. In the meantime, please assign materials and confirm what staff will attend. I'll follow up with you once the MO has confirmed a date. Thanks.

Meeting Details:	Thurs, May 27, 2:00 – 3:00 PM via Zoom
Pre-Brief Details:	n/a (no pre-brief)
Which Minister(s)?	1. Minister Murray Rankin 2. Minister Rob Fleming (MOTI)
Who is the Meeting With?	Tsawout First Nation & MLA Adam Olsen (Greens)
Subject:	Pending Approval of James Island Subdivision Plan
What Staff Need to Attend?	
Meeting Materials Cliff/E-Approval #	52193 / 2450
Meeting Materials Due to MO:	Tues, May 25, 3:00 PM
Background:	<< File: 21 04 15 TFN Let to Min Rankin, MOTI.pdf >>  Matt Howie in DMO will inform ADMO when the meeting is confirmed. MIRR is leading on materials. If MOTI needs to provide input, MIRR can work with MOTI staff (let Matt in DMO know if

MIRR staff need help finding a MOTI contact, and Matt can reach out to MOTI DMO).

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Cathy Webster <cwebster@tsawout.ca>  
**Sent:** April 16, 2021 4:41 PM  
**To:** Minister, IRR IRR:EX <IRR.Minister@gov.bc.ca>  
**Cc:** Transportation, Minister TRAN:EX <Minister.Transportation@gov.bc.ca>; Tsawout First Nation Chief & Council <council@tsawout.ca>; Band Manager <bandmanager@tsawout.ca>; John Gailus <john@dgwlaw.ca>; Erica Fritch <erica@dgwlaw.ca>  
**Subject:** 52056 - [Xref - 51424] Tsawout First Nation Letter, to request a meeting (re. pending approval of James Island Subdivision Plan)

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Good afternoon,

Please see attached letter from Chief Nick Claxton. Please advise of your availability. Thank you.

Cathy Webster  
Governance/HR Support  
Tsawout First Nation

## FW: for 2 PM

---

From: Costa, Sarina IRR:EX <Sarina.Costa@gov.bc.ca>  
To: Yeung, Lucinda IRR:EX <Lucinda.Yeung@gov.bc.ca>  
Cc: Loubert, Leslie IRR:EX <Leslie.Loubert@gov.bc.ca>, Hold - 210607 - Nirwan, Pavan IRR:EX <Pavan.Nirwan@gov.bc.ca>  
Sent: May 27, 2021 12:00:08 PM PDT  
Attachments: 2021-05-19\_301048\_MRF MBN\_James Island Subdivision.pdf, image001.jpg, image002.jpg, 52193 Meeting Bullets Tsawout meg MIRR, MOTI.docx  
Hi Lucinda, please advise if ok to forward our bullets attached above to MOTI?

Sarina

---

**From:** Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
**Sent:** May 27, 2021 11:56 AM  
**To:** Costa, Sarina IRR:EX <Sarina.Costa@gov.bc.ca>  
**Subject:** for 2 PM  
**Importance:** High

The word doc is MIRR's BN and the PDF is MOTI's.

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
**Sent:** May 27, 2021 8:53 AM  
**To:** Costa, Sarina IRR:EX <Sarina.Costa@gov.bc.ca>; Queen, Stephanie IRR:EX <Stephanie.Queen@gov.bc.ca>  
**Cc:** Yeung, Lucinda IRR:EX <Lucinda.Yeung@gov.bc.ca>; Loubert, Leslie IRR:EX <Leslie.Loubert@gov.bc.ca>; Nirwan, Pavan IRR:EX <Pavan.Nirwan@gov.bc.ca>; French, Shawna IRR:EX <Shawna.French@gov.bc.ca>; Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
**Subject:** RE: Materials for May 27 meeting w/Tsawout FN and Adam Olsen  
**Importance:** High

Hi everyone,

Here are the Trish-approved bullets for today's 2 PM meeting.

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Costa, Sarina IRR:EX <Sarina.Costa@gov.bc.ca>  
**Sent:** May 20, 2021 4:09 PM  
**To:** Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
**Cc:** Yeung, Lucinda IRR:EX <Lucinda.Yeung@gov.bc.ca>; Loubert, Leslie IRR:EX <Leslie.Loubert@gov.bc.ca>; Nirwan, Pavan IRR:EX <Pavan.Nirwan@gov.bc.ca>  
**Subject:** FW: Materials for May 27 meeting w/Tsawout FN and Adam Olsen

Please see attached note provided by MOTI for the Joint Ministers' meeting with Tsawout FN and Adam Olsen on May 27th at 2:00pm.

Have attached copy to MMR's calendar entry.

Sarina

---

**From:** Grant, Lisa TRAN:EX <[Lisa.Grant@gov.bc.ca](mailto:Lisa.Grant@gov.bc.ca)>  
**Sent:** May 20, 2021 3:36 PM  
**To:** Costa, Sarina IRR:EX <[Sarina.Costa@gov.bc.ca](mailto:Sarina.Costa@gov.bc.ca)>  
**Subject:** Materials for May 27 meeting

Hi Sarina,

My DMO has made the attached BN for our joint meeting on May 27, just wanted to share with your office.

Cheers,

**Lisa Grant** (she/her)

Administrative Coordinator



The Office of the Hon. Rob Fleming  
Minister of Transportation  
Legislative Assembly of British Columbia  
P: 250-387-1978 | E: [Lisa.Grant@gov.bc.ca](mailto:Lisa.Grant@gov.bc.ca)



## MEETING BRIEFING NOTE

**DATE:** May 19, 2021  
**PREPARED FOR:** Honourable Rob Fleming, Minister of Transportation and Infrastructure  
**ISSUE:** Proposed James Island Subdivision  
**MEETING:** Tsawout First Nation, May 27, 2021

### PROPOSED KEY MESSAGES:

- Ministry staff appreciate the concerns raised by the Tsawout First Nation (TFN) about the proposed subdivision on James Island and have been in consultation with TFN since 2019.
- Ministry staff have shared these concerns with the Ministry's Provincial Approving Officer (PAO) who has the final approval authority on this subdivision.
- Evaluation of the subdivision proposal is underway by the ministry's PAO and no decisions have been made.

### PAST INTERACTIONS:

- None that staff are aware of

### BACKGROUND:

James Island is a 780-acre private island (owned by Discover Land Company) located off of the Saanich Peninsula and falls within the Island Trust in the North Pender Local Trust Area. It can only be accessed by water and air. The island currently has a 5,000 square-foot principal residence, as well as six guest cottages, private docks, an airstrip, pool house, 18-hole golf course and the manager's residence.

A subdivision application was originally received by MOTI in 2009. An updated Preliminary Layout Review (PLR) was granted in 2014. One of the conditions of the 2014 PLR included the need to hire a qualified archeologist to determine AIA requirements, as records indicated the presence of Archeological Sites protected under the Heritage Conservation Act. The current development proposal is for a 79 lot bare land strata development (76 residential lots and three commercial lots).

s.13; s.16

### DISCUSSION:

s.13; s.16; s.17





s.13; s.16

The ministry expressed ongoing willingness to the presentation of new information from the Nation regarding impacts. Subsequent meetings with TFN occurred on April 13<sup>th</sup> and 27<sup>th</sup> 2021, s.13; s.16  
s.13; s.16

The ministry intends to send the TFN a letter (by the end of May) responding to the specific concerns they have raised with the subdivision proposal and the TFN will be asked to provide a response within 60 days to ensure the interests and concerns of TFN are fully understood by the ministry.

On April 1, 2021, the North Pender Local Trust Committee (NPLTC) passed a resolution to not approve the subdivision as they do not believe it is in the public interest. The concerns expressed by the TFN as well as the resolution of the NPLTC will be shared with the ministry's PAO who is typically the final approving authority on whether or not this development can proceed.

The PAO's decision is guided by the following legislation: the Local Government Act, the Land Title Act, the Strata Property Act and Bare Land Strata Regulations. Under this legislation, it is a requirement that a PAO must consider and may hear from any parties who may be affected by the subdivision. A final decision on the subdivision has not been made at this time.

On rare occasion, there is an alternate approval process in which the Lieutenant Governor of British Columbia could be asked to consider the subdivision under Section 90 of the Land Title Act (LTA).

*Land Title Act Section 90 - Power of Lieutenant Governor in Council to prohibit deposit of plan*

- (1) The Lieutenant Governor in Council may, when it appears that the deposit of a subdivision plan is against the public interest, order the registrar not to receive the plan for deposit.

Given this proposed subdivision is a strata, the approval is subject to the Bare Land Strata Regulations. There is nothing specific in those regulations that are similar to Section 90 of the LTA; however the BC Government is able to submit an opinion to the PAO regarding the public's interests, which would be considered by the PAO in their review of the file.

**GBA+ OR DIVERSITY AND INCLUSION IMPLICATIONS:**

The ministry is aware of the presence of Archeological Sites protected under the Heritage Conservation Act and has been engaging with the TFN to ensure their interests and concerns are fully understood. This information will form an important aspect of the materials the PAO considers in making a final decision on the file.



#### FINANCIAL IMPLICATIONS:

- None.

#### Attachments:

1. James Island Location Map and Aerial Photo
2. s.16

PREPARED BY:	REVIEWED BY:	DATE:
Mike Pearson, P. Eng. District Manager Vancouver Island District (250) 713-2815	Kevin Richter, Associate Deputy Minister Highway Operations	21-May-19
Janelle Staite, P.Eng Deputy Director, SCR (250) 713-8763	Nancy Bain, Executive Financial Officer Finance and Management Services Department	N/A
	Kevin Richter, A/Deputy Minister	21-May-19



Figure 1: James Island Location Map



Figure 2: James Island Arial Photo

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Withheld pursuant to/removed as

s.16 ; s.18.1

## MEETING BULLETS

**DATE:** May 26, 2021

**PREPARED FOR:** Honourable Murray Rankin, Minister of Indigenous Relations and Reconciliation

**REGARDING:** Meeting with Minister Rob Fleming, Minister of Transportation and Infrastructure and Chief Nicholas Claxton, Tsawout First Nation, regarding consultation on ŁEL,TOS / James Island subdivision

### PURPOSE:

- Tsawout First Nation (Tsawout) is seeking action on their concerns with regarding a proposed subdivision on ŁEL,TOS / James Island (James Island).

### BACKGROUND:

- James Island is a 780 acre privately owned island located off the Saanich Peninsula, within the Tsawout territory.
- The Ministry of Transportation and Infrastructure (MOTI) received a subdivision application in 2009 for an approximately 80 lot subdivision on James Island and a preliminary layout review was granted, as a next step in approval, in 2014.
- In 2018, Tsawout filed an action in the Supreme Court of British Columbia against the provincial and federal Crowns for a declaration of Aboriginal title to James Island and recognition that it should have been reserved for Tsawout's under the North Saanich Treaty (Douglas Treaty).
- Consultation with Tsawout on the application commenced in September 2019 and is ongoing.

### DISCUSSION:

#### WSÁNEĆ Leadership Council

- Tsawout is a member of the WSÁNEĆ Leadership Council (WLC), which also includes Tseycum and Tsartlip First Nations, and is a Douglas Treaty signatory. MIRR staff have had limited direct engagement with Tsawout over the years.
- MIRR recently joined a tripartite reconciliation table with the federal government and the WLC, to work to address member Nations' interests, including land acquisitions and economic development.
  - Discussions are currently preliminary and focused on a joint statement of recognition of Douglas Treaties in the territory, identification of lands and priority interests and next steps.
  - MIRR staff do not have the capacity for a stand-alone table with Tsawout and are seeking to engage through the tripartite WLC table wherever possible.

s.13; s.16

s.13; s.16

#### Key Messages

- MIRR has recently joined the reconciliation table with the WLC and the federal government and I understand they are working on priority land and economic interest identification for each Nation. I wonder if there is an opportunity for more engagement in that forum?

#### Consultation on Subdivision

s.13; s.16

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•

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#### Key Messages

- Consultation on the subdivision application remains the responsibility of MOTI, so I defer to my colleague from the Ministry of Transportation on that matter.
- We are interested in further developing our relationship and advancing reconciliation with Tsawout and have joined the tripartite WLC table where we are looking at land and economic opportunities for the Nations. I would recommend raising any land concerns at that table.

#### Douglas Treaties and Litigation

- s.14; s.16

•

•

•

### Key Messages

- While I would defer to the Ministry of Attorney General specifically regarding the litigation, the province continues to be interested in engaging with Tsawout on your land and economic interests; I would recommend bringing this to the WLC table.

### Longhouse

- s.13; s.16

### Key Messages

- How have your fundraising efforts been going? Who have you reached out to so far? Have you had any successes?
- [If needed] Thank you for bringing this important initiative to our attention, staff are looking into possible ways the province may be able to contribute.

### **CLOSING:**

#### Key Messages:

- I hear the frustration regarding recognition of Douglas Treaties and the differing interpretation by the governments and the Nation.
- We continue to be interested in advancing our relationship with Tsawout and exploring opportunities to improve our understanding of your land and economic interests.
- I am optimistic about the new line of dialogue established with the WSÁNEĆ Leadership Council and the work being undertaken at that tripartite table and encourage you to raise these issues at that table.

#### **PREPARED BY:**

Christie Harvie, Senior Negotiator  
Negotiations and Regional Operations Division  
(250) 361-6640

## RE: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

---

From: Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>  
To: Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>, Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Cc: Bellefontaine, Katherine IRR:EX <Katherine.Bellefontaine@gov.bc.ca>, Midiang'a, Josie IRR:EX <Josie.Midianga@gov.bc.ca>  
Sent: May 27, 2021 2:17:44 PM PDT  
Try this one.

Topic: Meeting with FNLC & Ministers Rankin/Ralston  
Time: May 27, 2021 10:00 AM Vancouver

Join Zoom Meeting  
<https://zoom.us/j/s.15?pwd=UzEzMTN3dzNKTTc1UTBnSVlVQ1dHdz09>

s.15

One tap mobile  
+14388097799,,97330510709#,,,,\*053727# Canada  
+15873281099,,97330510709#,,,,\*053727# Canada

Dial by your location  
+1 438 809 7799 Canada  
+1 587 328 1099 Canada  
+1 647 374 4685 Canada  
+1 647 558 0588 Canada  
+1 778 907 2071 Canada  
+1 204 272 7920 Canada

s.15

Find your local number: <https://zoom.us/j/aedZj2O9Cg>

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>  
**Sent:** May 27, 2021 2:11 PM  
**To:** Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Cc:** Howie, Matthew IRR:EX <Matthew.Howie@gov.bc.ca>; Bellefontaine, Katherine IRR:EX <Katherine.Bellefontaine@gov.bc.ca>; Midiang'a, Josie IRR:EX <Josie.Midianga@gov.bc.ca>  
**Subject:** Re: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Yes just tried it again

Mark James Lofthouse  
Chief Negotiator

On May 27, 2021, at 2:10 PM, Harvie, Christie IRR:EX <[Christie.Harvie@gov.bc.ca](mailto:Christie.Harvie@gov.bc.ca)> wrote:



Yup, try to join and see what it says

Christie Harvie (*she/her*)  
Ministry of Indigenous Relations and Reconciliation  
c. 250.361.6640

---

**From:** Howie, Matthew IRR:EX <[Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)>  
**Sent:** May 27, 2021 2:09 PM  
**To:** Harvie, Christie IRR:EX <[Christie.Harvie@gov.bc.ca](mailto:Christie.Harvie@gov.bc.ca)>; Lofthouse, Mark IRR:EX <[Mark.Lofthouse@gov.bc.ca](mailto:Mark.Lofthouse@gov.bc.ca)>  
**Cc:** Bellefontaine, Katherine IRR:EX <[Katherine.Bellefontaine@gov.bc.ca](mailto:Katherine.Bellefontaine@gov.bc.ca)>; Midiang'a, Josie IRR:EX <[Josie.Midianga@gov.bc.ca](mailto:Josie.Midianga@gov.bc.ca)>  
**Subject:** RE: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

You're using this link from the invite?

Indigenous Relations & Reconciliation is inviting you to a scheduled Zoom meeting.

Topic: Meeting with Ministers Rankin/Fleming, MLA Olsen & Tsawout First Nation  
Time: May 27, 2021 02:00 PM Vancouver

Join Zoom Meeting  
<https://zoom.us/j/s.15?pwd=V3BoYmduNm92cGpTNCsvbkFDbnVUUT09>

s.15

One tap mobile  
+17789072071,,98111058151#,,,,\*473891# Canada  
+12042727920,,98111058151#,,,,\*473891# Canada

Dial by your location  
+1 778 907 2071 Canada  
+1 204 272 7920 Canada  
+1 438 809 7799 Canada  
+1 587 328 1099 Canada  
+1 647 374 4685 Canada  
+1 647 558 0588 Canada

s.15

Find your local number: <https://zoom.us/u/acpWQiJxsZ>

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Harvie, Christie IRR:EX <[Christie.Harvie@gov.bc.ca](mailto:Christie.Harvie@gov.bc.ca)>  
**Sent:** May 27, 2021 2:09 PM  
**To:** Howie, Matthew IRR:EX <[Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)>; Lofthouse, Mark IRR:EX <[Mark.Lofthouse@gov.bc.ca](mailto:Mark.Lofthouse@gov.bc.ca)>  
**Cc:** Bellefontaine, Katherine IRR:EX <[Katherine.Bellefontaine@gov.bc.ca](mailto:Katherine.Bellefontaine@gov.bc.ca)>; Midiang'a, Josie IRR:EX <[Josie.Midianga@gov.bc.ca](mailto:Josie.Midianga@gov.bc.ca)>  
**Subject:** RE: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Hi Matt, Mark and I are still waiting to be let in.

It says host has another meeting in progress.

Christie Harvie (*she/her*)  
Ministry of Indigenous Relations and Reconciliation  
c. 250.361.6640

---

**From:** Howie, Matthew IRR:EX <[Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)>  
**Sent:** May 27, 2021 8:54 AM  
**To:** Harvie, Christie IRR:EX <[Christie.Harvie@gov.bc.ca](mailto:Christie.Harvie@gov.bc.ca)>; Lofthouse, Mark IRR:EX <[Mark.Lofthouse@gov.bc.ca](mailto:Mark.Lofthouse@gov.bc.ca)>  
**Cc:** Bellefontaine, Katherine IRR:EX <[Katherine.Bellefontaine@gov.bc.ca](mailto:Katherine.Bellefontaine@gov.bc.ca)>; Midiang'a, Josie IRR:EX <[Josie.Midianga@gov.bc.ca](mailto:Josie.Midianga@gov.bc.ca)>  
**Subject:** RE: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen  
**Importance:** High

Hi everyone,

Here are the Trish-approved final bullets.

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Harvie, Christie IRR:EX <[Christie.Harvie@gov.bc.ca](mailto:Christie.Harvie@gov.bc.ca)>  
**Sent:** May 21, 2021 4:35 PM  
**To:** Howie, Matthew IRR:EX <[Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)>; Lofthouse, Mark IRR:EX <[Mark.Lofthouse@gov.bc.ca](mailto:Mark.Lofthouse@gov.bc.ca)>; Chaytor, Wisty IRR:EX <[Wisty.Chaytor@gov.bc.ca](mailto:Wisty.Chaytor@gov.bc.ca)>  
**Cc:** Bellefontaine, Katherine IRR:EX <[Katherine.Bellefontaine@gov.bc.ca](mailto:Katherine.Bellefontaine@gov.bc.ca)>; Midiang'a, Josie IRR:EX <[Josie.Midianga@gov.bc.ca](mailto:Josie.Midianga@gov.bc.ca)>  
**Subject:** Re: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Thanks Matt!

Wisty is going to pass on this one, she's working her way off this file, so I'm good to go.

Thanks!

Christie Harvie  
250.361.6640

---

**From:** [Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)  
**Sent:** May 21, 2021 3:29 PM  
**To:** [Mark.Lofthouse@gov.bc.ca](mailto:Mark.Lofthouse@gov.bc.ca); [Wisty.Chaytor@gov.bc.ca](mailto:Wisty.Chaytor@gov.bc.ca); [Christie.Harvie@gov.bc.ca](mailto:Christie.Harvie@gov.bc.ca)  
**Cc:** [Katherine.Bellefontaine@gov.bc.ca](mailto:Katherine.Bellefontaine@gov.bc.ca); [Josie.Midianga@gov.bc.ca](mailto:Josie.Midianga@gov.bc.ca)  
**Subject:** RE: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Here are MOTI's materials for the May 27 meeting.

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Bellefontaine, Katherine IRR:EX <[Katherine.Bellefontaine@gov.bc.ca](mailto:Katherine.Bellefontaine@gov.bc.ca)>  
**Sent:** May 10, 2021 1:42 PM  
**To:** Howie, Matthew IRR:EX <[Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)>  
**Subject:** RE: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Thanks! Mark, Christie and Wisty to attend. Trish said she will pass.

-Katherine

---

**From:** Howie, Matthew IRR:EX <[Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)>  
**Sent:** May 10, 2021 9:42 AM  
**To:** Bellefontaine, Katherine IRR:EX <[Katherine.Bellefontaine@gov.bc.ca](mailto:Katherine.Bellefontaine@gov.bc.ca)>  
**Cc:** Howie, Matthew IRR:EX <[Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)>  
**Subject:** RE: May 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Hi Katherine,

This meeting is now confirmed for May 27. I've updated the chart and new deadline below.

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Howie, Matthew IRR:EX <[Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)>  
**Sent:** May 5, 2021 3:45 PM  
**To:** Bellefontaine, Katherine IRR:EX <[Katherine.Bellefontaine@gov.bc.ca](mailto:Katherine.Bellefontaine@gov.bc.ca)>  
**Cc:** Howie, Matthew IRR:EX <[Matthew.Howie@gov.bc.ca](mailto:Matthew.Howie@gov.bc.ca)>  
**Subject:** (TBC) May 25 or 27 meeting with MMR/MRF & Tsawout/MLA Olsen

Hi Katherine,

Our MO is holding a couple of dates for this meeting. In the meantime, please assign materials and confirm what staff will attend. I'll follow up with you once the MO has confirmed a date. Thanks.

Meeting Details:	Thurs, May 27, 2:00 – 3:00 PM via Zoom
Pre-Brief Details:	n/a (no pre-brief)
Which Minister(s)?	1. Minister Murray Rankin 2. Minister Rob Fleming (MOTI)
Who is the Meeting With?	Tsawout First Nation & MLA Adam Olsen (Greens)
Subject:	Pending Approval of James Island Subdivision Plan
What Staff Need to Attend?	
Meeting Materials Cliff/E-Approval #	52193 / 2450
Meeting Materials Due to MO:	Tues, May 25, 3:00 PM

Background:	<p>&lt;&lt; File: 21 04 15 TFN Let to Min Rankin, MOTI.pdf &gt;&gt;</p> <p>Matt Howie in DMO will inform ADMO when the meeting is confirmed. MIRR is leading on materials. If MOTI needs to provide input, MIRR can work with MOTI staff (let Matt in DMO know if MIRR staff need help finding a MOTI contact, and Matt can reach out to MOTI DMO).</p>
-------------	---

Matthew Howie  
Senior Executive Assistant to  
Doug Caul, Deputy Minister  
Ministry of Indigenous Relations & Reconciliation  
Phone: 778-974-2080

---

**From:** Cathy Webster <cwebster@tsawout.ca>  
**Sent:** April 16, 2021 4:41 PM  
**To:** Minister, IRR IRR:EX <IRR.Minister@gov.bc.ca>  
**Cc:** Transportation, Minister TRAN:EX <Minister.Transportation@gov.bc.ca>; Tsawout First Nation Chief & Council <council@tsawout.ca>; Band Manager <bandmanager@tsawout.ca>; John Gailus <john@dgwlaw.ca>; Erica Fritch <erica@dgwlaw.ca>  
**Subject:** 52056 - [Xref - 51424] Tsawout First Nation Letter, to request a meeting (re. pending approval of James Island Subdivision Plan)

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Good afternoon,

Please see attached letter from Chief Nick Claxton. Please advise of your availability. Thank you.

Cathy Webster  
Governance/HR Support  
Tsawout First Nation

Page 269 of 413 to/à Page 270 of 413

Withheld pursuant to/removed as

s.13 ; s.14



Page 272 of 413 to/à Page 277 of 413

Withheld pursuant to/removed as

s.14 ; s.16

## Briefing request from MOTI re: James Island

From: Costa, Sarina IRR:EX <Sarina.Costa@gov.bc.ca>  
To: Yeung, Lucinda IRR:EX <Lucinda.Yeung@gov.bc.ca>  
Cc: Loubert, Leslie IRR:EX <Leslie.Loubert@gov.bc.ca>, Black, Devon IRR:EX <Devon.Black@gov.bc.ca>  
Sent: June 24, 2021 11:40:32 AM PDT  
Attachments: image001.jpg, image002.jpg, 2021-06-21\_303794\_DM IBN\_James Island Subdivision.pdf  
Hi Lucinda. Please advise if ok to schedule this briefing. Just need the ok from you for MMR and staff to join briefing, and if so, we'll find a date that works.

Sarina

---

**From:** Grant, Lisa TRAN:EX <Lisa.Grant@gov.bc.ca>  
**Sent:** June 24, 2021 11:24 AM  
**To:** Costa, Sarina IRR:EX <Sarina.Costa@gov.bc.ca>  
**Subject:** MMR Briefing request

Hey Sarina,

As discussed this is the briefing we are hoping to book at 1:00pm on June 30 with MMR (pending confirmation of his travel schedule)

<b>303794</b>	<b>MRF/MMR BRIEFING   James Island Subdivision</b>
<b>ISSUE:</b>	<i>James Island Subdivision</i>
<b>PURPOSE:</b>	<ul style="list-style-type: none"><li>• <i>Seeking direction from MRF and MMR</i></li></ul>
<b>TIMING &amp; IMPLICATIONS:</b>	<ul style="list-style-type: none"><li>• <i>Next week</i></li><li>• <i>Developer and First Nations driven to get a resolution and decision ASAP</i></li></ul>
<b>PARTICIPANTS:</b>	<i>Minister Rob Fleming</i> <i>Minister Murray Rankin</i> <i>Kaye Krishna</i> <i>Kevin Richter</i> <i>Janelle Staite</i>
<b>DURATION:</b>	30 minutes
<b>MATERIALS:</b>	IBN attached

**Lisa Grant** (she/her)  
Administrative Coordinator



The Office of the Hon. Rob Fleming  
Minister of Transportation  
Legislative Assembly of British Columbia  
P: 250-387-1978 | E: [Lisa.Grant@gov.bc.ca](mailto:Lisa.Grant@gov.bc.ca)





## MEETING BRIEFING NOTE

**DATE:** June 21, 2021  
**PREPARED FOR:** Kaye Krisha, Deputy Minister, Ministry of Transportation and Infrastructure  
**ISSUE:** James Island Subdivision

### SUMMARY:

- Ministry staff have been in consultation with Tsawout First Nation (TFN) since September 2019.
- The TFN's concerns have been shared with the Provincial Approving Officer (PAO) who has the final approval authority on this subdivision.
- In April 2021, the North Pender Local Trust Committee (NPLTC) passed a resolution not to support the subdivision and this has been shared with the PAO.
- s.16

### BACKGROUND:

James Island is a 780-acre private island (owned by Discover Land Company) located off of the Saanich Peninsula and falls within the Island Trust in the North Pender Local Trust Area. It can only be accessed by water and air. The island currently has a 5,000 square-foot principal residence, as well as six guest cottages, private docks, an airstrip, pool house, 18-hole golf course and the manager's residence.

A subdivision application was originally received by MOTI in 2009. An updated Preliminary Layout Review (PLR) was granted in 2014. One of the conditions of the 2014 PLR included the need to hire a qualified archeologist to determine AIA requirements, as records indicated the presence of Archeological Sites protected under the Heritage Conservation Act. The current development proposal is for a 79 lot bare land strata development (76 residential lots and three commercial lots).

Consultation with the Tsawout First Nation (TFN) has been underway since September 2019, following a request from the TFN for a referral package for the subdivision application. Since this time, ministry staff have had numerous engagements with TFN, including sending eight letters and four virtual meetings.

### DISCUSSION:

s.13; s.16

The ministry has expressed ongoing willingness to the presentation of new information from the TFN regarding impacts. Subsequent meetings with TFN occurred on April 13<sup>th</sup> and 27<sup>th</sup> 2021, s.13; s.16  
 s.13; s.16

s.13; s.16

On April 1, 2021, the North Pender Local Trust Committee (NPLTC) passed a resolution to not approve the subdivision as they do not believe it is in the public interest (Attachment 3). The concerns expressed by the TFN as well as the resolution of the NPLTC will be shared with the ministry's PAO who is typically the final approving authority on whether or not this development can proceed.

The PAO's decision is guided by the following legislation: the Local Government Act, the Land Title Act, the Strata Property Act and Bare Land Strata Regulations. Under this legislation, it is a requirement that a PAO must consider and may hear from any parties who may be affected by the subdivision. A final decision on the subdivision has not been made at this time.

On rare occasion, there is an alternate approval process in which the Lieutenant Governor of British Columbia could be asked to consider the subdivision under Section 90 of the Land Title Act (LTA).

*Land Title Act Section 90 - Power of Lieutenant Governor in Council to prohibit deposit of plan*

- (1) The Lieutenant Governor in Council may, when it appears that the deposit of a subdivision plan is against the public interest, order the registrar not to receive the plan for deposit.

Given this proposed subdivision is a strata, the approval is subject to the Bare Land Strata Regulations. There is nothing specific in those regulations that are similar to Section 90 of the LTA; however the BC Government is able to submit an opinion to the PAO regarding the public's interests, which would be considered by the PAO in their review of the file.

The applicant has been ready since fall 2020 to submit their final plans (and corresponding final application fee of ~\$8000) however the ministry has asked the developer to await finalization of Indigenous consultation prior to submitting their final plans and fee. Once the final plans have been submitted and fees paid, the PAO has 60 days in which to render a decision on the subdivision.

If a subdivision gets approved, the developer is sent the signed documents to file at the Land Titles Office.

If a subdivision is not approved, a PAO is required to notify the applicant in writing of the non-approval, briefly stating the reasons (Land Title Act section 85(2)). The fulsome PAO decisions / rationale for approval or non-approval are kept in the file and are protected through FOIPA because it is a decision by a statutory decision maker. A fulsome written decision/rationale is not required by law, but it is in the PAO's best interest to do so if there is a legal challenge after the decision is made.

#### **GBA+ OR DIVERSITY AND INCLUSION IMPLICATIONS:**

The ministry is aware of the presence of Archeological Sites protected under the Heritage Conservation Act and has been engaging with the TFN to ensure their interests and concerns are fully understood. This information will form an important aspect of the materials the PAO considers in making a final decision.

#### **FINANCIAL IMPLICATIONS:**

- None.


**Attachments:**

1. Figure 1: James Island Location Map and Figure 2: Aerial Photo
2. s.13; s.16
3. First Nations impacts and Ministry response
4. April 1, 2021 Letter from North Pender Local Trust Committee (NPLTC)

PREPARED BY:	REVIEWED BY:	DATE:
Mike Pearson, P. Eng. District Manager Vancouver Island District (250) 713-2815	Kevin Richter, Associate Deputy Minister Highway Operations	21-Jun-18
Janelle Staite, P.Eng Deputy Director, SCR (250) 713-8763	Nancy Bain, Executive Financial Officer Finance and Management Services Department	N/A

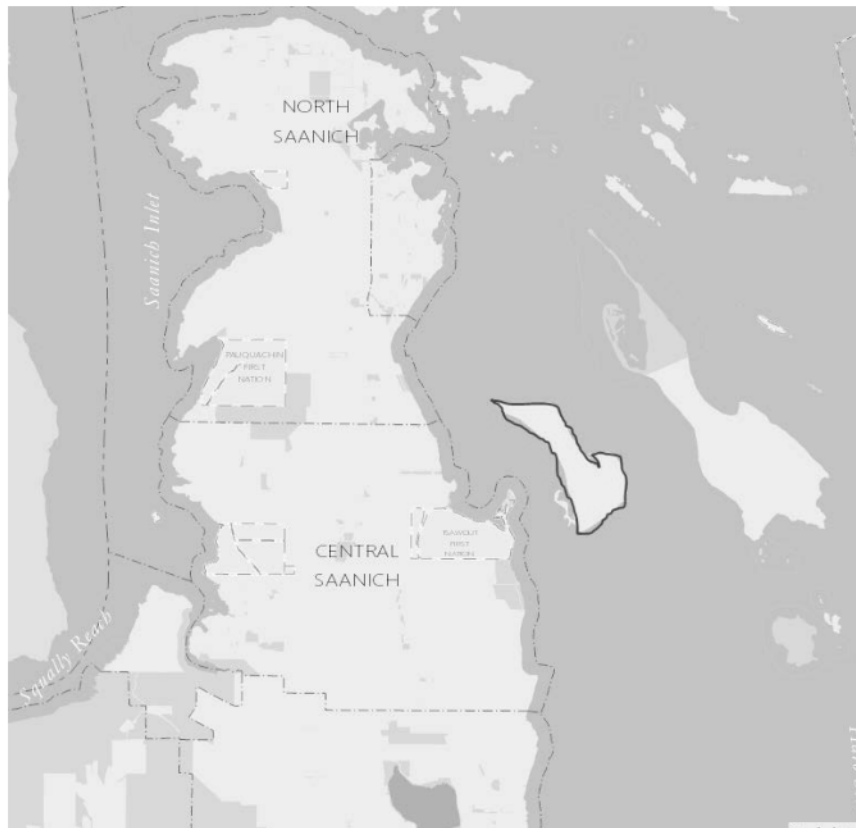


Figure 1: James Island Location Map



Figure 2: James Island Aerial Photo

2021-06-xx

Draft Consultation Summary Letter to Tsawout

**Re: April 27<sup>th</sup>, 2021 Meeting Follow-up Items and Impacts Assessment, MOTI File 2014-01343**

Dear Chief Claxton and Council:

Thank you for taking the time to meet with myself and the Provincial Approving Officer housed under the Ministry of Transportation and Infrastructure ("MOTI") and with our colleague from the Ministry of Forests, Lands, and Natural Resource Operations and Rural Development ("FLNRORD") on April 27<sup>th</sup>, 2021 as a continuation of our consultation process on the 79 lot bare land strata subdivision application on LEL,TOS (the "Application").<sup>s.16</sup>

s.16

### Impacts Assessment

The Province recognizes that Tsawout members are descendants of the signatories to the North Saanich Treaty entered into with Governor James Douglas in 1852. In addition to Douglas Treaty rights to hunt on unoccupied lands and fish as formerly, the Province acknowledges that Tsawout asserts Aboriginal rights and Aboriginal title within their traditional territory, including LEL,TOS and its surrounding waters.

In considering the potential impacts of the Application on Tsawout's Douglas Treaty rights and asserted Aboriginal rights related to traditional harvesting activities, the following three components have been considered:

- **Biophysical factors:** Consideration of potential effects on biophysical factors that are important for, or associated with the exercise of a harvesting right. This can include consideration of factors relevant to the exercise of the right, the residual and cumulative effects analysis of those factors, the species harvested by the Aboriginal group, relevant mitigation measures, and the efficacy of such mitigation measures;
- **Geospatial factors:** Consideration of potential effects on specific sites of or areas of importance for traditional use, or sites or areas where the rights are exercised. This can include consideration of whether there are any traditional land or marine use sites identified overlapping or in proximity to the Application area, the number of such sites within the Application, effects on the access to such sites, and effects on frequency or

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<sup>1</sup> The Provincial Approving Officer is a provincial appointee who sits within MOTI but MOTI is not the decision-maker. Hereinafter in this correspondence, the "Province" refers to the Provincial Approving Officer and the Development Officer.

timing to access such sites, increased public access, relevant mitigation measures, and the efficacy of such mitigation measures; and

• **Social, cultural, spiritual, experiential factors:** Consideration of potential effects on social, cultural, spiritual and experiential aspects of the exercise of the right. This can include potential effects of the Application on the experience of exercising rights in the area, effects on community health, on socio-cultural institutions, teaching and knowledge transfer, ceremonial/spiritual practices associated with the right, and the relative importance of the Application area to the exercise of right.

Based on the three components of Aboriginal rights and Treaty rights described above, the following relevant factors have been considered in assessing the impact of the Application on Tsawout's Aboriginal and Treaty harvesting rights:

#### *Biophysical*

- Increased pollution from population growth and increased marine and air traffic will negatively impact Tsawout's rights to harvest, particularly fish, shellfish, waterfowl, and other marine wildlife in the vicinity of LEL, TOS;
- Noise disturbance from the construction and occupation of LEL, TOS;
- Applicant's development model anticipates properties serving as vacation homes for owners not permanent residences meaning the anticipated volume of boat or air traffic is contemplated to be lower than a permanent resident model;

#### *Geospatial*

- Development of LEL, TOS will result in permanent changes to the landscape;
- The construction and occupation of LEL, TOS may lead to the potential disturbance of unrecorded archaeological sites and cultural features;
- Camas fields, potato patches, berry patches and harvesting sites on the island may be disturbed by increased human traffic and construction;

s.16; s.18.1

- Access to LEL, TOS by Tsawout will be further limited and existing access will be made more challenging with increased public use and occupation of LEL, TOS;
- LEL, TOS is currently privately owned in fee simple;
- Although Tsawout has a limited access agreement with the Applicant, as a private landowner, the Applicant could have decided to exclude Tsawout from accessing LEL, TOS at any time;

#### *Social, Cultural, Spiritual, or Experiential*

- Tsawout has explained that Tsawout members (particularly younger generations) have nowhere left to learn about and practice traditional customs, laws, and teachings that are grounded in ŁEL,TOS;
- James Island is an important cultural, spiritual, harvesting and governance site for Tsawout as reflected in its SENĆOŦEN name, ŁEL,TOS, which means “splashed on the face”;

#### *Current Mitigations*

- Conservation covenants were granted in favour of the Local Trust Committee and the Nature Conservancy of Canada that significantly restrict access and activity within the areas covered by the covenants, which includes much of the land abutting the shoreline around ŁEL,TOS;
- Applicant had Archaeological Inventory and Archaeological Impact Assessment of Proposed Land Subdivision prepared by Stantec Consulting Ltd., dated April 30, 2020 (“Stantec’s AIA”) including some Tsawout members in this work. The Province acknowledges that Tsawout disputes the nature and scope of Tsawout member involvement in the completion of Stantec’s AIA;
- Prior to Stantec’s AIA, four previous archaeological studies were conducted in respect of ŁEL,TOS:
  - o 1974 Avocational Study for the Archaeological Sites Advisory Board
  - o 1975 study for the SW Gulf of Georgia Archaeological Survey
  - o 2005 Archaeological Predictive Model for the Hul’qumi’num Treaty Group
  - o 2006 Millennia Archaeological Reconnaissance Report

In addition to the observations made during the course of their own surveys, Stantec considered the information provided in the prior studies in determining what areas were of low, moderate and high archaeological potential when conducting the AIA;

s.16; s.18.1

- The Province understands that the Applicant made an accommodation offer in November 2020 that included a financial donation to construct a new longhouse, parcel dedication for Tsawout agricultural purposes, employment and capacity funding. The Province understands this offer was not accepted by Tsawout;
- The Applicant has an open offer for Tsawout to harvest suitable timber from ŁEL,TOS to use in the construction of Tsawout’s new longhouse;
- The Applicant is in discussions with Cascadia Seaweed Corp. and Tsawout leadership about the potential installation of specialized lines for growing kelp in locations offshore of James Island; and

- At the request of Tsawout leadership, the Applicant is engaged in discussions with Robert Clifford, Assistant Professor at UBC's Peter A. Allard School of Law regarding the provision of housing for law students on ŁEL,TOS while they undertake an intensive land and community-based field course in WSÁNEĆ law. The Applicant anticipates hosting these students in late 2021.

s.16; s.18.1

In considering potential impacts of the Application on Tsawout's asserted Aboriginal title claims, the following three components of Aboriginal title have been considered:

- **Use and occupation:** Consideration of potential alienation of an area, the degree of potential disturbance or functional effect of the potential disturbance associated with the Application, how the Application might restrict community members' access to the area, and how the proposed decision might affect community members' enjoyment, experience, and use of the area, now and in the future;
- **Decision-making:** Consideration of whether the Application would result in a new tenure or transfer of ownership to the area, the extent to which an Aboriginal community might be involved in the decision-making process, and whether the activity might be consistent/ inconsistent with any cultural/other objectives of the Aboriginal group for management in this area, now and in the future; and
- **Economic benefits:** consideration of whether the Application might affect a community's ability to derive direct and/or indirect economic benefits from the area, and how the proposed decision might affect a community's economic development aspirations for the area, now and in the future.

Based on the three components of Aboriginal title described above, the Province has considered the following relevant factors:

- Tsawout is a Douglas Treaty nation;
- Tsawout opposes the Application;
- The Application is a 79 lot (76 residential lots, 3 commercial lots) Bare Land Subdivision located on undeveloped, previously disturbed land that is owned privately in fee simple;
- Although the Application is on private lands, further development makes ŁEL,TOS even less available in the future pending the outcome of Tsawout's existing litigation or through reconciliation processes;
- James Island is an important cultural, spiritual, harvesting and governance site for Tsawout as reflected in its SENĆOŦEN name, ŁEL,TOS, which means "splashed on the face";
- Historically, ŁEL,TOS included village sites, burial sites, a site for preparing reef nets for harvesting throughout Tsawout territory, and provided a defensive position for Tsawout to protect itself from raids from groups to the North;
- Development makes ŁEL,TOS more valuable and therefore more expensive for Tsawout to purchase in the future;



- Development through subdivision prevents the land from being developed for another purpose; and
- Although Tsawout has a limited access agreement with the Applicant, as a private landowner, the Applicant could have decided to exclude Tsawout from accessing LEL, TOS at any time.

s.16

;

s.16                    The Province recognizes that Tsawout has a claim before the BC Supreme Court that alleges a breach of the promises set out in the Douglas Treaty by Canada for failing to set LEL, TOS aside as reserve and allowing the pre-emption by British Columbia. Tsawout also seeks a declaration of Aboriginal title over LEL, TOS. It is unclear how a court will address the current private land ownership in relation to Tsawout's claim seeking a declaration of Aboriginal title to this area. Consequently, there is uncertainty in estimating the level of seriousness of impacts on Tsawout's future ability to apply its traditional governance in this area, to use the area for traditional purposes, and to obtain economic benefits from the area. Regardless of this uncertainty, the Province is interested in hearing from Tsawout about what mitigation or accommodation measures may be appropriate in these circumstances that would reduce the impacts of the Application on Tsawout's asserted Aboriginal title.

s.16; s.18.1

The Province recognizes that Tsawout has identified a number of areas of concern with the Stantec AIA that in Tsawout's view, require the completion of a supplemental archaeological impact assessment to fill these gaps. The Province has reviewed these concerns with the Applicant and responses from the Applicant are provided in Schedule 1 for Tsawout review and comment.

In the April 27<sup>th</sup>, 2021 meeting, Tsawout also provided additional details around the request for a traditional land use study to collate existing ethnohistoric information, publications, and various other data sources into a single resource. The Province has reviewed the information and resources gathered from Tsawout during consultation, the TMX Marine Use Study, and the *Saanichton Marina* decision to understand the nature of Tsawout's historic and current Aboriginal Interests in the vicinity of LEL, TOS and its surrounding waters. The Province does not view the completion of a traditional land use study as necessary prior to decision-making on

the Application given the existing sources of information already available that articulate the depth of Tsawout's Aboriginal Interests to LEL, TOS.

#### Strength of Claim Assessment

s.16; s.18.1

#### Next Steps

The Province welcomes any comments from Tsawout on the impact assessment provided in this correspondence or any of the responses provided in Schedule 1. The Province requests that this information be provided by **xxxxx, 2021**. In the interim, the Province would like to schedule a meeting with Tsawout, and if Tsawout agrees, the Applicant, to discuss potential accommodation measures for the impacts identified above.

I appreciate your time and continued engagement on this Application.

Page 289 of 413 to/à Page 294 of 413

Withheld pursuant to/removed as

s.16 ; s.18.1



200-1627 Fort Street Victoria BC V8R1H8  
 Telephone **250.405.5151** Fax 250.405.5155  
 Toll Free via Enquiry BC in Vancouver 604-660-2421 Elsewhere in BC **1.800.663.7867**  
 Email [information@islandstrust.bc.ca](mailto:information@islandstrust.bc.ca)  
 Web [www.islandstrust.bc.ca](http://www.islandstrust.bc.ca)

April 15, 2021

File Number: NP-SUB-2008.9 (James Island)  
 MoTI file: 2014-01343

Executive Council of British Columbia  
 PO Box 9041 Stn Prov Govt  
 Victoria BC V8W 9E1

**Re: Proposed Subdivision of James Island**

I am writing on behalf of the North Pender Island Local Trust Committee (LTC). The North Pender Island Local Trust Committee is the body constituted under the *Islands Trust Act* with authority for land use planning and regulation within the North Pender Island Local Trust Area. The local trust area includes a number of islands, including James Island. The owners of James Island have made application to the Provincial Approving Officer for a bare land strata subdivision on James Island. The applicant has requested that the LTC approve the acceptance of covenants, discharge of encumbrances and consideration of cash-in-lieu in relation to the application. While the LTC understands that the proposal is consistent with subdivision regulations imposed by the applicable land use bylaw, the LTC has reviewed the First Nations consultation record and considered its options. At a special meeting on April 1, 2021 the following resolution was adopted by the LTC, requesting that the Lieutenant Governor in Council consider intervening under s. 90(1) of the *Land Title Act* or otherwise on the grounds that it is against the public interest:

**NP-2021-041**

**It was Moved and Seconded,**

Whereas the Islands Trust Council has adopted a reconciliation declaration; and

Whereas the North Pender Island Local Trust Committee has adopted a standing resolution with respect to First Nations reconciliation in the North Pender Island Local Trust Area; and

Whereas the North Pender Island Local Trust Committee has reviewed the consultation record, and notes that objections to the subdivision continue to be expressed by the Tsawout First Nation;

Therefore, the North Pender Island Local Trust Committee resolves to:

1. Advise the Provincial Approving Officer that the North Pender Island Local Trust Committee considers approval of the subdivision of James Island as not being in the public interest.
2. Advise the Lieutenant-Governor-in-Council that the North Pender Island Local Trust Committee considers the deposit of the subdivision plan of James Island as being against the public interest.

And that staff forward this resolution to the Provincial Approving Officer and the Lieutenant-Governor-in-Council.

**CARRIED**

***Preserving and protecting over 450 islands and surrounding waters in the Salish Sea***

Bowen Denman Hornby Gabriola Galiano Gambier Lasqueti Mayne North Pender Salt Spring Saturna South Pender Thetis

Sincerely,

A handwritten signature in black ink, appearing to read 'Laura Patrick', with a long horizontal flourish extending to the right.

Laura Patrick  
Chair, North Pender Island Local Trust Committee

Cc: The Honourable Josie Osbourne, Minister of Municipal Affairs  
JI Properties  
Ryan Evanoff, Provincial Approving Officer  
Haley Leech, Development Technician, MoTI  
Phil Testmale, Planner 2, Islands Trust  
North Pender Island Local Trust Committee  
Islands Trust Executive Committee

## Tsawout - LEL,TOS (James Island)

---

From: Go, Spencer (AADNC/AANDC) <spencer.go@canada.ca>  
To: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>, Rogers, James IRR:EX <James.Rogers@gov.bc.ca>  
Cc: Blackburn, Michael (AADNC/AANDC) <michael.blackburn@canada.ca>, Durieux, Susan (AADNC/AANDC) <susan.durieux@canada.ca>, Lemon, Jeffery (AADNC/AANDC) <jeffery.lemon@canada.ca>  
Sent: July 13, 2021 5:01:20 PM PDT

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Hello Christie and James,

Did your team receive a correspondence from Elizabeth May regarding LEL,TOS (James Island), which Tsawout asserts should've been protected and set aside under their Douglas Treaty? Per a correspondence that Canada received, there's a proposed development by the private landholder of James Island, which is currently being reviewed by the "provincial authoritative body". If you'll be preparing a response, please let us know whether we can be coordinated to ensure consistent messaging. Our team has been tasked with preparing a draft response that's due by COB tomorrow.

Happy to discuss,

**Spencer C. Go**

Negotiator – Vancouver Island | Negotiations West | Treaties and Aboriginal Government  
Crown-Indigenous Relations and Northern Affairs Canada | Government of Canada  
[Spencer.Go@canada.ca](mailto:Spencer.Go@canada.ca) | (343) 553-3605 | Pronouns: He/Him/His

## RE: Tsawout - ŁEL,TOS (James Island)

---

From: Durieux, Susan (AADNC/AANDC) <susan.durieux@canada.ca>  
To: Go, Spencer (AADNC/AANDC) <spencer.go@canada.ca>, Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>, Rogers, James IRR:EX <James.Rogers@gov.bc.ca>  
Cc: Blackburn, Michael (AADNC/AANDC) <michael.blackburn@canada.ca>, Lemon, Jeffery (AADNC/AANDC) <jeffery.lemon@canada.ca>  
Sent: July 13, 2021 5:21:08 PM PDT

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

I don't know if you would have received Elizabeth May's letter, however she references a letter to provincial Minister of Transportation and Infrastructure, the Honourable Rob Fleming. We didn't receive the attached letter and are following up in our system. Wondering if you saw the provincial letter, and how BC is responding and if working with WSANEC? This is an urgent docket for us now (received today and due tomorrow).

June 25 letter from Elizabeth May:

*"As a member of the Southern Gulf Island's Forum, which is made up of elected First Nation leaders, as well as local, provincial, and federal government representatives, we co-signed a letter to the provincial Minister of Transportation and Infrastructure, the Honourable Rob Fleming. The letter urges the provincial government to ensure that it is meeting its obligations under the Declaration of the Rights of Indigenous Peoples Act (DRIPA), in all current and future subdivision projects in the region, including the proposed development plans on ŁEL,TOS (James Island). I will attach this letter for your reference.*

*The proposed development on ŁEL,TOS (James Island) is currently in front of the provincial authoritative body. I hope the federal government will support the island's return to Indigenous title."*

Thanks

Susan

---

**From:** Go, Spencer (AADNC/AANDC) <spencer.go@canada.ca>  
**Sent:** Tuesday, July 13, 2021 5:01 PM  
**To:** Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>; Rogers, James IRR:EX <James.Rogers@gov.bc.ca>  
**Cc:** Blackburn, Michael (AADNC/AANDC) <michael.blackburn@canada.ca>; Durieux, Susan (AADNC/AANDC) <susan.durieux@canada.ca>; Lemon, Jeffery (AADNC/AANDC) <jeffery.lemon@canada.ca>  
**Subject:** Tsawout - ŁEL,TOS (James Island)  
**Importance:** High

Hello Christie and James,

Did your team receive a correspondence from Elizabeth May regarding ŁEL,TOS (James Island), which Tsawout asserts should've been protected and set aside under their Douglas Treaty? Per a correspondence that Canada received, there's a proposed development by the private landholder of James Island, which is currently being reviewed by the "provincial authoritative body". If you'll be preparing a response, please let us know whether we can be coordinated to ensure consistent messaging. Our team has been tasked with preparing a draft response that's due by COB tomorrow.

Happy to discuss,

**Spencer C. Go**

Negotiator – Vancouver Island | Negotiations West | Treaties and Aboriginal Government  
Crown-Indigenous Relations and Northern Affairs Canada | Government of Canada  
[Spencer.Go@canada.ca](mailto:Spencer.Go@canada.ca) | (343) 553-3605 | Pronouns: He/Him/His

## RE: Tsawout - ŁEL,TOS (James Island)

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From: Harvie, Christie IRR:EX  
To: Rogers, James IRR:EX <James.Rogers@gov.bc.ca>  
Sent: July 13, 2021 5:50:27 PM PDT  
Feel free to respond, just cc me.

Christie Harvie (*she/her*)  
Ministry of Indigenous Relations and Reconciliation  
c. 250.361.6640

---

**From:** Go, Spencer (AADNC/AANDC) <spencer.go@canada.ca>  
**Sent:** July 13, 2021 5:01 PM  
**To:** Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>; Rogers, James IRR:EX <James.Rogers@gov.bc.ca>  
**Cc:** Blackburn, Michael (AADNC/AANDC) <michael.blackburn@canada.ca>; Durieux, Susan (AADNC/AANDC) <susan.durieux@canada.ca>; Lemon, Jeffery (AADNC/AANDC) <jeffery.lemon@canada.ca>  
**Subject:** Tsawout - ŁEL,TOS (James Island)  
**Importance:** High

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Hello Christie and James,

Did your team receive a correspondence from Elizabeth May regarding ŁEL,TOS (James Island), which Tsawout asserts should've been protected and set aside under their Douglas Treaty? Per a correspondence that Canada received, there's a proposed development by the private landholder of James Island, which is currently being reviewed by the "provincial authoritative body". If you'll be preparing a response, please let us know whether we can be coordinated to ensure consistent messaging. Our team has been tasked with preparing a draft response that's due by COB tomorrow.

Happy to discuss,

**Spencer C. Go**

Negotiator – Vancouver Island | Negotiations West | Treaties and Aboriginal Government  
Crown-Indigenous Relations and Northern Affairs Canada | Government of Canada  
[Spencer.Go@canada.ca](mailto:Spencer.Go@canada.ca) | (343) 553-3605 | Pronouns: He/Him/His



## 53291 - Tsawout First Nation Letter, re James Island Subdivision Application

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From: Cathy Webster <cwebster@tsawout.ca>  
To: Minister, IRR IRR:EX <IRR.Minister@gov.bc.ca>, Transportation, Minister TRAN:EX <Minister.Transportation@gov.bc.ca>  
Cc: Tsawout First Nation Chief & Council <council@tsawout.ca>, John Gailus <john@dgwlaw.ca>, Harvey Underwood <harveyunderwood@rocketmail.com>  
Sent: August 5, 2021 12:44:31 PM PDT  
Attachments: 21 07 04 TFN Let to Min Rankin & Min Fleming w Attachments.pdf

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Good afternoon,

Please see attached letter from Chief Harvey Underwood, in relation to the subdivision application from JI Properties for James Island/LEL,TOS.

Cathy Webster  
Governance/HR Support  
Tsawout First Nation

## 53291 - FW: Tsawout First Nation Letter, re James Island Subdivision Application

From: Olsen, Adam <s.17  
To: Fleming, Rob < >, Rankin, Murray <s.17 >  
Cc: Rees, Jake LASS:EX <Jake.Rees@leg.bc.ca>, Minister, IRR IRR:EX  
<IRR.Minister@gov.bc.ca>, Transportation, Minister TRAN:EX  
<Minister.Transportation@gov.bc.ca>, Parker, Laura LASS:EX <Laura.Parker@leg.bc.ca>  
Sent: August 9, 2021 5:56:01 PM PDT  
Attachments: 21 07 04 TFN Let to Min Rankin & Min Fleming w Attachments.pdf

**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Hello Ministers Fleming and Rankin,

Thank you for taking the time to meet with the leadership of Tsawout and myself at the end of May.

I have received this letter dated August 4, 2021 and I share the disappointment expressed by Tsawout Chief Harvey Underwood that more has not been done to advance this significant issue forward.

I'm following up and seeking clarification on one issue in particular. During our meeting Minister Fleming stated that the decision is to be made by the statutory decision-maker, the approving officer, who is independent and arms length from the Minister.

However, as is stated in this letter from Tsawout, that perhaps the Lieutenant-Governor in Council also has powers that could be used in this situation.

Can you please provide me the details of those powers?

Thank you kindly,  
Adam Olsen, MLA

Seconded. This is great guys.

From: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Sent: February 18, 2022 9:23 AM  
To: Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>; McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>; Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>  
Subject: Re: Douglas Treaty Farming

Thanks Matt!

Christie Harvie

Ministry of Indigenous Relations and Reconciliation

250.361.6640

From: Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>  
Sent: Friday, February 18, 2022 8:27:03 AM  
To: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>; McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>; Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>  
Subject: RE: Douglas Treaty Farming

Good Morning all!

Few notes of intel...

- Tsawout have granted a licence to Cascadia Seaweed Inc under the recently enacted Tsawout First Nation Marine Use Law
- DFO and FLNR were informed of this issuance, but were notified in an informative capacity and were not asked for approvals
- We were sent copies of the law / letter yesterday, FLNR (aquaculture group) intends to respond to Cascadia (not the Nation) that their infrastructure has been installed without Provincial or Federal approvals
- We are seeking a meeting with FLNR (director level) to better understand the details of their response, I can ask that AFF be included in that discussion

Cheers,

Matt

From: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Sent: February 18, 2022 6:39 AM  
To: McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>; Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>; Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>  
Subject: Re: Douglas Treaty Farming

Hey Tom,

This is the first I've heard of this one, and (not legal advice clearly) but the Douglas Treaties are focused on fish as formerly and hunt on unoccupied lands, this would be a first as far as I know.

So nothing specific to this, but a bit of background on goings on with them right now.

s.13; s.16

s.22 but am available on my cell and Matt is in the office today if you need us to participate more actively.

Christie

Christie Harvie

Ministry of Indigenous Relations and Reconciliation

250.361.6640

From: McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>  
Sent: Thursday, February 17, 2022, 10:17 p.m.  
To: Lofthouse, Mark IRR:EX; Butterfield, Matthew IRR:EX; Harvie, Christie IRR:EX  
Subject: FW: Douglas Treaty Farming

Any intel on this one/advice for Jennifer?

From: McGuire, Jennifer AFF:EX <Jennifer.Mcguire@gov.bc.ca>  
Sent: February 17, 2022 2:04 PM  
To: McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>  
Subject: FW: Douglas Treaty Farming

Hi – if you have 10 min – would he happy to hear any advice/intel on this.

Thanks

Jennifer

From: Kristina Long <klong@seaforest.ca>

Sent: February 10, 2022 12:06 PM  
To: Roth, Myron AFF:EX <Myron.Roth@gov.bc.ca>  
Subject: Re: Douglas Treaty Farming

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Myron,

Cascadia have reported this to various news outlets as a win. It's not a Tsawout farm, it's their farm - they talk about renting it on the CTV broadcast, below.

They're involved in a ceremony with the Tsawout on February 25th, which they've also invited the press to.

What's interesting is that they continue to tell the public that they're the largest cultivator of seaweed in North America. They didn't even harvest 18 tonnes last season. They barely make the top 5 list of cultivators.

I'm curious as to where the oversight lies when it comes to spending public money. I've been told by an ex-employee that they're scrambling to license a 10ha lease because they were awarded a grant by Agritech, and told the funder that they already had one. It sounds like that might be their motivation for now trying to utilize the Douglas Treaty in Sooke.

<https://vancouverisland.ctvnews.ca/mobile/video?clipId=2378965>

<<https://can01.safelinks.protection.outlook.com/?url=https://vancouverisland.ctvnews.ca/mobile/video?clipId=2378965&data=04|01|Myron.Roth@gov.bc.ca|283556cd37214573becd08d9ecd0c9cc|6fdb52003d0d4a8ab036d3685e359adc|0|0|637801203759526791|Unknown|TWFpbGZsb3d8eyJWljoIjMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0=|3000&sdata=M9s+CazufDdq+TZ6KQ7uYUqPenbsdoV5SDi/OPWauuc=&reserved=0>>

Founder/CEO

Sea Forest Macro Algae, Ltd.

Victoria, BC

+1 (250) 891-4198

[www.seaforest.ca](http://www.seaforest.ca)

On Feb 9, 2022, at 16:50, Roth, Myron AFF:EX <Myron.Roth@gov.bc.ca> wrote:

Kristina,

Thanks for this – and it is very timely. We are aware of this issue and are in the process of assessing and advising Executive. If you have any additional information/concerns please pass it/them along.

Best regards,

Myron

Myron Roth, Ph.D., P.Ag.

A/Executive Director|Fisheries, Aquaculture & Wild Salmon Branch

Ministry of Agriculture, Food & Fisheries

p: 778-698-3404 | cell: 250-812-0706

From: Kristina Long <klong@seaforest.ca>

Sent: February 9, 2022 12:19 PM

To: Roth, Myron AFF:EX <Myron.Roth@gov.bc.ca>

Subject: Douglas Treaty Farming

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Myron,

Were you aware that Cascadia found a way to circumvent all due process in licensing a farm? They partnered with a Douglas Treaty Nation and asked them to exercise their right to 'self governance', and for the Nation to issue their own marine licence. This meant no environmental surveys, no species at risk surveys, no sensitive habitat reviews, no zoning approval, no navigation/buoyage approval, no management plan approval, no debris management plan.....no licence/tenure/permit required.

The site isn't on the chart and it's within a navigable channel that experiences heavy traffic in the summer. None of the buoys are properly marked. None of the perimeter marks are lit. There are well over 1000 buoys in the area, which according to several newspapers, is over 5ha.

No agencies reviewed this site. In a matter of months, it was deployed (November 2021) and planted on. No species licence was applied for. I'm only speculating, but it's likely that the seed came from Barkley Sound as *Saccharina Latissima* does not grow there. No doubt that this was funded by their BCSRIF award.

There are up to 12 Nations with claim to marine territory in that area, and I'm also suspecting that outside of the Wsanec/Tsawout, that none were engaged with.

I'm betting that divers did not confirm whether eel grass would be impacted.

Is this the future of the industry? Is this behaviour supported by Lana Popham?

I guess that any operator could do the same - Partner with a non-modern day treaty Nation and drop in a farm any place that they want, no permissions required.

If this farm stays in the water, it sets a very dangerous precedent.

Best Regards,

Kristina Long

Founder/CEO

Sea Forest Macro Algae, Ltd.

Victoria, BC

+1 (250) 891-4198

www.seaforest.ca

<https://can01.safelinks.protection.outlook.com/?url=http://www.seaforest.ca/&data=04|01|Myron.Roth@gov.bc.ca|283556cd37214573becd08d9ecd0c9cc|6fdb52003d0d4a8ab036d3685e359adc|0|0|637801203759526791|Unknown|TWFPbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjojV2luMzliLCJBTiI6lk1haWwiLCJXVCi6Mn0=|3000&sdata=y/sMq7rA9qugpVYz5y442N/3gh4NoKkQ28R4lZ+hHdQ=&reserved=0>















## Re: Douglas Treaty Farming

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From: McCarthy, Tom IRR:EX  
To: Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>  
Cc: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Sent: February 18, 2022 3:26:25 PM PST  
s.13

Sent from my iPhone

On Feb 18, 2022, at 3:20 PM, Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca> wrote:

Hi Tom,

We've added him to the discussions with FLNR, and I've had a chat with him this morning. FLNR is sending a reply next week, we just received a copy for review by Tuesday. The main messaging to Cascadia is:

- s.13

,

,

- 

,

,

Do you have any issues with this direction?

Matt

---

**From:** McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>  
**Sent:** February 18, 2022 2:16 PM  
**To:** Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>  
**Cc:** Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Subject:** Fwd: Douglas Treaty Farming

See below. Please bring Myron in with FNLR.

Sent from my iPhone

Begin forwarded message:

**From:** "McGuire, Jennifer AFF:EX" <Jennifer.Mcguire@gov.bc.ca>  
**Date:** February 18, 2022 at 2:00:32 PM PST  
**To:** "McCarthy, Tom IRR:EX" <Tom.McCarthy@gov.bc.ca>  
**Cc:** "Roth, Myron AFF:EX" <Myron.Roth@gov.bc.ca>  
**Subject:** RE: Douglas Treaty Farming

Thanks Tom  
And yes pls – Myron is the contact on this.

JLM

From: McCarthy, Tom IRR:EX <[Tom.McCarthy@gov.bc.ca](mailto:Tom.McCarthy@gov.bc.ca)>  
Sent: February 18, 2022 11:11 AM  
To: McGuire, Jennifer AFF:EX <[Jennifer.Mcguire@gov.bc.ca](mailto:Jennifer.Mcguire@gov.bc.ca)>  
Subject: FW: Douglas Treaty Farming

Hi Jennifer –

A few background notes from the team on this one. Happy to dive in more if you like. My team is looking to understand the nature of the FLNR response – want to have your team plug into that meeting?

s.13

s.13

s.13

- \* DFO and FLNR were informed of this issuance, but were notified in an informative capacity and were not asked for approvals
- \* We were sent copies of the law / letter yesterday, FLNR (aquaculture group) intends to respond to Cascadia (not the Nation) that their infrastructure has been installed without Provincial or Federal approvals

Tom

---

From: McCarthy, Tom IRR:EX <[Tom.McCarthy@gov.bc.ca](mailto:Tom.McCarthy@gov.bc.ca)<<mailto:Tom.McCarthy@gov.bc.ca>>>  
Sent: Thursday, February 17, 2022, 10:17 p.m.  
To: Lofthouse, Mark IRR:EX; Butterfield, Matthew IRR:EX; Harvie, Christie IRR:EX  
Subject: FW: Douglas Treaty Farming

Any intel on this one/advice for Jennifer?

From: McGuire, Jennifer AFF:EX  
<[Jennifer.Mcguire@gov.bc.ca](mailto:Jennifer.Mcguire@gov.bc.ca)<<mailto:Jennifer.Mcguire@gov.bc.ca>>>  
Sent: February 17, 2022 2:04 PM  
To: McCarthy, Tom IRR:EX <[Tom.McCarthy@gov.bc.ca](mailto:Tom.McCarthy@gov.bc.ca)<<mailto:Tom.McCarthy@gov.bc.ca>>>  
Subject: FW: Douglas Treaty Farming

Hi – if you have 10 min – would be happy to hear any advice/intel on this.  
Thanks  
Jennifer

From: Kristina Long <[klong@seaforest.ca](mailto:klong@seaforest.ca)<<mailto:klong@seaforest.ca>>>  
Sent: February 10, 2022 12:06 PM  
To: Roth, Myron AFF:EX <[Myron.Roth@gov.bc.ca](mailto:Myron.Roth@gov.bc.ca)<<mailto:Myron.Roth@gov.bc.ca>>>  
Subject: Re: Douglas Treaty Farming

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Myron,

Cascadia have reported this to various news outlets as a win. It's not a Tsawout farm, it's their farm - they talk about renting it on the CTV broadcast, below. They're involved in a ceremony with the Tsawout on February 25th, which they've also invited the press to.

What's interesting is that they continue to tell the public that they're the largest cultivator of seaweed in North America. They didn't even harvest 18 tonnes last season. They barely make the top 5 list of cultivators.

I'm curious as to where the oversight lies when it comes to spending public money. I've been told by an ex-employee that they're scrambling to license a 10ha lease because they were awarded a grant by Agritech, and told the funder that they already had one. It sounds like that might be their motivation for now trying to utilize the Douglas Treaty in Sooke.

[https://vancouverisland.ctvnews.ca/mobile/video?clipId=2378965<https://can01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fvancouverisland.ctvnews.ca%2Fmobile%2Fvideo%3FclipId%3D2378965&data=04%7C01%7CMyron.Roth%40gov.bc.ca%7C283556cd37214573becd08d9ecd0c9cc%7C6fdb52003d0d4a8ab036d3685e359adc%7C0%7C0%7C637801203759526791%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCI6Mn0%3D%7C3000&sdata=M9s%2BCazufDdq%2BTZ6KQ7uYUqPenbsdoV5SDi%2FOPWauuc%3D&reserved=0>](https://vancouverisland.ctvnews.ca/mobile/video?clipId=2378965&https://can01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fvancouverisland.ctvnews.ca%2Fmobile%2Fvideo%3FclipId%3D2378965&data=04%7C01%7CMyron.Roth%40gov.bc.ca%7C283556cd37214573becd08d9ecd0c9cc%7C6fdb52003d0d4a8ab036d3685e359adc%7C0%7C0%7C637801203759526791%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCI6Mn0%3D%7C3000&sdata=M9s%2BCazufDdq%2BTZ6KQ7uYUqPenbsdoV5SDi%2FOPWauuc%3D&reserved=0)

[cid:image001.jpg@01D824CF.E1944350][cid:image002.jpg@01D824CF.E1944350]

Founder/CEO  
Sea Forest Macro Algae, Ltd.  
Victoria, BC  
+1 (250) 891-4198  
[www.seaforest.ca](http://www.seaforest.ca)<<http://www.seaforest.ca>>

On Feb 9, 2022, at 16:50, Roth, Myron AFF:EX  
<[Myron.Roth@gov.bc.ca](mailto:Myron.Roth@gov.bc.ca)<<mailto:Myron.Roth@gov.bc.ca>>> wrote:

Kristina,

Thanks for this – and it is very timely. We are aware of this issue and are in the process of assessing and advising Executive. If you have any additional information/concerns please pass it/them along.

Best regards,  
Myron

Myron Roth, Ph.D., P.Ag.  
A/Executive Director | Fisheries, Aquaculture & Wild Salmon Branch  
Ministry of Agriculture, Food & Fisheries  
p: 778-698-3404 | cell: 250-812-0706



From: Kristina Long <[klong@seaforest.ca](mailto:klong@seaforest.ca)<<mailto:klong@seaforest.ca>>>  
Sent: February 9, 2022 12:19 PM  
To: Roth, Myron AFF:EX <[Myron.Roth@gov.bc.ca](mailto:Myron.Roth@gov.bc.ca)<<mailto:Myron.Roth@gov.bc.ca>>>  
Subject: Douglas Treaty Farming

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Myron,

Were you aware that Cascadia found a way to circumvent all due process in licensing a farm? They partnered with a Douglas Treaty Nation and asked them to exercise their right to 'self governance', and for the Nation to issue their own marine licence. This meant no environmental surveys, no species at risk surveys, no sensitive habitat reviews, no zoning approval, no navigation/buoyage approval, no management plan approval, no debris management plan.....no licence/tenure/permit required.

The site isn't on the chart and it's within a navigable channel that experiences heavy traffic in the summer. None of the buoys are properly marked. None of the perimeter marks are lit. There are well over 1000 buoys in the area, which according to several newspapers, is over 5ha.

No agencies reviewed this site. In a matter of months, it was deployed (November 2021) and planted on. No species licence was applied for. I'm only speculating, but it's likely that the seed came from Barkley Sound as *Saccharina Latissima* does not grow there. No doubt that this was funded by their BCSRIF award.

There are up to 12 Nations with claim to marine territory in that area, and I'm also suspecting that outside of the Wsanec/Tsawout, that none were engaged with.

I'm betting that divers did not confirm whether eel grass would be impacted.

Is this the future of the industry? Is this behaviour supported by Lana Popham?

I guess that any operator could do the same - Partner with a non-modern day treaty Nation and drop in a farm any place that they want, no permissions required.

If this farm stays in the water, it sets a very dangerous precedent.

[cid:image003.jpg@01D824CF.E1944350][cid:image004.jpg@01D824CF.E1944350]  
[cid:image005.jpg@01D824CF.E1944350][cid:image006.jpg@01D824CF.E1944350]  
[cid:image007.jpg@01D824CF.E1944350][cid:image008.jpg@01D824CF.E1944350]

Best Regards,

Kristina Long  
Founder/CEO  
Sea Forest Macro Algae, Ltd.  
Victoria, BC  
+1 (250) 891-4198

[www.seaforest.ca<<https://can01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.seaforest.ca%2F&data=04%7C01%7CMyron.Roth%40gov.bc.ca%7C283556cd37214573becd08d9ecd0c9cc%7C6fdb52003d0d4a8ab036d3685e359adc%7C0%7C0%7C637801203759526791%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikl1haWwiLCJXVCi6Mn0%3D%7C3000&sdata=y%2FsMq7rA9qugpVYz5y442N%2F3gh4NoKkQ28R4lZ%2BhHdQ%3D&reserved=0>>](https://can01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.seaforest.ca%2F&data=04%7C01%7CMyron.Roth%40gov.bc.ca%7C283556cd37214573becd08d9ecd0c9cc%7C6fdb52003d0d4a8ab036d3685e359adc%7C0%7C0%7C637801203759526791%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikl1haWwiLCJXVCi6Mn0%3D%7C3000&sdata=y%2FsMq7rA9qugpVYz5y442N%2F3gh4NoKkQ28R4lZ%2BhHdQ%3D&reserved=0)

## FOR REVIEW: Tsawout Chief to do interview with CTV regarding James Island

---

From: Aronson, Art GCPE:EX <Art.Aronson@gov.bc.ca>  
To: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Cc: Harbord, Chris GCPE:EX <Chris.Harbord@gov.bc.ca>, Ritchie, Leanne GCPE:EX <Leanne.Ritchie@gov.bc.ca>, Carey, Paul IRR:EX <Paul.Carey@gov.bc.ca>  
Sent: March 15, 2022 1:21:55 PM PDT  
Attachments: IN James Island Subdivision Application.docx  
Hi Christie and Paul,

CTV gave us the heads up that Tsawout First Nation are upset over a stall in negotiations on James Island.

Is this IN up to date?

Thanks!

### Reporter

Jason Hallman, Editor  
CTV Vancouver Island - Victoria  
[Jason.Hallman@bellmedia.ca](mailto:Jason.Hallman@bellmedia.ca)  
250-414-6510 c: 250-883-6746

**Deadline** Wednesday, March 16, 2022 2:00 PM

### Request

CTV VI is doing an interview with Chief of the Tsawout First Nation who is reportedly upset about how the negotiations are going with the federal and provincial governments in regards to James Island.

This is after the announcement last Friday regarding land transfers with Songhees Nation and the City of Victoria .

CTV's interview with the nation is scheduled for Wed morning.

They are asking for Minister Murray Rankin or anyone from government to speak on the topic (how they see it). They would be willing to do a zoom if necessary.

CTV also asking for the federal Minister on this.

There is some flexibility on timing but they want it in the evening news cast on Wednesday.

### Recommendation

### Background

---

**Art Aronson MA**, (He/Him)

**Public Affairs Officer**  
Government Communications and Public Engagement  
Ministry of Indigenous Relations and Reconciliation  
Province of British Columbia  
250-893-2028



## ADVICE TO MINISTER

<p><b>CONFIDENTIAL ISSUES NOTE</b></p> <p>Ministry: Transportation and Infrastructure Date: November 5, 2021 Minister Responsible: Rob Fleming</p>	<p><b>James Island Subdivision Application</b></p>
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### ADVICE AND RECOMMENDED RESPONSE:

s.13; s.16

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## **BACKGROUND:**

James Island is a 780-acre private island (owned by Discover Land Company) located off the Saanich Peninsula and falls within the Island Trust in the North Pender Local Trust Area. It can only be accessed by water and air. The island currently has a 5,000-square-foot principal residence, as well as six guest cottages, private docks, an airstrip, pool house, 18-hole golf course and the manager's residence.

A subdivision application was originally received by MOTI in 2009. An updated preliminary layout review was granted in 2014. One of the conditions of the 2014 preliminary layout review included the need to hire a qualified archeologist to determine AIA requirements, as records indicated the presence of archeological sites protected under the Heritage Conservation Act. The current development proposal is for a 79-lot bare land strata development (76 residential lots and three commercial lots).

Consultation with the Tsawout First Nation has been underway since September 2019, following a request for a referral package for the subdivision application. Since this time, ministry staff have had numerous engagements with Tsawout First Nation, including sending nine letters and five virtual meetings.

## **ADVICE TO MINISTER**

On February 3, 2021, ministry staff met with Tsawout First Nation's Chief and Council to provide a status update on the subdivision file. The ministry has expressed ongoing willingness to the presentation of new information from the Tsawout First Nation regarding impacts. Subsequent meetings occurred on April 13 and 27, 2021, where further details were provided regarding their concerns.

On April 1, 2021, the North Pender Local Trust Committee (NPLTC) passed a resolution to not approve the subdivision as they do not believe it is in the public interest.

On July 6, 2021, the ministry sent a consultation overview letter to the Tsawout First Nation responding to the specific concerns raised by regarding the subdivision proposal. As part of this letter, the Tsawout First Nation were asked to provide a response by August 15, 2021 to ensure their interests and concerns were fully understood by the ministry. In this letter, the ministry also advised that the applicant intended to submit their final application and payment by July 30, 2021.

On July 29, 2021, Tsawout First Nation legal counsel contacted the applicant and requested a meeting on August 12, 2021. As such, the applicant held off on submitting their final plans. Following this meeting, the applicant advised the ministry that the meeting didn't advance any possibilities of accommodations and a final plan was submitted by the applicant on August 20, 2021 with final payment received on August 24, 2021. Once payment was received, this triggered a 60-day response time by the PAO for final decision.

On August 17, 2021, the Tsawout First Nation, in a meeting with the ministry, advised that the meeting with the applicant wasn't productive as they weren't interested in any accommodations from the developer and did not want to see the subdivision proceed. Tsawout First Nation reiterated that they feel consultation is still incomplete and brought up concerns about sewage system contamination, and necessary contaminated site documentation (previously raised).

They also informed the ministry that they rejected the applicant's most recent offer of capacity funding and, in a letter to the ministry dated August 18, 2021, requested that the Province reconsider Tsawout's prior request for capacity funding to support meaningful engagement in this consultation process. At that time, the Tsawout First Nation had incurred over \$75,000 in costs for the consultation process and was requesting \$225,000 to cover the completion of a traditional land use study, supplemental AIA, collection of LIDAR data, technical support, and community consultation. At the August 17, 2021 meeting, the ministry extended the Tsawout First Nation's deadline to provide written comment to August 30, 2021. No capacity funding was provided.

On August 30, 2021, the Tsawout First Nation sent a letter to the ministry requesting clarification on the criteria and standards applied in determining the Province's initial impact assessment of the application on Tsawout's Aboriginal rights and Douglas Treaty rights as 'moderate'. The ministry provided an explanation of this process in a letter on September 28, 2021.

On October 15, 2021, MLA for Saanich North and The Islands Adam Olsen sent a letter to government expressing his support for the Tsawout First Nation and urging the PAO to reject the application as contrary to the public interest. Ministers Fleming and Rankin also received this letter.

On October 22, 2021, MP for Saanich-Gulf Islands Elizabeth May sent a letter to government in support of the Tsawout First Nation's request for capacity funding to conduct a comprehensive Indigenous land use study and supplemental archaeological assessment. Ministers Fleming and Rankin, as well as MLA Olsen, and Tsawout First Nation Chief Harvey Underwood and Band Manager Christine Bird, also received this letter.

On November 4, 2021, the applicant requested a meeting with the ministry. This meeting hasn't yet been confirmed.

The concerns expressed by the Tsawout First Nation as well as the resolution of the NPLTC and the letters from the MLA and MP have been shared with the ministry's PAO who is the final approving authority on whether this development can proceed.

If the subdivision is approved, the developer is sent the signed documents to file at the Land Titles Office. If the subdivision is not approved, the PAO is required to notify the applicant in writing of the non-approval, briefly stating the reasons.

The provincial approving officer was expected to render a final decision the week of October 25, 2021. As of November 5, 2021, the case is being reviewed to ensure alignment with all recent legal reviews. A decision is expected the week of November 8, 2021.

#### **BACKGROUND ON THE ABILITY OF CABINET TO OVERRIDE THIS TYPE OF DEVELOPMENT PROPOSAL:**

For non-strata applications, the PAO's decision is guided by the Land Title Act (LTA). Under the LTA, on rare occasion, there is an alternate approval process in which the Lieutenant Governor of British Columbia, through direction from cabinet, could be asked to consider the subdivision under Section 90 of the LTA.

Land Title Act Section 90 - Power of Lieutenant Governor in Council to prohibit deposit of plan (1) The Lieutenant Governor in Council may, when it appears that the deposit of a subdivision plan is against the public interest, order the registrar not to receive the plan for deposit.

Given this proposed subdivision is a strata, the approval is subject to the bare land strata regulations. There is nothing specific in those regulations that are similar to Section 90 of the LTA; however, the B.C. Government, at its discretion, is able to submit an opinion to the PAO regarding the public's interests, which would be considered by the PAO in their review of the file, along with the interests of other affected parties.

Communications Contact: Max  
Gordon 250-896-1866

## ADVICE TO MINISTER

Program Area Contact: Stefan  
Yancey /Janelle Staite

Minister's Office	Program Area	Deputy	Communications
	SY, JS	KR	DC



## **RE: FOR REVIEW: Tsawout Chief to do interview with CTV regarding James Island**

---

From: Aronson, Art GCPE:EX <Art.Aronson@gov.bc.ca>  
To: Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>, Carey, Paul IRR:EX <Paul.Carey@gov.bc.ca>, Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Cc: Harbord, Chris GCPE:EX <Chris.Harbord@gov.bc.ca>, Ritchie, Leanne GCPE:EX <Leanne.Ritchie@gov.bc.ca>  
Sent: March 15, 2022 2:22:49 PM PDT  
Attachments: IN James Island Subdivision Application.docx  
Hi Matthew,

Here is an IN from TRAN.

Art

---

**From:** Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>  
**Sent:** March 15, 2022 2:01 PM  
**To:** Carey, Paul IRR:EX <Paul.Carey@gov.bc.ca>; Aronson, Art GCPE:EX <Art.Aronson@gov.bc.ca>; Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Cc:** Harbord, Chris GCPE:EX <Chris.Harbord@gov.bc.ca>; Ritchie, Leanne GCPE:EX <Leanne.Ritchie@gov.bc.ca>  
**Subject:** RE: FOR REVIEW: Tsawout Chief to do interview with CTV regarding James Island

Hi Art,

Can you please flip me the latest version of the IN, I'll look to see if there are updates.

Thank you,  
Matt

**Matthew Butterfield**, B.Comm, RI(BC)  
(he/him/his)  
Regional Director, South Island  
Ministry of Indigenous Relations and Reconciliation  
Office: 236.478.1782 | Cell: 250.880.9950

---

**From:** Carey, Paul IRR:EX <Paul.Carey@gov.bc.ca>  
**Sent:** March 15, 2022 1:50 PM  
**To:** Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>; Aronson, Art GCPE:EX <Art.Aronson@gov.bc.ca>; Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Cc:** Harbord, Chris GCPE:EX <Chris.Harbord@gov.bc.ca>; Ritchie, Leanne GCPE:EX <Leanne.Ritchie@gov.bc.ca>  
**Subject:** RE: FOR REVIEW: Tsawout Chief to do interview with CTV regarding James Island

Hi Art,

This one is actually with Matthew Butterfield (cc'd here). He can help respond to your below inquiry. Thanks.

**Paul Carey** (he/him)  
A/Senior Negotiator Team 2  
Ministry of Indigenous Relations and Reconciliation  
Cell#604-250-8714

---

**From:** Aronson, Art GCPE:EX <Art.Aronson@gov.bc.ca>  
**Sent:** March 15, 2022 1:22 PM  
**To:** Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Cc:** Harbord, Chris GCPE:EX <Chris.Harbord@gov.bc.ca>; Ritchie, Leanne GCPE:EX <Leanne.Ritchie@gov.bc.ca>; Carey, Paul IRR:EX <Paul.Carey@gov.bc.ca>  
**Subject:** FOR REVIEW: Tsawout Chief to do interview with CTV regarding James Island

Hi Christie and Paul,

CTV gave us the heads up that Tsawout First Nation are upset over a stall in negotiations on James Island.

Is this IN up to date?

Thanks!

**Reporter**

Jason Hallman, Editor  
CTV Vancouver Island - Victoria  
[Jason.Hallman@bellmedia.ca](mailto:Jason.Hallman@bellmedia.ca)  
250-414-6510 c: 250-883-6746

**Deadline** Wednesday, March 16, 2022 2:00 PM

**Request**

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They are asking for Minister Murray Rankin or anyone from government to speak on the topic (how they see it). They would be willing to do a zoom if necessary.

CTV also asking for the federal Minister on this.

There is some flexibility on timing but they want it in the evening news cast on Wednesday.

**Recommendation**

**Background**

---

**Art Aronson MA, (He/Him)**

**Public Affairs Officer**  
Government Communications and Public Engagement  
Ministry of Indigenous Relations and Reconciliation  
Province of British Columbia  
250-893-2028

*Grateful to be living, learning and working on the traditional territory of the Lekwungen peoples.*

## **IN\_Tsawout James Island 08Aug2018 (003)**

---

From: Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>  
To: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Sent: March 15, 2022 3:45:15 PM PDT  
Attachments: IN\_Tsawout James Island 08Aug2018 (003).docx  
FYI – needs updating but we have an old IN on the litigation and history on the file.

In case we need it

## Confidential Issues Note - ADVICE TO MINISTER

<b>Ministry of Indigenous Relations and Reconciliation</b> <b>Updated:</b> Aug. 8, 2018 <b>Minister Responsible:</b> Hon. Scott Fraser	<b>Tsawout First Nation claim for James Island</b>
--	--

### RECOMMENDED RESPONSE:

- **The Provincial government respects and recognizes that Tsawout First Nation has a historic Douglas treaty.**
- **The Crown must act with honour and integrity, and interpret the treaty in a manner that gives meaning to promises made by the Crown and benefits the people of Tsawout First Nation.**
- **The Province was required to respond to Tsawout's notice of claim through the court.**
- **However, as part of our commitment to reconciliation, the Province has reached out to Tsawout to seek to resolve these issues outside of the court, government-to-government, based on building a respectful relationship.**
- **The Province is committed to building relationships with Indigenous peoples based on respect and recognition of rights, as guided by the United Nations Declaration on the Rights of Indigenous Peoples, the Truth and Reconciliation Commission Calls to Action and case law.**

### KEY FACTS:

- On Jan. 24, 2018, Tsawout First Nation filed a notice of claim seeking the return of James Island. Tsawout assert the island was a village site and should have been set aside as per its Douglas Treaty.
- B.C., Canada and JI Properties Inc. (owner of James Island) are named as defendants. B.C. filed its response on May 1, 2018, and Canada filed on May 14, 2018. No dates are set.
- Ministry of Indigenous Relations and Reconciliation has reached out to Tsawout, but no discussions have taken place. MIRR has no agreements and has had little engagement with Tsawout.
- James Island is private property located off the Saanich Peninsula currently owned by U.S. telecom billionaire Craig McCaw, through JI Properties Inc.
- Tsawout is organizing a public event on Sept. 2, 2018, to highlight their claim, with a breakfast, a paddle around the island, followed by a feast in the Tsawout community.
- Tsawout is one of the successors of the Saanich Tribes which concluded two treaties in February 1852 with James Douglas, governor of the Colony of Vancouver Island. Douglas treaties provide signatory First Nations and their successors the right to hunt over unoccupied lands and to fish "as formerly," as well as reserving enclosed fields and village sites for the First Nations' use and benefit.
- The notice of claim states that "LEL,TOS" (James Island) held a village site exclusively occupied by Tsawout, and was used by members for hunting, fishing and foraging. It also had a burial site. The

## Confidential Issues Note - ADVICE TO MINISTER

claim states James Island was not included in lands purchased by James Douglas, and was never surrendered. Tsawout's reserve is directly across from James Island.

- Tsawout is seeking:
  - A declaration that James Island in whole or part is a village site or enclosed field of Tsawout; or alternatively that it has Aboriginal title to James Island in whole or part;
  - Compensation from Canada for a breach of its treaty obligation to set aside James Island.
  - Damages for loss of use and enjoyment of James Island;
  - An order for the owner (JI Properties Inc.) to transfer ownership of James Island to Tsawout, subject to compensation for the owner from the Crown.
- The Province's response includes:
  - The Saanich Tribes through their Douglas treaties surrendered lands as described in the treaties, "entirely and forever," including James Island, except for villages and enclosed fields;
  - The Saanich Tribes did not maintain villages or enclosed fields on James Island; and if they did, such villages and fields were abandoned prior to the treaties;
  - Saanich Tribes did not seek possession of James Island through two federal commissions on Indigenous peoples, nor through colonial officials (federal commissions did set aside a number of other lands on nearby islands for the use and benefit of Saanich Tribes);
  - If dispossession of James Island is an infringement of a Douglas treaty, (which B.C. denies) it pre-dates B.C.'s entry into Confederation with Canada, and thus is the sole responsibility of the federal government (known as a "pre-Confederation liability").
- In a press release, Tsawout Councillor Mavis Underwood said: "The Crown has not honoured the Douglas Treaties, which has forced us to take court action. We have many village sites that were not reserved for our benefit and our rights to hunt and fish 'as formerly' have been diminished to the point of extinction."
- Media stories state that Tsawout has made a number of claims to gain ownership or possession of James Island, however no such claims have been filed in provincial or federal court. Tsawout has filed three federal Specific Claims, but James Island is not among them.
- s.16

- Tsawout is a signatory to a protective writ, in which the WSANEC (Saanich) First Nations are seeking Aboriginal title to their traditional territories, which includes James Island. The protective writ preserves the ability for the First Nations to reactivate their Aboriginal title claim.
- The Douglas Treaties are 14 historic treaties with Vancouver Island First Nations signed by the colonial government between 1850 and 1854, and involve a series of 14 land purchases. Successor nations include: Songhees; Esquimalt; Beecher Bay; T'sou-ke; Malahat; Tsawout; Tsartlip; Pauqhachin; Tseycum; Kwakiutl; and Snuneymuxw.

Communications contact: Edward Hill;  
Program Area Contact: Hugh Gwillim (JAG), Wisty Chaytor, Gracie Wilcox

Page 329 of 413 to/à Page 332 of 413

Withheld pursuant to/removed as

s.14

## FW: 269619 EWN re Tsawout and Cascadia Celebration

---

From: McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>  
To: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>, Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>  
Sent: March 25, 2022 10:43:12 AM PDT  
Attachments: 269619 EWN re Tsawout and Cascadia celebration on Feb 25 2022 near James Island - March 23 2022 update.pdf, 269619 EWN Attachment 1 - Tsawout Marine Use Law.pdf, 269619 EWN Attachment 2 - FLNR letter to Cascadia.pdf

FYI to both of you.

Have you guys been engaged at all by AFF or FLNR on whether we can assist in this?

Tom

---

**From:** de Bree, Jennifer FLNR:EX <Jennifer.deBree@gov.bc.ca>  
**Sent:** March 25, 2022 9:56 AM  
**To:** Haslam, David GCPE:EX <David.Haslam@gov.bc.ca>; Sheldrake, Jeff FLNR:EX <Jeff.Sheldrake@gov.bc.ca>; McGuire, Jennifer AFF:EX <Jennifer.Mcguire@gov.bc.ca>; McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>; Mack, James ENV:EX <James.Mack@gov.bc.ca>; Wood, Andrea D FLNR:EX <Andrea.Wood@gov.bc.ca>; Tripp, Allison FLNR:EX <Allison.Tripp@gov.bc.ca>; FLNR Deputy Minister's Office FLNR:EX <FLNR.DMO@gov.bc.ca>; Mayser, Rudi E FLNR:EX <Rudi.Mayser@gov.bc.ca>; Kumar, Sangita FLNR:EX <Sangita.Kumar@gov.bc.ca>  
**Subject:** 269619 EWN re Tsawout and Cascadia Celebration

Hello everyone.

A/Assistant Deputy Minister Jeff Sheldrake approved the attached 269619 EWN documentation. I have completed and closed the cliff log and forwarded eapproval back to Sangita Kumar.

**Jennifer de Bree, ACC**  
**Executive Administrative Assistant**  
Regional Operations Division – Coast Area  
Ministry of Forests, Lands, Natural Resource Operations and Rural Development  
Phone (778)974-5878  
Email: [Jennifer.deBree@gov.bc.ca](mailto:Jennifer.deBree@gov.bc.ca)

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**Sent:** March 25, 2022 9:56 AM

**To:** Haslam, David GCPE:EX <David.Haslam@gov.bc.ca>; Sheldrake, Jeff FLNR:EX <Jeff.Sheldrake@gov.bc.ca>; McGuire, Jennifer AFF:EX <Jennifer.Mcguire@gov.bc.ca>; McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>; Mack, James ENV:EX <James.Mack@gov.bc.ca>; Wood, Andrea D FLNR:EX <Andrea.Wood@gov.bc.ca>; Tripp, Allison FLNR:EX <Allison.Tripp@gov.bc.ca>; FLNR Deputy Minister's Office FLNR:EX <FLNR.DMO@gov.bc.ca>; Mayser, Rudi E FLNR:EX <Rudi.Mayser@gov.bc.ca>; Kumar, Sangita FLNR:EX <Sangita.Kumar@gov.bc.ca>

**Subject:** 269619 EWN re Tsawout and Cascadia Celebration

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**Executive Administrative Assistant**

Regional Operations Division – Coast Area

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Phone (778)974-5878

Email: [Jennifer.deBree@gov.bc.ca](mailto:Jennifer.deBree@gov.bc.ca)





- WHEREAS** SṮÁUTW First Nation has inherent rights, customs, traditions and the inherent right to self-government as defined in the Douglas Treaty and reinforced through Section 35 of the *Constitution Act, 1982* and Articles 3, 20, 23, 29 and 32 of the *United Nations Declaration on the Rights of Indigenous Peoples* (the "Declaration");
- AND WHEREAS** the *Declaration on the Rights of Indigenous Peoples Act* affirms the application of the Declaration to the laws of British Columbia.
- AND WHEREAS** as an aspect of our inherent right of self-government and as an incident of SṮÁUTW First Nation's right to carry on our fisheries as formerly, affirmed in the *Saanichton Marina* case, SṮÁUTW First Nation has the jurisdiction to manage the marine habitat including Marine Use Operations in SṮÁUTW Territory;
- AND WHEREAS** SṮÁUTW First Nation has jurisdiction and authority over Tsawout lands, waters, resources and interests through our unextinguished Aboriginal title to SṮÁUTW Territory which is reinforced pursuant to the *Tsawout First Nation Land Code*, which came into force and effect on May 29, 2007 (the "Land Code");
- AND WHEREAS** Section 6 of the Land Code allows the SṮÁUTW First Nation the authority to enact rules and procedures, to make policies ancillary to any laws with respect to the management of SṮÁUTW Territory;
- AND WHEREAS** Section 18.10 of the *Framework Agreement on First Nation Land Management* affirms SṮÁUTW First Nation's power to make laws in accordance with its Land Code, respecting the development, conservation, protection, management, use and possession of SṮÁUTW land and interests, land rights and licences in relation to that land;
- NOW THEREFORE** the Council of Tsawout First Nation in open meeting assembled, enacts as follows, the SṮÁUTW First Nation *Marine Use Law* No. 2021-01.

---

**1.0 TITLE**

- 1.1 This Law may be cited as the SṮÁUTW First Nation *Marine Use Law*.

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**2.0 DEFINITIONS**

- 2.1 In this Law the following definitions apply:

**"Applicant"** means a Person applying for a Licence under this Law, including a renewal of a Licence;

**"Application"** means a completed written request on the prescribed form and the appropriate fees paid requesting the issuance, amendment or renewal of a Licence under this Law;

**"Community Impact Assessment Report"** means a report prepared in compliance with the Tsawout First Nation Community Impact Assessment Policy No. 01-2009, at the direction of Council, to support an Application under this Law;

**"Council"** means the Chief and Council of SṮÁUTW First Nation;

**"Douglas Treaty"** means the Douglas Treaty for North Saanich of February 1852;

**"Land Code"** means the *Tsawout First Nation Land Code*, dated October 31, 2006, which came into force and effect on May 29, 2007, as amended from time to time;

**"Law"** means this SṮÁUTW First Nation *Marine Use Law*;

**"Licence"** means a licence to engage in Marine Use Operations, issued pursuant to this Law;

**"Licencee"** means a Person who has been issued a Licence pursuant to this Law;

**"Marine Use Operations"** means the carrying on of a commercial or industrial undertaking of any kind or nature for the purpose of gain or profit, within the marine and coastal areas of SṮÁUTW Territory, but does not include any activities carried on by SṮÁUTW First Nation and its members or W̱SÁNEĆ members exercising Aboriginal and Treaty rights, protected by section 35 of the *Constitution Act, 1982*;

**"Marine Use Plan"** means a plan to support an Application under this Law, as revised from time to time in accordance with the terms of the Licence, describing the activities that are proposed relating to the Marine Use Operations, the size of the site, the proposed use of the site and any other information required by Council, prepared by the Licencee in a form approved by Council, signed and dated by both the Licencee and Council and held on file by Tsawout First Nation;

**"Offence"** means an offence under this Law;

**"Person"** means any natural person, corporation, partnership, trust, unincorporated organization, association, limited liability company, Band or other governmental authority, or other entity to whom the context can apply according to this Law;

**"Saanichton Marina case"** means *Saanichton Marina Ltd. v. Claxton*, [1989] 5 W.W.R. 82 (B.C.C.A.);

**"SṮÁUTW" or "Tsawout"** means SṮÁUTW First Nation as defined in the Land Code; and

**"SṮÁUTW Territory"** means that portion of the traditional marine territory recognized and described in W̱SÁNEĆ oral history and consistently accessed for food, social, ceremonial and economic purposes as shown on the map filed in the *Saanichton Marina* case, attached to this Law as Schedule "A".

### **3.0 AUTHORITY AND PURPOSE**

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- 3.1 The authority of SḤÁUTW First Nation to govern activities within, on and in respect of SḤÁUTW Territory and resources flows from our Douglas Treaty rights and inherent right of self-government.
- 3.2 The purpose of this Law is to set out the principles and legislative and administrative structures through which SḤÁUTW First Nation will exercise our authority over Marine Use Operations within SḤÁUTW Territory.

### **4.0 LICENCING REQUIREMENTS**

---

- 4.1 No Person shall carry on Marine Use Operations, within or on SḤÁUTW Territory without a valid Licence issued pursuant to this Law.
- 4.2 A Licence must set out the following information:
  - 4.2.1 the name and contact information of the holder of the Licence;
  - 4.2.2 the Licence number;
  - 4.2.3 the civic address or legal land description of the site where the Marine Use Operation is authorized and, if applicable, each building within the site;
  - 4.2.4 the authorized activity at the site and, if applicable, the authorized activity that may be conducted at each building within the site;
  - 4.2.5 any conditions that Council considers appropriate, pursuant to Section 5.5.3;
  - 4.2.6 the effective date of the Licence; and
  - 4.2.7 the date of expiry of the Licence.
- 4.3 Every Licence issued pursuant to this Law shall authorize the Licencee to carry on the Marine Use Operations and activities stipulated in the Licence in a lawful manner for the period, within the times, and at the premises specified in the Licence, subject to the terms and conditions specified on the Licence.
- 4.4 A Licence is valid for a term of up to five (5) years from the date of issuance specified on the Licence.
- 4.5 The Licence fees and Application fees set out in Schedule "B" are hereby imposed and must be paid to SḤÁUTW First Nation by every Applicant for a Licence at the time of Application. Council may, from time to time, amend the amount of the Licence fees and Application fees.
- 4.6 No Licence fee paid pursuant to this Law will be refunded.

- 4.7 Each Licencee wishing to continue Marine Use Operations must submit an Application to renew their Licence before it expires.
- 4.8 The Licencee must promptly notify Council in writing of any changes to their Licence information listed under s. 4.2 and may be required by Council to submit an Application to amend the Licence accordingly.
- 4.9 A Licence is not transferable from one Person to another Person or from one Person's business to another Person's business.
- 4.10 It is the responsibility of the Licencee to be aware of all applicable laws and the limits of the Licence, and to obtain proper authorization.

## **5.0 LICENCE APPLICATION PROCESS**

---

- 5.1 An Application must be filed with Council in the form and manner prescribed by Council and must set out the information that Council, in its sole discretion, deems necessary to review and evaluate the Application. This information may include, but is not limited to, the following:
  - 5.1.1 the Applicant information set out in Section 4.2;
  - 5.1.2 financial and background information related to the Applicant;
  - 5.1.3 confirmation that all necessary federal fisheries authorizations have been obtained;
  - 5.1.4 a Marine Use Plan; and
  - 5.1.5 a Community Impact Assessment Report (Council will identify the information required in accordance with the Tsawout First Nation Community Impact Assessment Policy No. 01-2009).
- 5.2 Council may refuse to consider an Application if any information required under Section 5.1 is not provided.
- 5.3 All Applications must be accompanied by the prescribed fees as set out in Schedule "B".
- 5.4 Council will, within a reasonable period of time, review the Application along with all relevant information and documentation as soon as practicable after receiving the prescribed fee and a complete Application under Section 5.1 and may:
  - 5.4.1 approve the Application;
  - 5.4.2 reject the Application; or
  - 5.4.3 approve the Application, subject to any terms or conditions Council considers appropriate.
- 5.5 Council may refuse to approve an Application to issue, renew or amend a Licence if:

- 5.5.1 the issuance, the renewal or the amendment is likely to create a risk to the natural environment, community health or safety that is not consistent with Sᑦᐱᐱᐱᐱ law, including but not limited to the Tsawout First Nation Community Impact Assessment Policy No. 01-2009;
- 5.5.2 there are reasonable grounds to believe that false or misleading information or false or falsified documents were submitted in, or in support of, the Application;
- 5.5.3 Council is of the opinion that it is in the public interest to do so; or
- 5.5.4 any other reasonable grounds exist, in the sole discretion of Council.
- 5.6 If Council approves the Application, Council shall issue a Licence to the Applicant.
- 5.7 If Council refuses an Application, Council must send written notice of the refusal to the Applicant with reasons for such refusal.

## **6.0 SUSPENSION AND REVOCATION OF A LICENCE**

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- 6.1 Council may suspend or revoke a Licence if it determines that a Licencee or the Licencee's business has contravened any provision of this Law or other Sᑦᐱᐱᐱᐱ First Nation laws, federal laws, provincial laws, or applicable permits, guidelines, orders, consents or other directions, or if in Council's opinion there are just and reasonable grounds to suspend or revoke the Licence.
- 6.2 If Council suspends, restores or revokes a Licence, Council must send written notice to the Licencee, with reasons for such suspension, restoration or revocation.
- 6.3 A refusal of an Application does not preclude submission of a new Application for a Licence by the Person subject to the refusal or revocation.

## **7.0 PENALTIES AND ENFORCEMENT**

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- 7.1 Any Person who violates any of the provisions of this Law or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this Law, or who neglects to do or refrains from doing any act or thing required by any of the provisions of this Law, is guilty of an Offence under this Law and is liable to the penalties imposed by this Law or any other Sᑦᐱᐱᐱᐱ law.
- 7.2 Each day a violation of this Law continues will be deemed to be a separate Offence for which a fine or imprisonment may be imposed.
- 7.3 Any Person who is guilty of an Offence under this Law is liable, on summary conviction, to a fine of not more than One Thousand Dollars (\$1,000.00) or to a term of imprisonment not exceeding thirty (30) days, or both.
- 7.4 Nothing in this Law precludes Sᑦᐱᐱᐱᐱ from pursuing any other enforcement action or remedy provided for in any other Sᑦᐱᐱᐱᐱ law.

## 8.0 APPLICATION OF LAW

- 8.1 Nothing in this Law relieves a Person from complying with any applicable law, regulation, by-law, or any requirements of any lawful permit, guideline, order, consent or other direction.
- 8.2 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be severed from and not affect the remaining provisions of this Law.
- 8.3 The headings given to the sections in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.

## 9.0 COMING INTO FORCE

- 9.1 This Law shall come into force and effect on the date that it is enacted.

THIS LAW IS HEREBY ENACTED by Council at a duly convened meeting held on the 16<sup>th</sup> day of June, 2021 at Saanichton, British Columbia.

A quorum consists of **five (5)** Council Members:

\_\_\_\_\_  
Chief Nicholas Claxton

\_\_\_\_\_  
Councillor John Etzel

\_\_\_\_\_  
Councillor Samantha Etzel

\_\_\_\_\_  
Councillor Abraham Pelkey

\_\_\_\_\_  
Councillor Mary Ann Sam

\_\_\_\_\_  
Councillor Stanley Sam

\_\_\_\_\_  
Councillor Bruce Underwood

\_\_\_\_\_  
Councillor Mavis Underwood

\_\_\_\_\_  
Councillor John Wilson

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Withheld pursuant to/removed as

s.16 ; s.18.1

**SCHEDULE B – INITIAL LICENCE AND APPLICATION FEES**

Type	Fee
Application Fee	\$500
Licence Fee	\$25,000/year





March 23, 2022

Cascadia Seaweed  
9774-C Third Street  
Sidney, BC  
V8L 3A4

*Transmitted via email: [mike@cascadiaseaweed.com](mailto:mike@cascadiaseaweed.com)*

Dear Mike Williamson:

I am contacting you regarding Cascadia's recent installation of infrastructure, including anchoring on the seabed, near James Island for the purpose of culturing marine aquatic plants (kelp) at this site.

First off, I would like to acknowledge Cascadia's collaborative and respectful approach of partnering with First Nations to advance the culture of kelp, thereby creating employment and business opportunities for many Indigenous communities across the coast.

When the Province was notified by Cascadia in October 2021 that Tsawout First Nation ("Tsawout"), following the earlier enactment of the Tsawout Marine Use Law (MUL), had issued a licence to Cascadia under the MUL for the culture of marine aquatic plants near James Island, the Province saw this collaborative relationship as a further positive step – both on Tsawout's and on Cascadia's part – in the advancement of Indigenous self-governance and economic self-determination through a joint-venture with your company.

The Province had expected that Cascadia would submit an application to FrontCounter BC in the weeks and months following the above notification in order to initiate the harmonized federal-provincial review process for aquatic plant culture with which Cascadia is well familiar. Unfortunately, this did not occur and it came to our attention recently that Cascadia proceeded on the basis of Tsawout's licence alone to install infrastructure for the purposes of marine aquatic plant cultivation within the waters near James Island.

The Province respects Tsawout's pursuit of meaningful self-governance and economic self-reliance and I commend Cascadia for having pursued and obtained a licence under Tsawout Nation's legal system. At the same time, I must be clear that under the

Page 1 of 2

Canadian legal system, Cascadia must apply for and receive the required provincial and federal authorizations in order to lawfully operate a kelp farm, including at site near James Island.

Accordingly, the Province hereby advises and notifies Cascadia that an application for the culture of marine plants for the site near James Island is required and must be submitted to the harmonized partners for review and adjudication. Information on the application process is available here –

<https://www2.gov.bc.ca/gov/content/industry/crown-land-water/crown-land/crown-land-uses/aquaculture>.

I am looking forward to receiving Cascadia's application at your earliest convenience.

If you have any questions, please do not hesitate to contact me at 250-739-8364 or by email at [Rudi.Mayser@gov.bc.ca](mailto:Rudi.Mayser@gov.bc.ca).

Respectfully,

A handwritten signature in black ink, appearing to read 'Rudi Mayser', with a stylized flourish at the end.

Rudi Mayser, R. P. F  
Resource Manager, Authorizations  
FLNRORD, West Coast



## Early Warning Note

Date: **March 23, 2022** **CLIFF: 269619**

Email to: **David Haslam, Communications Director, GCPE**  
Email to: **Jeff Sheldrake, A/ADM, FLNR, Coast Area**  
**Jennifer McGuire, ADM, MAFF, Agriculture Science and Policy**  
**Tom McCarthy, ADM, MIRR, Negotiations and Regional Operations**  
**James Mack, ADM, MECCS, Environmental Sustainability**

CC to: **Andrea Wood, Director, Executive Operations, DMO**  
**Allison Tripp, Manager, Executive Issues, DMO**  
**FLNR Deputy Minister Inbox (FLNR.DMO@gov.bc.ca)**

From: **West Coast Region**  
Contact: **Rudi Mayser, Manager of Authorizations** **Ph: (250) 739-8364**

Issue: **Tsawout First Nation and Cascadia Seaweed celebration on February 25, 2022**

Briefing Note to follow: **No**

### **Background:**

- In October 2021, Tsawout First Nation (TFN) notified the Department of Fisheries and Oceans (DFO) that they had enacted a Marine Use Law (MUL) (Attachment 1) for their territory. Provincial ministers (ENV, AFF, FLNR and IRR) received copies of this notification.
- The MUL provides for the issuance of licences by TFN to engage in marine use operations, and the TFN notice indicated that the Nation had issued a licence for the culture of kelp to Cascadia Seaweed near James Island.
- Cascadia Seaweed is a non-indigenous privately owned company based in Sidney BC.
- DFO promptly responded to the notice and pointed to the harmonized federal/provincial application process for the growing of aquatic plants and that applications must be submitted to the province who will refer them to DFO and Transport Canada (TC) for assessments and issuance of provincial and federal authorizations.
- The response also confirmed that no application had yet been received by the province and that DFO would be 'watchful for Cascadia's application'.
- Recently, West Coast Authorization's aquaculture team became aware that Cascadia Seaweed has installed infrastructure for a kelp farm without obtaining any provincial or federal authorizations. The infrastructure reportedly includes "close to 1,000 buoys in the water, all unmarked & unlit" off of the coast of James Island, east of Saanich.
- TFN/Cascadia issued a joint media release and TFN held a ceremony on February 25, 2022 recognizing the Nation's sovereign rights featuring Cascadia's kelp farm.
- TC has inspected the site with regards to marine hazards, and Cascadia has subsequently submitted an application to TC.
- Staff from the Ministry of the Attorney General have reviewed the implications of TFN's Marine Use Law and have confirmed that while there are several opportunities for the Province to work collaboratively with TFN and their MUL, TFN does not have sufficient



jurisdiction under the Canadian legal system to authorize Cascadia's development in the absence of federal and provincial authorizations.

- West Coast Authorizations staff has notified Cascadia via letter (Attachment 2) that an application for the culture of marine plants for the site near James Island is required and must be submitted to the harmonized partners for review and adjudication. Specifically, Cascadia requires a *Land Act* tenure and a license under the provincial *Fish and Seafood Act*. TFN has been notified of this letter by separate correspondence.
- Seaweed cultivation applications, while being referred to DFO for review and comment, do not require DFO authorization.
- In response to complaints from other operators, MAFF has opened an investigation regarding the processing of the aquatic plants harvested from the James Island facility and has advised Cascadia that aquatic plants from James Island cannot be processed at a Provincially licensed facility because they come from an un-approved source.

**Suggested Response:**

- s.13

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Attachments (2):      1. Tsawout First Nation – Marine Use Law No. 2021-01  
                                 2. FLNR letter to Cascadia Seaweed

## RE: 269619 EWN re Tsawout and Cascadia Celebration

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From: Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>  
To: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>, McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>  
Sent: March 25, 2022 11:56:03 AM PDT  
Attachments: s.14  
Hi All,

s.14

Cheers!  
Matt

**Matthew Butterfield**, B.Comm, RI(BC)  
(he/him/his)  
Regional Director, South Island  
Ministry of Indigenous Relations and Reconciliation  
Office: 236.478.1782 | Cell: 250.880.9950

---

**From:** Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Sent:** March 25, 2022 11:02 AM  
**To:** McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>; Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>  
**Subject:** RE: 269619 EWN re Tsawout and Cascadia Celebration

We were actually talking to Sharon Hadway this morning, more info sharing than involvement, but Matt is plugged in so I will leave it to him.

Christie Harvie (she/her)  
Ministry of Indigenous Relations and Reconciliation  
c. 250.361.6640

---

**From:** McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>  
**Sent:** March 25, 2022 10:43 AM  
**To:** Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>; Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>  
**Subject:** FW: 269619 EWN re Tsawout and Cascadia Celebration

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**To:** Haslam, David GCPE:EX <David.Haslam@gov.bc.ca>; Sheldrake, Jeff FLNR:EX <Jeff.Sheldrake@gov.bc.ca>; McGuire, Jennifer AFF:EX <Jennifer.Mcguire@gov.bc.ca>; McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>; Mack, James ENV:EX <James.Mack@gov.bc.ca>; Wood, Andrea D FLNR:EX <Andrea.Wood@gov.bc.ca>; Tripp, Allison FLNR:EX <Allison.Tripp@gov.bc.ca>; FLNR Deputy Minister's Office FLNR:EX <FLNR.DMO@gov.bc.ca>; Mayser, Rudi E FLNR:EX <Rudi.Mayser@gov.bc.ca>; Kumar, Sangita FLNR:EX <Sangita.Kumar@gov.bc.ca>

**Subject:** 269619 EWN re Tsawout and Cascadia Celebration

Hello everyone.

A/Assistant Deputy Minister Jeff Sheldrake approved the attached 269619 EWN documentation. I have completed and closed the cliff log and forwarded eapproval back to Sangita Kumar.

**Jennifer de Bree, ACC**

**Executive Administrative Assistant**

Regional Operations Division – Coast Area

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Phone (778)974-5878

Email: [Jennifer.deBree@gov.bc.ca](mailto:Jennifer.deBree@gov.bc.ca)

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Withheld pursuant to/removed as

s.14



April 26, 2022

Tsawout First Nation  
7728 Tetayut Rd.  
Saanichton, BC V8M 2E4

Delivered by email to: [referrals@tsawout.ca](mailto:referrals@tsawout.ca)

Dear Chief Harvey Underwood,

I am writing you regarding Tsawout First Nation's ("Tsawout") recent enactment of the Nation's Marine Use Law (MUL) and about Cascadia Seaweed Inc.'s ("Cascadia") subsequent installation of a kelp farm near James Island.

First off, the Province recognizes that the enactment of the Marine Use Law is an important step in advancing Tsawout Nation's self-governance, as is the business relationship with Cascadia in fostering Tsawout's economic interests and self-reliance.

Cascadia notified the Province last fall that Tsawout had issued a licence to Cascadia under the MUL for the culture of marine aquatic plants near James Island. After receiving the notification, the Province had expected that Cascadia would submit an application to FrontCounter BC in the ensuing weeks and months in order to initiate the harmonized federal-provincial aquaculture review process required to obtain the necessary provincial and federal authorizations with which Cascadia is well familiar.

Unfortunately, this did not occur and it came to our attention recently that Cascadia had proceeded on the basis of Tsawout's licence alone to install a kelp farm near James Island. In consequence, the Province sent the attached letter notifying Cascadia that an application must be made to obtain the necessary provincial and federal authorizations which are required under the Canadian legal system.

It is my understanding that a meeting on the subject of Tsawout's Marine Use Law is currently being planned with participation of both BC and Canada, and I am looking forward to learn more about Tsawout's MUL, how the Nation intends to apply it to marine land uses such as aquaculture within its territory, and how it may be considered in the provincial and federal aquaculture review process.



If you have any questions, please do not hesitate to contact me at 250-739-8364 or by email at [Rudi.Mayser@gov.bc.ca](mailto:Rudi.Mayser@gov.bc.ca)

Respectfully,

A handwritten signature in black ink, appearing to read 'Rudi Mayser', with a stylized flourish at the end.

Rudi Mayser, Resource Manager of Authorizations

Ministry of Forests, West Coast Region

Attachment: letter to Cascadia dated March 23, 2022



2022-03-23 Letter to  
Cascadia\_re James Isl.



March 23, 2022

Cascadia Seaweed  
9774-C Third Street  
Sidney, BC  
V8L 3A4

*Transmitted via email: [mike@cascadiaseaweed.com](mailto:mike@cascadiaseaweed.com)*

Dear Mike Williamson:

I am contacting you regarding Cascadia's recent installation of infrastructure, including anchoring on the seabed, near James Island for the purpose of culturing marine aquatic plants (kelp) at this site.

First off, I would like to acknowledge Cascadia's collaborative and respectful approach of partnering with First Nations to advance the culture of kelp, thereby creating employment and business opportunities for many Indigenous communities across the coast.

When the Province was notified by Cascadia in October 2021 that Tsawout First Nation ("Tsawout"), following the earlier enactment of the Tsawout Marine Use Law (MUL), had issued a licence to Cascadia under the MUL for the culture of marine aquatic plants near James Island, the Province saw this collaborative relationship as a further positive step – both on Tsawout's and on Cascadia's part – in the advancement of Indigenous self-governance and economic self-determination through a joint-venture with your company.

The Province had expected that Cascadia would submit an application to FrontCounter BC in the weeks and months following the above notification in order to initiate the harmonized federal-provincial review process for aquatic plant culture with which Cascadia is well familiar. Unfortunately, this did not occur and it came to our attention recently that Cascadia proceeded on the basis of Tsawout's licence alone to install infrastructure for the purposes of marine aquatic plant cultivation within the waters near James Island.

The Province respects Tsawout's pursuit of meaningful self-governance and economic self-reliance and I commend Cascadia for having pursued and obtained a licence under Tsawout Nation's legal system. At the same time, I must be clear that under the

Page 1 of 2

Canadian legal system, Cascadia must apply for and receive the required provincial and federal authorizations in order to lawfully operate a kelp farm, including at site near James Island.

Accordingly, the Province hereby advises and notifies Cascadia that an application for the culture of marine plants for the site near James Island is required and must be submitted to the harmonized partners for review and adjudication. Information on the application process is available here –

<https://www2.gov.bc.ca/gov/content/industry/crown-land-water/crown-land/crown-land-uses/aquaculture>.

I am looking forward to receiving Cascadia's application at your earliest convenience.

If you have any questions, please do not hesitate to contact me at 250-739-8364 or by email at [Rudi.Mayser@gov.bc.ca](mailto:Rudi.Mayser@gov.bc.ca).

Respectfully,

A handwritten signature in black ink, appearing to read 'Rudi Mayser', with a stylized flourish at the end.

Rudi Mayser, R. P. F  
Resource Manager, Authorizations  
FLNRORD, West Coast

## FW: Final Decision - James Island Subdivision

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From: Rogers, James IRR:EX <James.Rogers@gov.bc.ca>  
To: Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>, Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>, Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>, Nicholson, George AG:EX <George.Nicholson@gov.bc.ca>  
Sent: May 25, 2022 4:06:34 PM PDT  
Attachments: 2014-01343 James Island Final Decision (May 25 2022).pdf, image001.jpg  
FYI, MOTI just issued its decision not to approve the James Island subdivision application.

Thanks,

**James Rogers** (*he/his*)

Assistant Negotiator

Ministry of Indigenous Relations and Reconciliation

2957 Jutland Rd, V8T 5J9, Victoria

C: 250.208.4406 W: 778.974.2095

---

**From:** Evanoff, Ryan TRAN:EX <Ryan.Evanoff@gov.bc.ca>

**Sent:** May 25, 2022 4:03 PM

**To:** Soloducha, Danielle TRAN:EX <Danielle.Soloducha@gov.bc.ca>; Rogers, James IRR:EX <James.Rogers@gov.bc.ca>; Staite, Janelle A TRAN:EX <Janelle.Staite@gov.bc.ca>; Gordon, Max GCPE:EX <Max.Gordon@gov.bc.ca>; Richter, Kevin J TRAN:EX <Kevin.Richter@gov.bc.ca>; Kojima, Robert ISLT:IN <rkojima@islandstrust.bc.ca>; 'John Gailus' <john@dgwlaw.ca>; 'referrals@tsawout.ca' <referrals@tsawout.ca>; Harvey Underwood <chief@tsawout.ca>; Scott, Maheen FLNR:EX <Maheen.Scott@gov.bc.ca>

**Subject:** Final Decision - James Island Subdivision

Attached is the final decision for the James Island Decision.

The decision has been delivered to the applicant(s) and the file is now considered closed.

Copied from the attached for your quick reference:

### **Section 7: Conclusion**

1. I am refusing to approve the Application for the reasons set out above. In accordance with s. 3(1)(e)(ii) of the BLSR, I consider the application to be against the public interest.
2. This is a decision which I do not make lightly, understanding its significance and the future challenges it may entail for the Applicant and Tsawout, among others. The issues discussed in the “public interest” section above, including the lack of local government support and the outstanding impacts on Tsawout’s Aboriginal Interests, considered together and combined with British Columbia’s commitments to UNDRIP and reconciliation with Indigenous peoples, cannot be overlooked for this specific proposal.
3. I am only rejecting the proposed subdivision in front of me at this time and this decision should not be considered any form of development moratorium for the Island. This decision does not detract from the significant care and attention the Applicant has otherwise made in development plans for the Island. Additionally, this decision does not bar owners of the Island to present different development plans in the future.

**Ryan Evanoff**

Senior Manager Development Services

Highways and Regional Services Division – Ministry of Transportation and Infrastructure

Ph: 778-974-2634



Ministry of  
Transportation  
and Infrastructure

## FW: Final Decision - James Island Subdivision

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From: McCarthy, Tom IRR:EX  
To: Wood, Jessica IRR:EX <Jessica.D.Wood@gov.bc.ca>, Arthur, Emily IRR:EX <Emily.Arthur@gov.bc.ca>, Caul, Doug D IRR:EX <Doug.Caul@gov.bc.ca>, Melles, Jennifer IRR:EX <Jennifer.Melles@gov.bc.ca>  
Sent: May 25, 2022 9:31:00 PM PDT  
Attachments: 2014-01343 James Island Final Decision (May 25 2022).pdf, image001.jpg  
Thought this might be of interest. See the Approving Officer's reasons for refusing.

---

**From:** Lofthouse, Mark IRR:EX <Mark.Lofthouse@gov.bc.ca>  
**Sent:** May 25, 2022 8:04 PM  
**To:** McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>  
**Subject:** Fwd: Final Decision - James Island Subdivision

Did not expect this. Interesting. Victory for UNDRIP

Mark James Lofthouse  
Chief Negotiator

Begin forwarded message:

**From:** "Lofthouse, Mark IRR:EX" <Mark.Lofthouse@gov.bc.ca>  
**Date:** May 25, 2022 at 4:17:57 PM PDT  
**To:** "Rogers, James IRR:EX" <James.Rogers@gov.bc.ca>  
**Subject:** Re: Final Decision - James Island Subdivision

Interesting. Did not expect that

Mark James Lofthouse  
Chief Negotiator

On May 25, 2022, at 4:06 PM, Rogers, James IRR:EX <James.Rogers@gov.bc.ca> wrote:

FYI, MOTI just issued its decision not to approve the James Island subdivision application.

Thanks,  
**James Rogers** (*he/his*)  
Assistant Negotiator  
Ministry of Indigenous Relations and Reconciliation  
2957 Jutland Rd, V8T 5J9, Victoria  
C: 250.208.4406 W: 778.974.2095

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**From:** Evanoff, Ryan TRAN:EX <Ryan.Evanoff@gov.bc.ca>  
**Sent:** May 25, 2022 4:03 PM  
**To:** Soloducha, Danielle TRAN:EX <Danielle.Soloducha@gov.bc.ca>; Rogers, James IRR:EX <James.Rogers@gov.bc.ca>; Staite, Janelle A TRAN:EX <Janelle.Staite@gov.bc.ca>; Gordon, Max GCPE:EX <Max.Gordon@gov.bc.ca>; Richter, Kevin J TRAN:EX <Kevin.Richter@gov.bc.ca>; Kojima, Robert ISLT:IN <rkojima@islandstrust.bc.ca>; 'John Gailus' <john@dgwlaw.ca>; 'referrals@tsawout.ca' <referrals@tsawout.ca>; Harvey Underwood <chief@tsawout.ca>; Scott, Maheen FLNR:EX <Maheen.Scott@gov.bc.ca>  
**Subject:** Final Decision - James Island Subdivision

Attached is the final decision for the James Island Decision.  
The decision has been delivered to the applicant(s) and the file is now considered closed.

Copied from the attached for your quick reference:

### **Section 7: Conclusion**

1. I am refusing to approve the Application for the reasons set out above. In accordance with s. 3(1)(e)(ii) of the BLSR, I consider the application to be against the public interest.
2. This is a decision which I do not make lightly, understanding its significance and the future challenges it may entail for the Applicant and Tsawout, among others. The issues discussed in the “public interest” section above, including the lack of local government support and the outstanding impacts on Tsawout’s Aboriginal Interests, considered together and combined with British Columbia’s commitments to UNDRIP and reconciliation with Indigenous peoples, cannot be overlooked for this specific proposal.
3. I am only rejecting the proposed subdivision in front of me at this time and this decision should not be considered any form of development moratorium for the Island. This decision does not detract from the significant care and attention the Applicant has otherwise made in development plans for the Island. Additionally, this decision does not bar owners of the Island to present different development plans in the future.

**Ryan Evanoff**

**Senior Manager Development Services**

**Highways and Regional Services Division – Ministry of Transportation and Infrastructure**

Ph: 778-974-2634

**ADVICE TO MINISTER**

<p><b>CONFIDENTIAL ISSUES NOTE</b></p> <p>Ministry: Transportation and Infrastructure Date: May 27, 2022 Minister Responsible: Rob Fleming</p>	<p><b>James Island Subdivision Application Decision</b></p>
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**ADVICE AND RECOMMENDED RESPONSE:**

- **The ministry respects the provincial approving officer's decision to refuse the subdivision application for James Island.**
- **The provincial approving officer is a statutory decision maker who is independent of the Minister.**
- **The ministry understands that this was a complex decision that not everyone will support.**
- **First Nation consultation between the provincial approving officer, the Provincial Government, and Tsawout First Nation occurred between November 2019 and March 2022.**
- **This decision is specific to this proposed development and should not be considered a development moratorium for the James Island.**
- **The Tsawout First Nation has had a separate land claim before the B.C. Supreme Court since 2018. This claim remains in the discovery phase.**





## **ADVICE TO MINISTER**

### **BACKGROUND:**

James Island is a 780-acre private island (owned by Discover Land Company) located off the Saanich Peninsula and falls within the Island Trust in the North Pender Local Trust Area. It can only be accessed by water and air. The island currently has a 5,000-square-foot principal residence, as well as six guest cottages, private docks, an airstrip, pool house, 18-hole golf course and the manager's residence.

A subdivision application was originally received by MOTI in 2009. An updated preliminary layout review was granted in 2014. One of the conditions of the 2014 preliminary layout review included the need to hire a qualified archeologist to determine AIA requirements, as records indicated the presence of archeological sites protected under the Heritage Conservation Act. The current development proposal is for a 79-lot bare land strata development (76 residential lots and three commercial lots).

Consultation with the Tsawout First Nation has been underway since September 2019, following a request for a referral package for the subdivision application. Since this time, ministry staff have had numerous engagements with Tsawout First Nation, including sending nine letters and five virtual meetings.

On February 3, 2021, ministry staff met with Tsawout First Nation's Chief and Council to provide a status update on the subdivision file. The ministry has expressed ongoing willingness to the presentation of new information from the Tsawout First Nation regarding impacts. Subsequent meetings occurred on April 13 and 27, 2021, where further details were provided regarding their concerns.

On April 1, 2021, the North Pender Local Trust Committee (NPLTC) passed a resolution to not approve the subdivision as they do not believe it is in the public interest.

On July 6, 2021, the ministry sent a consultation overview letter to the Tsawout First Nation responding to the specific concerns raised by regarding the subdivision proposal. As part of this letter, the Tsawout First Nation were asked to provide a response by August 15, 2021, to ensure their interests and concerns were fully understood by the ministry. In this letter, the ministry also advised that the applicant intended to submit their final application and payment by July 30, 2021.

On July 29, 2021, Tsawout First Nation legal counsel contacted the applicant and requested a meeting on August 12, 2021. As such, the applicant held off on submitting their final plans. Following this meeting, the applicant advised the ministry that the meeting didn't advance any possibilities of accommodations and a final plan was submitted by the applicant on August 20, 2021, with final payment received on August 24, 2021. Once payment was received, this triggered a 60-day response time by the PAO for final decision.

On August 17, 2021, the Tsawout First Nation, in a meeting with the ministry, advised that the meeting with the applicant wasn't productive as they weren't interested in any accommodations from the developer and did not want to see the subdivision proceed.

Tsawout First Nation reiterated that they feel consultation is still incomplete and brought up concerns about sewage system contamination, and necessary contaminated site documentation (previously raised).

They also informed the ministry that they rejected the applicant's most recent offer of capacity funding and, in a letter to the ministry dated August 18, 2021, requested that the Province reconsider Tsawout's prior request for capacity funding to support meaningful engagement in this consultation process. At that time, the Tsawout First Nation had incurred over \$75,000 in costs for the consultation process and was requesting \$225,000 to cover the completion of a traditional land use study, supplemental AIA, collection of LIDAR data, technical support, and community consultation. At the August 17, 2021 meeting, the ministry extended the Tsawout First Nation's deadline to provide written comment to August 30, 2021. No capacity funding was provided.

On August 30, 2021, the Tsawout First Nation sent a letter to the ministry requesting clarification on the criteria and standards applied in determining the Province's initial impact assessment of the application on Tsawout's Aboriginal rights and Douglas Treaty rights as 'moderate'. The ministry provided an explanation of this process in a letter on September 28, 2021.

On October 15, 2021, MLA for Saanich North and The Islands Adam Olsen sent a letter to government expressing his support for the Tsawout First Nation and urging the PAO to reject the application as contrary to the public interest. Ministers Fleming and Rankin also received this letter.

On October 22, 2021, MP for Saanich-Gulf Islands Elizabeth May sent a letter to government in support of the Tsawout First Nation's request for capacity funding to conduct a comprehensive Indigenous land use study and supplemental archaeological assessment. Ministers Fleming and Rankin, as well as MLA Olsen, and Tsawout First Nation Chief Harvey Underwood and Band Manager Christine Bird, also received this letter.

The concerns expressed by the Tsawout First Nation as well as the resolution of the NPLTC and the letters from the MLA and MP have been shared with the ministry's PAO who is the final approving authority on whether this development can proceed.

On November 24, 2021, the PAO paused the final decision process at the request of the applicant in order that they could complete further First Nations consultation. On January 18, 2022, the ministry issued a letter notifying the Tsawout First Nation of this request and requesting additional information related to three specific impacts: marine harvesting sites, cultural practices on James Island and associated privacy requirements, and the economic component of the asserted Aboriginal title.

The Tsawout First Nation responded to the ministry on January 25, 2022, requesting legal basis for decision to pause the final approval process and to request copies of all communications between the province and applicant dating to August 24, 2021. The ministry provided all requested communications on February 28, 2022.

## **ADVICE TO MINISTER**

On February 28, 2022, the ministry received the applicant's accommodation framework document, which details all proposed accommodation measures for the subdivision. This document was shared with the Tsawout First Nation on March 3, 2022.

On March 4, 2022, the ministry (PAO and legal council) met with the Tsawout First Nation and leadership to discuss the rationale behind pause in the decision-making process and the applicant's accommodation framework letter. At this meeting, the Tsawout First Nation proposed to issue a written response to the applicant's accommodation framework. The PAO advised the Tsawout First Nation at this time that, if the applicant requests that the decision process resume, the process will move forward with or without additional info from the Nation if the applicant requests

On March 11, the PAO received a request from the applicant to restart the decision process. The applicant is in the process of submitting all standard final subdivision review documents. On March 15, the ministry advised the Tsawout First Nation that the decision process has resumed.

As of March 15, 2022, the applicant and the Tsawout First Nation have not reached a consensus. If the subdivision is approved, the developer is sent the signed documents to file at the Land Titles Office. If the subdivision is not approved, the PAO is required to notify the applicant in writing of the non-approval, briefly stating the reasons.

On May 25, 2022, the provincial approving officer issued their decision to refuse the James Island Subdivision application. This decision was made based on the grounds that the subdivision would be against the public interest for a few main reasons:

- Lack of local government support
- Outstanding impacts on the Tsawout First Nation's Aboriginal Interests
- British Columbia's commitments to UNDRIP and reconciliation with Indigenous Peoples

## **BACKGROUND ON THE ABILITY OF CABINET TO OVERRIDE THIS TYPE OF DEVELOPMENT PROPOSAL:**

For non-strata applications, the PAO's decision is guided by the Land Title Act (LTA). Under the LTA, on rare occasion, there is an alternate approval process in which the Lieutenant Governor of British Columbia, through direction from cabinet, could be asked to consider the subdivision under Section 90 of the LTA.

Land Title Act Section 90 - Power of Lieutenant Governor in Council to prohibit deposit of plan (1) The Lieutenant Governor in Council may, when it appears that the deposit of a subdivision plan is against the public interest, order the registrar not to receive the plan for deposit.

Given this proposed subdivision is a strata, the approval is subject to the bare land strata regulations. There is nothing specific in those regulations that are similar to Section 90 of the LTA; however, the B.C. Government, at its discretion, is able to submit an opinion to the PAO regarding the public's interests, which would be considered by the PAO in their

review of the file, along with the interests of other affected parties.

Communications Contact: Max  
Gordon 250-896-1866

Program Area Contact: Angie  
Allwood /Janelle Staite

Minister's Office	Program Area	Deputy	Communications
	SY, JS	KR	DC

## FW: Final Decision - James Island Subdivision

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From: McCarthy, Tom IRR:EX  
To: Mader, Susan LWRS:EX <Susan.Mader@gov.bc.ca>  
Cc: Robb, Peter L. EMLI:EX <Peter.Robb@gov.bc.ca>, Halls, Lori D FOR:EX <Lori.D.Halls@gov.bc.ca>  
Sent: June 20, 2022 3:38:25 PM PDT  
Attachments: 2014-01343 James Island Final Decision (May 25 2022).pdf

Susan –

As discussed today.

Tom

## RE: FOR MO: Seaweed follow up

---

From: McCarthy, Tom IRR:EX  
To: Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>  
Cc: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Sent: August 9, 2022 9:51:37 PM PDT

Thanks. Good response but I would include in question 2: *The intended resolution is to create a solution whereby a provincial authorization can appropriately be issued alongside the existing Tsawout license.* (if this is what is happening). The term 'streamlining the authorization process' is a bit opaque.

At the end of the email you could offer to set up a verbal.

Tks  
Tom

---

**From:** Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>  
**Sent:** August 9, 2022 5:10 PM  
**To:** McCarthy, Tom IRR:EX <Tom.McCarthy@gov.bc.ca>  
**Cc:** Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
**Subject:** FOR MO: Seaweed follow up

Hi Tom,

Wanted to run this by you before responding to MO, it is a MOF lead with MIRR supporting discussions with Nation. Unsure why these questions are coming in and what might be behind it. I'm happy to respond, just want to get your thoughts.

**Background:**

- MO reached out to Jennifer (acting DM) re: Cascadia Seaweed
- Kim called me and I verbally provided the following for her on the topic:
  - Tsawout passed a Marine Use Law
  - MOF (MIRR supporting) is working with Tsawout to harmonize land-act authorizations and Marine Use Law
  - Tsawout has included Canada in the conversation as there is jurisdictional overlap

**MO now has follow-up questions**, my proposed answers in red:

1. Are licenses are still being issued? MOF, Tsawout, and Canada are discussing a streamlined process for authorizations, to best of our knowledge no licences have been issued.
2. What is projected to happen with regards to a resolution, and possible time line? MOF is leading this discussion, and they are working on streamlining the authorizations process to include Tsawout. We believe there is a follow-up meeting happening in September.

Cheers,  
Matt

**Matthew Butterfield**, B.Comm, RI(BC)  
(he/him/his)  
a/Regional Executive Director, Coast  
Ministry of Indigenous Relations and Reconciliation  
Office: 236.478.1782 | Cell: 250.880.9950

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**From:** Ponchet, Kim IRR:EX <Kim.Ponchet@gov.bc.ca>  
**Sent:** August 9, 2022 2:58 PM  
**To:** Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>  
**Subject:** Seaweed follow up

Hi Matthew,

MO has a few more qs for you, please!

1. Are licenses are still being issued?
2. What is projected to happen with regards to a resolution, and possible time line?

Thank you,

**Kim Ponchet**

(she/her)

a/Executive Director, Executive Operations

Deputy Minister's Office

Ministry of Indigenous Relations & Reconciliation

250 812-2459

*I acknowledge with gratitude that I am privileged to live, work, and play on many unceded territories, particularly the lands of the laḱʷəŋən and W̱SÁNEĆ peoples.*

Page 366 of 413 to/à Page 367 of 413

Withheld pursuant to/removed as

s.14



**From:** [Evanoff, Ryan TRAN:EX](#)  
**To:** [Soloducha, Danielle TRAN:EX](#); [Rogers, James IRR:EX](#); [Staitte, Janelle A TRAN:EX](#); [Gordon, Max GCPE:EX](#); [Richter, Kevin J TRAN:EX](#); [Kojima, Robert ISLT:IN](#); ["John Gailus"](#); ["referrals@tsawout.ca"](#); [Harvey Underwood](#); [Scott, Maheen FLNR:EX](#)  
**Subject:** Final Decision - James Island Subdivision  
**Date:** May 25, 2022 4:03:13 PM  
**Attachments:** [image001.jpg](#)  
[2014-01343 James Island Final Decision \(May 25 2022\).pdf](#)

---

Attached is the final decision for the James Island Decision.

The decision has been delivered to the applicant(s) and the file is now considered closed.

Copied from the attached for your quick reference:

### **Section 7: Conclusion**

1. I am refusing to approve the Application for the reasons set out above. In accordance with s. 3(1)(e)(ii) of the BLSR, I consider the application to be against the public interest.
2. This is a decision which I do not make lightly, understanding its significance and the future challenges it may entail for the Applicant and Tsawout, among others. The issues discussed in the “public interest” section above, including the lack of local government support and the outstanding impacts on Tsawout’s Aboriginal Interests, considered together and combined with British Columbia’s commitments to UNDRIP and reconciliation with Indigenous peoples, cannot be overlooked for this specific proposal.
3. I am only rejecting the proposed subdivision in front of me at this time and this decision should not be considered any form of development moratorium for the Island. This decision does not detract from the significant care and attention the Applicant has otherwise made in development plans for the Island. Additionally, this decision does not bar owners of the Island to present different development plans in the future.

**Ryan Evanoff**

**Senior Manager Development Services**

**Highways and Regional Services Division – Ministry of Transportation and Infrastructure**

Ph: 778-974-2634



## **Decision Rationale for Strata Subdivision Submission – James Island – MOTI File 2014-01343**

### **Section 1: Introduction**

1. James Island (the “Island”) is located east of the Saanich Peninsula and within the North Pender Local Trust Area of Islands Trust. It is approximately 780 acres and is owned by J.I. Properties Inc. (the “Applicant”). The Island can only be accessed by water and air. It currently has a 5,000 square-foot principal residence, as well as six guest cottages, private docks, an airstrip, pool house, 18-hole golf course and a manager’s residence.
2. An application for a rural subdivision for 83 strata lots for the Island was originally received from the Applicant in 2009. The file number for this application was 01-001-26176. The Applicant was issued a letter of preliminary layout approval (“PLA”) on August 3, 2009, but its application was then inactive until April 2014, when a request from the Applicant was received to extend the August 3, 2009 PLA letter. That request was granted, and, to facilitate a change in Development Services’ filing system, the Applicant resubmitted the application materials and was assigned file 2014-01343.
3. The Applicant was issued a new PLA letter on June 27, 2014, which included conditions related to archaeology sites present across James Island. Another letter cancelling and replacing the 2014 PLA letter with a new Preliminary Layout Review Status letter (“PLRS”) was sent to the Applicant on November 8, 2019. The PLRS letter added conditions around local government zoning regulations, groundwater supply, and First Nations consultation in response to Islands Trust and Tsawout First Nation (“Tsawout”) submissions. As the Applicant had made progress addressing the new groundwater and local government zoning considerations set out in the November 8, 2019 PLRS, a Subdivision Preliminary Layout Review letter (“PLR”) was issued on February 11, 2020. The Applicant submitted a revised layout plan for 79 lots (76 residential and 3 commercial) in July 2020 (the “Application”), and this revised plan was issued an updated PLR letter on July 15, 2020. This most recent PLR letter, listing preliminary conditions for the Application and upon which this final submission review is based, was issued March 1, 2021.<sup>1</sup>
4. The Application is brought under the *Strata Property Act* and the *Bare Land Strata Regulations* (“BLSR”), is proposed as water access only, and is designed to be marketed as vacation rentals / summer homes that the Applicant says are unlikely to be lived in year-round. No specific use plans for the three included commercial lots have been required or provided by the Applicant but the Applicant describes the development as a private golf club development and the proposed subdivision does not interfere with that facility. The future use of these proposed lots would be managed via Islands Trust zoning and land use regulations.
5. As per standard subdivision review processes, the Application was also referred to applicable agencies as follows: the Islands Trust; Island Health Authority; and Capital Regional District (“CRD”). Responses were received from all three referral agencies. During the subdivision review process, application information pertinent to their respective areas of jurisdiction was also shared with the Ministry of Forests, Lands, and Natural Resource Operations (“FLNRORD”) Sustainable Water Division, FLNRORD Archaeology Branch, and the Agricultural Land Commission (“ALC”). Subdivision information has been shared with FLNRORD for its decisions on water licenses and foreshore tenure applications, which will occur post-subdivision. The Agricultural Land Reserve (“ALR”) has been established throughout a significant part of James Island and the ALC was provided application details for their consideration and confirmed by letter December 18, 2020 that their interests are unaffected so long as the appropriate ALR notations remain on title for Lot A, Section 1 – 5.
6. First Nation consultation between myself (as Provincial Approving Officer), the Province (as represented by the Ministry of Transportation and Infrastructure [“MOTI”] and Ministry of Attorney General staff), and Tsawout occurred between November 2019 and March 2022, and is an important consideration in this decision. All relevant documents were provided to Tsawout via a SharePoint website by MOTI staff throughout the consultation process.

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<sup>1</sup> The name of the various preliminary condition letters used in the MOTI subdivision review has changed over the years. PLA and PLR letters are used for proposals which are not being rejected outright and establish conditions which an applicant is expected to resolve prior to final review. A PLRS letter is used in situations where information may be missing, or a requirement has been identified which leads the Approving Officer to believe the proposal must be rejected unless the identified issue can be resolved. Preliminary condition letters are not directly indicative of future approval or non-approval of a given proposal.

7. In accordance with s. 3(1)(b) of the BLSR I have also heard from other persons who, in my opinion, are affected by the proposed plan. In addition to Tsawout, I have received input from adjacent municipalities, the Southern Gulf Islands Forum, and local elected provincial and federal representatives. Additionally, the Applicant has provided written submissions detailing its position on relevant matters.

## **Section 2: Statutory considerations**

8. This decision incorporates considerations from the *Strata Property Act*, the BLSR, the *Land Title Act* and the *Local Government Act*.

9. The most significant of the above legislation for this decision is the BLSR, some relevant sections of which are reproduced below:

### *Approval of plan*

*2 (1) No bare land strata plan shall be approved by an approving officer unless*

*(a) it conforms to the relevant municipal or regional district zoning bylaws and development permits*

### *Requirements for approval*

*3 (1) In considering an application for the approval of a bare land strata plan, the approving officer may*

*(a) at the cost of the owner-developer, personally examine or cause an examination and report to be made on the land intended to be included in the bare land strata plan,*

*(b) hear from all persons who, in the approving officer's opinion, are affected by the bare land strata plan,*

*(c) require an owner-developer to state in writing the intended use of the strata lots being created by a bare land strata plan,*

*(d) require the owner-developer to provide such plans, designs, specifications and reports as the approving officer may reasonably require in order to consider the bare land strata plan for approval,*

*(e) refuse to approve the bare land strata plan, if the approving officer considers that*

*(i) the anticipated development would injuriously affect the established amenities of adjoining or reasonably adjoining properties,*

*(ii) the deposit of the bare land strata plan is against the public interest,*

*(iii) the bare land strata plan does not comply with the provisions of these regulations relating to access and the sufficiency of highways required to be dedicated pursuant to these regulations,*

*(iv) the highways required to be dedicated prior to the approval of the bare land strata plan by the approving officer are not cleared, drained, constructed and surfaced to the approving officer's satisfaction, or unless, in such circumstances as the approving officer considers proper, security in an amount and in a form acceptable to the approving officer is provided by the owner-developer,*

*(v) it contains land that because of inadequate drainage is not suitable for the intended use or any other prospective use the approving officer considers likely,*

*(vi) the land is subject or could reasonably be expected to be subject to flooding, erosion, land slip or avalanche,*

*(vii) the cost of providing the public utilities or other works or services would be excessive, or*

*(viii) the development would adversely affect the natural environment to an unacceptable level.*

### **Section 3: Relevant Considerations**

#### **(1) Access**

10. The Applicant proposes access to the Island via private watercraft, water taxi (from Sidney), floatplane, or via the private airstrip on the Island (receiving helicopters from the Victoria International Airport).

11. The following considerations and best practices, of which the Applicant has been made aware through application review discussions, are in my opinion relevant when reviewing considerations related to water-access-only developments:

- The water body used for access needs to be accessible by a maintained public road for boat launching purposes.
- Public parking located “on the other side” of the water should be available.
- The body of water used for access needs to be generally capable of year-round travel.

12. In this instance, there are many nearby amenities which make this type of water-access application possible. These include multiple public/private boat launching and moorage sites (with parking) around Sidney, water taxi services, and private watercraft operators. Other nearby islands have similar development, and the surrounding waterways are generally calm (suitable for year-round use). Additionally, there are other nearby water-access-only islands which are subdivided and have proven to be suitable for this style of development, including Piers Island.

13. Access by air is also possible and has been suggested by the Applicant as a potentially preferred method of travelling to and from James Island. With the Victoria International Airport nearby and a constructed helicopter landing pad on James Island it stands to reason that access-via-air would be a suitable method to supplement marine travel to and from the Island for future lot owners.

14. As a bare land strata proposal this subdivision does not need to include any public highway dedications, which does remove some burden from government agencies such as the MOTI and the CRD. Given the proximity of the local airport, water taxi services, private and public boat launches, and moorage facilities, I believe that an application on James Island could be suitable as a water-access-only proposal, were it not for the issues addressed below.

15. James Island currently has two moorage facilities: Melanie Bay (traditional small craft moorage) on the Island’s protected eastern side, and Powder Wharf (larger watercraft and barges) on the Island’s western side. Currently these two sites are not large enough to allow each proposed lot to be provided individual moorage. Expansion of these sites is not constrained by space limitations (if expansion becomes necessary in the future). This is a point of contention in the review of this proposal, however, as the potentially necessary expansion of these marina facilities may in the future negatively impact concerned parties. These negative impact concerns are expanded on in the “Resident access & potential impacts” and “Environmental considerations” sections below.

16. Tsawout and the Southern Gulf Islands Forum have raised concerns that the added marine and air traffic around the Island would result in negative impacts to the environment. The Applicant has pointed out that there are no limitations on marine or air traffic currently, regardless of the proposed subdivision. No restrictions on the volume of visiting marine or air traffic have been proposed by the Applicant. The potential for additional marine and air traffic is addressed in more detail below.

#### **(2) Potable water and sewage**

17. As with any standard subdivision review, the suitability of the land for residential dwellings should be considered in accordance with BLSR s. 3(1)(e)(v) and (viii). Primarily this includes a review of the availability of potable water and soil suitability for inground (type 1) septic systems. The Applicant has proposed individual drilled wells and individual type 1 septic tank systems for each proposed lot. It should be noted that previous iterations of this subdivision plan had proposed community systems for both water and sewerage.

18. James Island is managed under the CRD’s building inspection program. This partially addresses concerns related to the installation of proper water and in-ground type 1 sewerage systems (primarily septic tanks) for future dwellings. The CRD’s building permit program has allowed the Applicant to propose restrictive covenants which preclude future

homes from receiving occupancy permits until water and type 1 sewerage systems meeting the applicable regulations are in place. I accept that that these covenants (under s. 219 of the *Land Title Act*) are an appropriate device to meet the requirements regarding potable water and septic suitability in lieu of construction of all necessary systems prior to final approval.

19. In letters dated July 4, 2019, and April 30, 2020, Island Health confirmed that the proposed lots were suitable for inground septic systems.

20. Proof of water supply is a requirement of Island Trust Land-use Bylaw No. 103 and, as per standard MOTI subdivision processes, the Approving Officer ensures that these Land-use Bylaws are met. In response to referral comments from the Islands Trust, the Applicant has provided a report by Western Water Associates (the “Western Water Report”). It provides a hydrological overview of James Island and addresses the feasibility of individual ground water wells to service each lot. The report concludes that individual wells are viable for the proposal, provided that they are accompanied by a number of restrictive measures. The Applicant has agreed to implement these measures by registering the Western Water Report against the proposed lots using s. 219 *Land Title Act* covenants, which are included in the Applicant’s final submission. Via letter dated August 1, 2019, the Islands Trust (via a Senior Freshwater Specialist) advised the Applicant that Islands Trust has concerns about the proposed single-well approach and about some methodology in the Western Water hydrological report. Although bylaw requirements are met with the proposed individual systems, Islands Trust’s letter recommends a community-based groundwater supply or extensive drilling and testing as well as area-based regulation of the individual wells either under the *Water Sustainability Act* or via s. 219 *Land Title Act* covenants. To date, the Applicant has not elected to amend its single-use-well plan.

21. Regardless of local government area-based regulations and restrictive covenants, maintenance and/or replacement of these systems would be left to the strata and/or the individual owners, as no local agency or government authority provides any oversight, monitoring, or remediation of individual water and/or sewage systems. These owners, the Applicant says, are unlikely to permanently reside on the Island. Proliferation of the individual ground water wells, and associated issues of saltwater intrusion into the existing aquifer, is a primary concern of Tsawout, and is a concern that I share.

22. A significant consideration here involves the not-yet-issued commercial water licenses from FLNRORD for the proposed commercial properties. Although it is *normal* for lots which will rely on water licenses to receive those licenses after subdivision approval (in part because new legal descriptions are necessary for the applications), there is still a risk that they will not be issued. It is foreseeable that FLNRORD’s review process will encounter First Nations and local government objections similar to those this subdivision proposal has received. Proposed commercial lots which do not qualify for water licenses would pose a challenge to the suitability of the proposed plan. I believe this to be a relevant consideration under s. 3(1)(e) of the BLSR. If the proposed commercial use – golf course and club – could not operate, this could potentially lead to alternative commercial uses that could substantially change the nature of the development.

23. Additionally, commercial use of the available ground water, in addition to the increase in residential use once the development is fully built out, could strain the aquifer and increase the likelihood of saltwater intrusion. Commercial water use (for the golf course and club or otherwise) is not adequately covered in the Western Water Report provided by the Applicant. Any future ground water reports for James Island should better investigate the threat, and mitigation, of saltwater intrusion as it relates to both residential and commercial use.

### (3) Land Considerations (archaeological, geotechnical and environmental)

24. Archaeological sites are protected under the *Heritage Conservation Act* and standard subdivision review processes ensure that proposals with registered archaeological sites, or significant potential for discoveries, are investigated and referred to FLNRORD. An Archaeological Impact Assessment prepared by Stantec (April 30, 2020) (“AIA”) was submitted by the Applicant in support of the proposed subdivision layout. The AIA identifies the archeologically sensitive areas across the Island which are to be surveyed and protected by restrictive covenants (s. 219 of the *Land Title Act*) and included on the certified survey plan. The AIA, and proposed covenants, were reviewed and accepted by Archaeology Branch staff with FLNRORD.

25. A geotechnical report prepared by Thurber Engineering (April 28, 2020) (the “Thurber Report”) was also submitted by the Applicant in support of the proposed subdivision layout as per s. 3(1)(e)(vi) of the BLSR. The Thurber Report concludes that the Island is generally suitable for the proposed residential and commercial use and recommends coastal setback no-build areas. These setback areas are used to protect both future dwellings from landslip and erosion hazards, as well as protecting the sensitive shoreline ecosystem from construction, which could lead to further erosion issues. Of specific note, tsunami risks were not included in the report. CRD’s Tsunami Modeling and Mapping Report (November, 2021) does not include James Island as an area of high threat for Tsunami inundation zones. The Thurber Report was reviewed by a MOTI geotechnical engineer (approval email May 2, 2020) and found to be acceptable. I accept that the Thurber Report and confirmed restrictive covenants (s. 219 of the *Land Title Act*) would be suitable to enforce the identified no-build areas of the Island and necessary oceanfront setbacks.

26. As is normal process for rural subdivision reviews, when local government bylaws include provisions for environmental reviews and mitigation, the local government advises whether it considers that its bylaws have been met. In this instance the Islands Trust Land Use Bylaw, which establishes relevant bylaws and regulations for James Island, includes specific environmental provisions. The Applicant has provided relevant reports to the Islands Trust and prepared restrictive covenants (s. 219 of the *Land Title Act*) which identify and locate specific environmental concerns (such as raptor nesting trees) and prohibit their removal or alteration with prior consent. Although the final acceptance of these covenants by the Islands Trust has not yet been confirmed, Islands Trust is not required to authorize the documents in order for them to be registered against the new strata titles.

27. Overall, I find that James Island is suitable for the proposed residential and commercial use as it pertains to archaeological and geotechnical considerations with the proposed restrictive covenants in place. Although the Applicant has satisfied the Islands Trust environmental requirements, however, I believe there are outstanding environmental concerns; these are addressed in more detail below.

#### (4) Islands Trust

28. In accordance with the BLSR s. 2(1)(a), a submitted bare land strata plan is required to conform with relevant regional district or municipal zoning bylaws and development permits. The CRD does not have any applicable zoning bylaws. I have considered this subdivision application against the Islands Trust zoning bylaws, a reflection the views of the community and community interests.

29. As previously stated, the proposed subdivision was referred to the Islands Trust for review. Via letter April 15, 2021, the Islands Trust advised that that North Pender Island Local Trust Committee had passed resolution NP-2021-027 as follows:

*Whereas the Islands Trust Council has adopted a reconciliation declaration; and  
Whereas the North Pender Island Local Trust Committee has adopted a standing resolution with respect to First Nations reconciliation in the North Pender Island Local Trust Area; and  
Whereas the North Pender Island Local Trust Committee has reviewed the consultation record, and notes that objection to the subdivision continue to be expressed by the Tsawout First Nation;*

*Therefore, the North Pender Island Local Trust Committee resolves to:*

- 1) Advise the Provincial Approving Officer that the North Pender Island Local Trust Committee considers approval of the subdivision of James Island as not being in the public interest*
- 2) Advise the Lieutenant-Governor-in-Council that the North Pender Island Local Trust Committee considered the deposit of the subdivision plan James Island as being against the public interest*

30. Via email April 29, 2021, the Islands Trust advised that the North Pender Local Trust Committee passed the following resolution in a meeting earlier that day

*THAT the North Pender Island Local Trust Committee will not accept any appraisal until written confirmation from the Tsawout First Nation is received that the Tsawout leadership approve subdivision NP-SUB-2008.9 (JI Properties).*

*THAT the North Pender Island Local Trust Committee amend resolution NP-2021-027 by modifying the grant of authority by requiring that the Chair also obtain written confirmation from the Tsawout First Nation that they*



*consider the consultation by the Ministry of Transportation and Infrastructure to be sufficient and will not be seeking further consultation.*

31. On or about April 30, 2021, I met with North Pender Island Local Trust Committee Chair Laura Patrick (via virtual conference call) about this resolution. Chair Patrick advised as follows:

- Although the Islands Trust had previously (2008) approved the rezoning of James Island, which allows this subdivision to be proposed, it has since adopted significant resolutions pertaining to First Nations reconciliation and consider those newly adopted resolutions to take precedence.
- The North Pender Island Local Trust Committee does not consider the proposed subdivision to be in the spirit of the Islands Trust “preserve and protect” mandate.
- The North Pender Island Local Trust Committee may never consent to approval of the subdivision without the consent of the Tsawout.
- Although the North Pender Island Local Trust Committee formally objected to the subdivision it understands that an approval/non-approval decision still needed to be made and the subdivision could possibly be registered without their consent.

32. In subsequent telephone calls and virtual conferences, I made the Applicant aware of this above-noted information and encouraged dialogue to continue between the Applicant and Islands Trust. I have also shared all correspondence from the Islands Trust with the Applicant for comment and have reviewed and considered the Applicant’s responses.

33. The *Local Government Act* s. 510 stipulates that a percentage of land in a proposed subdivision be set aside as parkland. Alternatively, a local government can accept cash in lieu of this dedication in accordance with an appraisal of the land value. The Islands Trust, via the elected North Pender Island Local Trust Committee, resolved that it would not accept an appraisal of the Island (for cash in lieu of parkland purposes) or authorize required restrictive covenants until such time as written confirmation from Tsawout leadership “approving” the subdivision was received.

34. Under the *Islands Trust Act* s. 29(3), the Islands Trust is unable to accept monies paid in lieu of parkland dedication. Therefore, the final acceptance and use of the *Local Government Act* s. 510 monies in lieu of park land falls under the authority of the CRD and not the Islands Trust.

35. In response to the Island Trust’s unwillingness to accept an appraisal, the Applicant requested that the Superintendent of BC Real Estate appoint a land assessor to provide an assessment and require the local government to accept that assessment under the *Local Government Act*. The request was accepted July 9, 2021, and an appraisal was completed September 23, 2021, establishing a land value of \$48,880,000.00. There has been no objection to this assessment from the CRD and the Island Trust has since accepted the Applicant’s cheque for monies in lieu of parkland totaling \$2,444,000.00. I consider the s. 510 *Local Government Act* requirement to have been met for the purposes of this review.

36. Via letter January 21, 2021, Island Trust staff confirmed that the proposed subdivision will conform to all zoning and subdivision regulation in the North Pender Associated Islands Land Use Bylaw No 148 (2003), provided various covenants (raptor nesting protection and wildlife tree protection) are granted/confirmed.

37. The Applicant has not provided confirmation of the following as part of its final submission:
- Acceptance by the Island Trust of James Island appraisal value. However, the appraisal value has been received and has not been formally objected to.
  - Acceptance/signature by the Island Trust of covenants required by relevant Land Use Bylaw.

38. I recognize that the April 15, 2021, North Pender Island Local Trust Committee resolution complicates Island Trust’s final acceptance of these items, which the Islands Trust may, or may not, have the ability to outright reject. However, I consider that the Applicant has substantially complied with the Islands Trust zoning bylaws and development permits in the absence of the *usual* formal confirmation from the local government. Overall, my determination is that the subdivision proposal meets the relevant Land Use Bylaw requirements.

## (5) Public Interest

39. This leaves public interest as the last remaining issue to be addressed. Section 3(1)(e)(ii) of the BLSR provides that an Approving Officer may refuse to approve a bare land strata plan if the approving officer considers that the deposit of the bare land strata plan is against the public interest. The following items are included in my consideration of the public interest for this application.

### i) Comments from “affected persons”

40. Section 3(1)(b) of the BLSR allows me to hear from persons who, in my opinion, are affected by the Application. As previously stated, I have received multiple written submissions requesting that I reject the Application. The submissions include written statements by BC MLA Adam Olsen, the Southern Gulf Islands Forum, federal MP Elizabeth May, the Islands Trust, Central Saanich Municipality, and Tsawout as represented by Chief Harvey Underwood. Received submissions all generally followed a similar thread, which is that the Approving Officer should reject the Application due to the impacts on Tsawout.

41. All of these written submissions are heavily predicated on the impacts of the Application on Tsawout’s Douglas Treaty rights to hunt on unoccupied lands and fish as formerly and on Tsawout’s asserted Aboriginal rights and title (“Aboriginal Interests”), placing significant weight of the public interest analysis on First Nations reconciliation and fulfilling the Province’s duty to consult.

42. It should be noted that the Ministers for both MOTI and Ministry of Indigenous Relations and Reconciliation met with Tsawout regarding this application at Tsawout’s request on May 27, 2021. Background information and a record of consultation to date was provided by myself and a Development Services Officer for this meeting. No recommendations have been received from either Minister’s office and as far as I am aware neither have taken a position on the Application.

43. The Applicant has received a copy of all written submissions and has had the opportunity to respond to them. By letter dated August 19, 2021, the Applicant said that there is no reasonable factual foundation before me for three of these submissions in particular (Islands Trust North Pender Island Local Trust Commission, Tsawout, and Southern Gulf Islands Forum). The Applicant’s primary position is that assessing the public interest solely with regard to First Nations considerations is too narrow of an approach. In the Applicant’s words:

*The Provincial Approving Officer is bound by the provisions of section 23(2) of the LTA to acknowledge that our client has indefeasible title to James Island. Additionally, the alleged “dispossession” of the Island from Tsawout has no reasonable factual basis, and therefore cannot be relied upon by the Provincial Approving Officer.*

*Moreover, by adoption of the position that Tsawout was “dispossessed” of the island and failing to engage our client in a discussion about the scope and benefits of this development, the SGI Forum has demonstrated that its position in respect of the public interest has only considered one narrow aspect of the public interest and therefore is not sufficiently informed as to warrant substantial consideration by the Provincial Approving Officer.*

44. An additional memo “re. Public Interest Considerations,” dated March 7, 2022, was received from the Applicant which included submissions relating to revenue and employment generation as positive attributes for the Application. This memo is in support of the Application being “in the public interest” rather than against. Although I appreciate the time and effort to present this information, I am not giving much weight to financial considerations for the purposes of evaluating this application as “for” or “against” the public interest. The BLSR does not include any provision for review of financial considerations, and while I recognize that financial benefits to the public may factor into the public interest analysis, I do not consider financial benefits of revenue to the CRD or potential employment opportunities to outweigh the negative impacts of this proposed subdivision.

45. As will be clear from my consideration of Tsawout’s Aboriginal Interests below, I believe that approval of the Application as it is currently envisioned would have outstanding negative impacts on Tsawout’s Aboriginal Interests. However, there are also other aspects of the public interest that weigh against approval of this Application. My consideration of whether the Application is “against the public interest” involves the considerations is set out below.



ii) Nature of the development & potential impacts:

46. The Applicant has consistently maintained that the fact that the proposed subdivision lots will primarily be upscale vacation homes will be a positive for the conservation, ecological stewardship, and environmental protection of James Island.

47. I do not agree with this position. I consider this type of development to be more of a detriment to the conservation, stewardship, and environmental protection of the Island, as the owners are likely to have less of a connection to the local area and less of an interest in caring for the Island. A lack of year-round residents to monitor their home's water, drainage, and septic systems could foreseeably have negative impacts on the sensitive surrounding environment. While it is true that "summer vacation property" style subdivisions are routinely approved across the province, the proposed subdivision of James Island has, in my experience, the most potential for negative impacts to the environment, as well as to First Nation and the public interest more broadly, that I have seen to date.

48. The Applicant has stressed that the owner/development company has experience in caring for environments like James Island, but a controlling strata council - a considerable wild card in this conversation - would dictate the future of the Island upon approval of the Application. While not required by the PAO, the Applicant has not presented any form of guiding environmental requirements or restrictions for the strata council to implement (assuming the Applicant could require the strata council to do so). Additionally, the Applicant has not provided any form of plan or restriction(s) regarding the proposed commercial lots (which were also not specifically requested by the PAO).

49. While I recognize that the Applicant has downsized the strata proposal from original plans, there has been no attempted accommodation of Tsawout concerns regarding the number of proposed strata and/or commercial lots during the review of this current submission. Specific information relating to Tsawout concerns is included in section 5 and 6 below. The Applicant says that any plan modifications would interfere with the existing local government zoning of James Island and are therefore not suitable to propose at this time. As referenced in the Islands Trust section above, the Islands Trust now considers the development to be against the public interest. Therefore, I disagree with the Applicant that the zoning cannot be changed, if necessary, to change the number or arrangement of proposed lots, as I would expect the Islands Trust to be willing to revisit the previously approved zoning for James Island.

iii) Access & potential impacts:

50. Although I have stated above that access to the Island (via the two moorage sites) appears suitable for the proposed development in terms of the ability of owners to access the Island, access to the Island by the owners of 79 lots and users of the commercial lots does still raise additional concerns. This is in part because James Island has an issue which other neighboring developed islands, such as Piers, Pender, and Mayne Island do not: the presence of significant archeological sites along its shoreline. It is important to note that these archaeological sites ring a large section of the Island and effectively make individual wharves impossible for many of the proposed lots.

51. This has the potential to cause issues if there are future marina tenure / expansion / modification applications which are denied by their respective approval agencies. Without an expansion, the existing marina facilities will be unable to support watercraft for all of the proposed lots the lot owners are likely to become frustrated with the situation and seek to construct individual/group wharves. As I have seen in other local recreational based communities, such as Shawnigan Lake, Cowichan Lake, and Salt Spring Island, a proliferation of unapproved docks and wharves is very real and significant issue faced by local governments which will only be more difficult to detect and deal with given James Island's isolated nature. The proliferation of these unauthorized works affects the protection and preservation of environmental features and archaeological sites; any individual stairways or private/group wharves constructed are likely to be built within these sensitive areas. The likelihood of formal applications for such construction in these sensitive areas is low.

52. On the other hand, if larger marinas are approved, such expansion could also exacerbate the concerns raised by Tsawout related to marine harvesting activities and environmental contamination. Although the Applicant addresses these concerns by suggesting that a majority of lot owners will be travelling to James Island by water taxi service or helicopter service and therefore larger scale expansion of the marina sites will not be necessary, no binding conditions or assurances have been offered to exclude this possibility. Additionally, although the Applicant includes some means of attempting to regulate marine traffic in its accommodation framework proposal (see the "Accommodation" section

below), those means are neither binding nor detailed enough to determine if they would be sufficient. At this time, the Applicant has applied to renew the tenure of the Powder Wharf site and a decision on that application is still pending with FLNRORD. The tenure of the Melanie Bay site will expire in 2031. Should an extension of the Powder Wharf site tenure be rejected, it will further increase the likelihood of expansion of the Melanie Bay site. It is unrealistic to believe that lot owners will not want to use their own boats to get to their property. It is also unrealistic that a private golf club island will not see an increase in private marine traffic as it develops and matures.

iv) Environmental considerations:

53. BLSR s. 3(1)(e)(viii) allows the Approving Officer to consider if the development would adversely affect the natural environment to an unacceptable level. Although I am not able to say with *certainty* that the proposed subdivision will cause unacceptable harm to the surrounding environment, I am confident that it will, at minimum, risk environmental damage. Environmental considerations are one of many factors that collectively bring me to a conclusion regarding the public interest.

54. Saltwater intrusion into the local aquifer due to drilled wells and contamination from unmaintained/leaking type 1 septic systems are the primary environmental concerns. These concerns have been raised by the Tsawout and are summarized in their consultation response letter (via counsel) dated August 30, 2021. Even if the likelihood of saltwater infiltration into the local aquifer is low, I agree that it is a significant concern. This is because if it were to occur, it may be irreversible or take years to recover (Government of Canada Best Practices for Prevention of Saltwater Intrusion, March 2016). Saltwater infiltration has the potential to permanently render the water supply unsuitable for human use as well as negatively impact plant health and soil fertility.

55. The Applicant has addressed the saltwater intrusion concerns, stating that “it is in the developer/strata’s best interests to not allow this to happen.” While I do agree with this statement and have no doubt the developer/strata will do what they can to avoid the issue, there is extremely little that can be done to reverse saltwater intrusion once it has been detected. The high number of proposed lots in this submission, in addition to a potential private golf course and club, only makes this issue more likely to occur. The Western Water Report submitted by the Applicant, used to justify the single-well approach for each lot, includes saltwater intrusion as a significant risk. It recommends mitigating the risk of saltwater intrusion via restrictions on the location, construction, monitoring, and draw usage of the wells. The Applicant has not proposed to include any of these recommendations as formal restrictions on the private lots, strata, or private golf club, however. The Applicant has only provided a s. 219 restrictive covenant which would withhold occupancy permits for dwellings until a Provincial Approving Officer reviews well quantity tests and quality samples.

56. Avoiding septic contamination requires diligence on the part of homeowners and/or strata to maintain all installed systems and replace them when necessary. The fact that the Island is near to significant fishing and ocean harvesting activities cannot be overlooked when considering contamination possibilities. Much like the individual wells discussed above, the Applicant contends that systems will be maintained by lot owners and resort staff. I am not satisfied that this assurance is sufficient in light of the sensitivity of the ecosystem. As it stands the proposal for water and sewage has potential negative environmental effects that contribute to my conclusion that the Application is against the public interest.

57. Both the Islands Trust and Tsawout have suggested that the Applicant consider/explore community-based systems for both water and sewer, as the Applicant originally proposed years ago, in order to better accommodate environmental concerns. A community-based system would alleviate concerns regarding monitoring, maintenance, and repair of the development’s water and sewage systems by individual owners. I agree that the individual lot potable water and sewerage system setup proposed by the Applicant creates a not-insignificant risk to the environment when considered against a community-based system and it should have been considered/proposed as a method to significantly mitigate these risks. In simple terms, there is no doubt in my mind that 86 individual water systems and 86 individual septic systems pose greater risks than one community water system and one community sewage system.

58. Future tenure applications of the two existing marina sites, as well as commercial lot water licenses, are also relevant here. Although not mandated for applicants seeking final subdivision approval, completion of these processes, prior to final application review, could have allowed for a more comprehensive view of the relevant environmental considerations.

v) Aboriginal interests:

59. I consider reconciliation with Indigenous peoples and the Province's duty to consult to be integral parts of the public interest. The Province is committed to reconciliation with Indigenous peoples as reflected in the Draft 10 Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples and the ongoing implementation of the *Declaration on the Rights of Indigenous Peoples Act* SBC 2019 c. 44. As a decision cannot be in the public interest if the duty to consult has not been satisfied, consultation with Tsawout significantly informs the public interest analysis on this proposed subdivision. As detailed in the Consultation Process section, outstanding impacts on Tsawout's Aboriginal Interests remain.

60. In November 2021 the Province amended the *Interpretation Act*, RSBC 1996 c 238 (the "Interpretation Act") to require provincial laws be interpreted as upholding s. 35 Aboriginal and treaty rights, as well as in a manner consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP"). I have considered the application of s. 8.1 of the Interpretation Act to s. 3(1)(e)(ii) of the BLSR, which provides an Approving Officer may refuse to approve a bare land strata plan if the Approving Officer considers that the deposit of the bare land strata plan is against the public interest. The term "public interest" is not defined in the BLSR and allows the Approving Officer to consider a wide range of relevant factors. As stated above, I believe that the meaning of "public interest" in the BLSR includes considerations around consultation and reconciliation with Indigenous peoples more broadly.

61. From my perspective, reconciliation in the circumstances requires that Tsawout's concerns are taken seriously, given Tsawout's Aboriginal Interests and deep connection to the Island. To myself, reconciliation means listening to Tsawout's concerns which I may, on the outset, consider to be intangible and difficult to assess in terms of impacts in a subdivision application. Tsawout's concerns include considerations such as tradition, history, culture, identity, and spirituality. Tsawout has been clear from the outset of the consultation process that the scope and style of the proposed subdivision is incompatible with its social, cultural, and environmental values. My consideration of how the proposed subdivision may impact Tsawout's Aboriginal Interests and whether those impacts have been adequately addressed, is captured in sections 5 and 6, below.

62. My understanding of the different aspects of how Tsawout's Aboriginal Interests may be impacted by the proposed subdivision is also supported by the following relevant UNDRIP articles: Article 11 (right to maintain and protect past, present and future culture), Article 12 (access to religious and cultural sites), Article 13 (right to revitalize, use and develop culture), Article 25 (right to maintain and strengthen spiritual relationship with traditionally occupied territories), Article 26 (right to use, develop and control traditional territories), Article 29 (protection and conservation of territories), and Article 32 (right to determine and develop priorities for the development of territories).

**Section 5: Consultation Process**

63. The Province has a duty to consult and, if necessary, accommodate First Nations with respect to decisions that may adversely impact their asserted or established Aboriginal or treaty rights and title. The content of the duty to consult varies with the circumstances.

64. The Application was referred to First Nations with overlapping traditional territories on James Island in September 2019. This list includes the following First Nations: Semiahmoo, Stz'uminus, Tsartlip, Tseycum, Halalt, Lake Cowichan, Lyackson, Pauquachin, Penelakut, and Tsawout. Other than Tsawout, the only other formal response was from the Lyackson First Nations, who deferred to the local First Nation (Tsawout).

65. Tsawout has Aboriginal Interests on and surrounding the Island. While the Applicant currently owns the lands on the Island in fee simple, Aboriginal/treaty rights can continue to be exercised on private lands that have not been put to a visible and incompatible use (*R. v. Badger*, [1996] 1 SCR 771). Tsawout has brought a claim before the courts seeking (in part) a declaration of Aboriginal rights and title over the Island, which is currently held as private fee simple land. It is unclear how a court will address the current private land ownership in relation to Tsawout seeking a declaration of Aboriginal title to this area and the implications of the Douglas Treaty to this claim. Consequently, there is uncertainty in estimating the level of seriousness of impacts on Tsawout future ability to use the area for traditional purposes, to govern the area, or to obtain economic benefits from the area. Regardless of this uncertainty, I have

considered whether the proposed mitigation and accommodation measures may effectively address the concerns identified by Tsawout of how the proposed subdivision may impact their Aboriginal Interests.

66. Given the significance of Tsawout's connection to the Island, known as LEL,TOS in Tsawout's SENĆOŦEN language, and the potential for adverse impacts from the Application on these interests, the Province committed to deep level consultation with Tsawout early in the consultation process.

67. In July 2021, the Province shared its preliminary impact assessment of the Application on Tsawout's Aboriginal Interests with Tsawout. The preliminary impact assessment, including a consideration of currently available information and relevant mitigation measures, was moderate. Following the receipt of additional information from Tsawout and the Applicant in the consultation process, a revised impact assessment was provided on September 28, 2021. In consideration of the available information and relevant mitigation measures, the Province views the potential impacts of the Application on Tsawout's Aboriginal and Treaty harvesting rights as moderate-to-serious.

68. Tsawout provided information throughout the consultation process about the important cultural, spiritual, harvesting and governance values at LEL,TOS that they say will be adversely impacted by the Application. I have organized Tsawout's concerns with the Application into the following categories of impacts: (1) Archaeology; (2) Culture; (3) Environment; and (4) Governance. This analysis is not exhaustive of all Tsawout's concerns raised as documented in the consultation record but represents the primary considerations informing my decision.

#### (1) Archaeology

69. I have reviewed the Archaeological Inventory and Archaeological Impact Assessment of Proposed Land Subdivision prepared by Stantec Consulting Ltd. dated April 30, 2020 (the "Stantec AIA") prepared by the Applicant and approved by the Archaeology Branch of the Ministry of FLNRORD. I have also reviewed the predecessor 2006 Millenia Archaeological Reconnaissance Report commissioned by the Applicant.

70. Tsawout has been clear that although four Tsawout members assisted with field work on the Stantec AIA, Tsawout did not participate in the scoping of the assessment and views the Stantec AIA as having a narrow focus on the proposed strata lots and as failing to investigate all recorded archaeological sites. As part of the request for capacity funding, Tsawout requested funds to complete a supplemental archaeological impact assessment to remedy these perceived deficiencies. Tsawout requested \$90,000 in capacity funding to complete a supplemental archaeological impact assessment. At this time, neither the Province nor the Applicant has funded this proposal. Of particular concern to Tsawout is the location and protection of foreshore fishing locations on the eastern and western sides of the Island.

71. The Applicant views the completion of the Stantec AIA, utilization of archaeological covenants recommended by the Archaeology Branch, conservation covenants, setbacks (15 meters on entire island, s. 3.3(3) Land Use Bylaw; 50 meters on northern portion of island where DdRu-40 is located, s. 5.21(11) Land Use Bylaw), geotechnical covenants, and the prior designation of more than half the island (162 acres) as Agricultural Land Reserve by the Agricultural Land Commission as sufficient means of protecting the archaeological potential of the Island. Such restrictive title charges (s. 219 covenants) are typical of subdivision review processes where archaeological sites are present and should be considered the bare minimum of what is required.

72. Although the Stantec AIA has been approved by the Archaeological Branch of FLNRORD, given the high archaeological potential of the Island it is likely that additional sites may exist which have not yet been investigated, as suggested by the Tsawout, who provided Kwusen's Desktop Review and Gap Analysis related to the Island to support their rationale. Without careful planning and restriction of development of the Island there is potential to damage or permanently destroy these sites. I consider this risk as a potential impact on Tsawout's Aboriginal Interests. When reviewing the risk of damage or destruction of archaeological sites I find the nature of the development to be a negative contributing factor for these reasons:

- Lot owners who are not BC residents may be unaware or ignorant of the legal/procedural requirements surrounding archaeological findings;
- Upscale summer vacation homes, marinas, private roadways / pathways, a golf club, and other commercial uses are all likely to include extensive landscaping and associated improvements when compared to more "rustic" vacation style destinations; and

- There is less likely to be appropriate and enforceable oversight for construction, landscaping, and maintenance activities on a private island. Proper removal and depositing of materials are also less likely due to the difficulty and/or cost of getting to/from the Island.

73. Beyond the restrictive covenants required (in accordance with the Stantec Report), the Applicant has not provided/suggested any form of future requirements to protect known or potential archaeological deposits. Although they have not been specifically requested for the review of the Application, additional planning features such as lot servicing plans, building schemes, landscaping plans, stormwater management/collection, roadway and pathway plans, and golf course/club operating plans, have not been provided/proposed by the Applicant to address these concerns.

## (2) Culture

74. As currently proposed, Tsawout views the Application as incompatible with its Indigenous land use values and cultural continuity. Through consultation with Tsawout I am aware that certain cultural practices and ceremonies require privacy that will not exist if the Island is developed as currently proposed. Similarly, Tsawout's ability to educate future generations on traditional customs, laws, and teachings grounded on the Island will be adversely impacted if the Application is approved.

75. Tsawout requested \$75,000 in capacity funding for a traditional land use study. At this time neither the Applicant nor Province has funded this proposal.

76. The impact to culture is related primarily to access and privacy (for cultural practices) on the Island. Both impacts were emphasized by Tsawout over numerous consultation sessions, and I consider them to be significant impacts that should be adequately accommodated. The Applicant's view is that Tsawout currently neither owns, nor has access rights to the Island currently, so nothing changes with the approval of a subdivision. However, the proposed strata development stands to make those rights increasingly difficult to obtain and potentially removes the possibility of ever obtaining them for the purposes Tsawout requires.

77. The Applicant has provided an existing access agreement between J.I. Properties Inc. and Tsawout dated July 3, 2018. As Tsawout considers the nature of this agreement to be confidential I will not cite to specific provisions. Generally speaking, the agreement is narrow in scope, expires in 2023, and will provide little flexibility for access once the development is fully built out. It will also, presumably, be unenforceable once a strata council assumes management of the new land parcels.

78. The Applicant's accommodation framework proposal, discussed below, responds to this impact and includes provisions for access to the Island's beaches for the purposes of Tsawout's cultural activities. However, as set out below, the proposed accommodation does not fully address Tsawout's concerns.

## (3) Environment

79. Tsawout views the increased pollution (land, air, noise, water) from population growth and increased marine and air traffic as negatively impacting its rights to harvest fish, shellfish, waterfowl and other marine wildlife in the vicinity of the Island. While I would generally agree that an incremental increase in marine and air traffic is bound to have some effect on the environment on and around James Island, I have not been presented with any specific evidence to formally evaluate those impacts. In relation to these impacts, the Tsawout state in their consultation letter dated August 30, 2021: *"The duty to consult requires the Province to consider all potential impacts of the Subdivision Application, not just the impacts of a best-case scenario that the Applicant is not required to achieve."* Given the complexities of the Application, the potential for variability in future plans and/or land use (marina tenures, commercial use, water licenses, etc.), and the fact a governing strata council will be in charge, I agree with Tsawout's statement.

80. There are currently no marine traffic restrictions around the Island, or the nearby waters, and a 2019 Vessel Track Report provided by the Applicant (obtained from MarineCadastre.gov) illustrates that marine traffic is relatively low and that larger vessels passing by the Island are very rare. Tsawout views this information as irrelevant given that the basis of its concerns are around marine traffic associated with the development, and not customary marine shipping lanes in nearby waters. It is my opinion that attempted restrictions on marine traffic, by way of restrictive covenant instruments registered through the subdivision process, would be ineffective in mitigating these concerns as there is



little possibility for monitoring or enforcement measures. Therefore, no such restrictive mechanisms were required in preliminary approval conditions for the proposed subdivision.

81. The Applicant does not view the Application as resulting in any material increase in marine traffic or as adversely affecting the marine environment. For these reasons, the Applicant does not believe Tsawout's ability to exercise its Aboriginal Interests around James Island will be adversely impacted in this regard. Nonetheless, the Applicant has proposed accommodation measures to mitigate these concerns. In its October 4, 2021, letter, the Applicant outlines that it will:

*...commit to developing a marine traffic outreach and communication program with Tsawout. Our client proposes to work with Tsawout to identify the location of any sensitive cultural and harvesting sites in the marine areas around the Island and provide special routing instructions and speed guidelines for development-related vessels to its employees, contractors, invitees and subsequent owners so as to mitigate any potential impacts on those areas and Tsawout's activities therein. In the case of the TMX project, the Crown accepted a similar commitment on the part of the proponent as an effective means of mitigating and accommodating First Nations concerns about the potential marine impacts of that project.*

82. My views on this and a number of other accommodation measures proposed by the Applicant are discussed below in the "Accommodation" section.

83. Through consultation with the Tsawout it was made very clear that environmental considerations related to use of individual water wells and septic systems was also a concern. My conclusions on these issues are included in the "Environmental Considerations" section above.

#### (4) Governance

84. As currently proposed, the Application is not consistent with Tsawout's view of what could be acceptable development of James Island. Tsawout is prepared to work with the Applicant to explore possible alternative forms of development on James Island, but these conversations have not gained any traction.

85. By email dated September 7, 2021, the Applicant made clear that it is not interested in pursuing a different scope or style of development and views the current Application as an alternative development proposal in itself, as the Island was previously zoned to accommodate a development of 210 residential lots. The Applicant submits that, through a public rezoning process in 2006-2008, it agreed to a reduced allowable density from 210 to 80 residential lots and to the inclusion of the Island within the North Pender Associated Islands Official Community Plan and Land Use Bylaw. During the time of review and consultation of the most recent proposal, no significant changes to the subdivision layout have been proposed by the Applicant.

#### Section 6: Accommodation

86. The Applicant has provided a number of proposed accommodation measures in response to the impacts on Tsawout's Aboriginal Interests. I understand that given Tsawout's view of the incompatibility with the current proposal with their Aboriginal Interests, disagreement over the provision and purpose of capacity funding, and general relationship challenges, there has not been substantive discussion on these measures between the Applicant and Tsawout. The Province informed the Applicant of all material consultation discussions with Tsawout and all relevant documents have been shared with the Applicant.

87. The Applicant's updated February 28, 2022 Accommodation Framework proposal includes provisions for the following items:

- General marine traffic restriction proposals: limiting marina size and practices for the type of marine vessels used by the development.
- Marine protection: establishment of protection zone(s) around James Island, communication protocol, Indigenous marine harvesting monitoring program, and installation of web-accessible cameras.
- Support of initiatives to identify and restore clam garden sites.
- Support of communications protocol with Tsawout to address access and privacy concerns.

88. In many, but not all, of the accommodation proposals above the Applicant has failed to provide information which I consider critical to the success of the accommodations:

- Proposed accommodations are general in scope, lacking detail, and illustrate that impacts were not fully understood;
- Proposed accommodation measures were developed without Tsawout's involvement;
- Proposed accommodation measures are voluntary and lacking details on implementation and duration;
- Proposed accommodation proposals lack strong enforcement/agreement mechanisms; and
- Local government bylaw/development permit requirements, which would have to have been completed regardless of Tsawout's interests, such as required conservation and raptor nesting tree covenants, are not accommodation measures as suggested in Applicant's Existing and Proposed Accommodative and Mitigative Measures document.

89. I understand that the Applicant is in a difficult position, given Tsawout's lack of responsiveness to the proposed accommodations on the Applicant's timelines. I agree with the Applicant that Tsawout is unlikely to ever consent to development of the Island. Tsawout's position on the proposed subdivision aside, I do not view the current proposed accommodation measures as fully addressing the potential impacts of the subdivision on Tsawout's Aboriginal Interests.

90. The decision regarding whether outstanding impacts on Tsawout's Aboriginal Interests remain should not be construed as "veto" by Tsawout. In my view a subdivision can be approved, despite First Nation opposition, if all impacts on Aboriginal Interests have been adequately addressed and the decision is not against the public interest. In my view, the following impacts remain outstanding after my consideration of the Applicant's proposed accommodation measures:

#### (1) Access to James Island

91. Consultation has established that there are many reasons that Tsawout requires access to the Island. These include, but are not strictly limited to, the following: collection, cataloging, or locating of archaeological/historical materials; cultural practices; educational purposes; and resource acquisition.

92. While the Applicant has facilitated access to Tsawout to these lands since 2018 through an agreement, that agreement expires in 2023 with no commitment to extending its term, or to commit that any future agreement would also be binding on the strata council which would control the Island post-subdivision. A lack of public/park land in the proposed subdivision is another obstacle to the Tsawout's ability to access the Island.

93. The Applicant has also proposed a statutory right-of-way (SRoW) in favour of the Province for the purposes of allowing Tsawout access to certain common areas on the Island for traditional uses, at times and locations mutually agreeable to Tsawout and the Applicant. I agree that this measure is responsive at a high level to Tsawout's access concerns, as it relates to the common areas of the Island. However, the Applicant has not provided the SRoW in the Application. It is difficult to understand exactly what area the Applicant proposes to have the SRoW cover without the SRoW document. Limiting the proposed access to only the limited common property of the Application (areas primarily comprised of public beaches and steep shoreline terrain), as the Applicant appears to propose, is of limited value as I am not aware that Tsawout seek to use these specific spaces.

#### (2) Privacy for Tsawout cultural practices

94. Consultation has established that the Tsawout has historically used sites across the Island for various cultural or ceremonial practices and that they continue to do so today. Establishing appropriate levels of privacy (and access) for these practices is essential to responding to Tsawout's concerns related to the exercise of their cultural practices.

95. Although possessing merit, I find that the proposed communications protocol and the suggested ability of the strata to grant beach access via limited common property are insufficient to address the impacts on Tsawout's Aboriginal Interests. Proposing to strictly limit cultural practices to the beaches around James Island, as well as then leaving the privacy for those areas up to the strata council, does not effectively address Tsawout's privacy concerns.

### (3) Economic and Development Cooperation with Tsawout

96. Early inclusion of Tsawout in the development could have been a significant benefit for the Application and may have facilitated the Applicant more effectively addressing Tsawout's concerns with the scope and style of the current subdivision proposal. Obviously easier said than done, given the Tsawout's position on the matter, but the fact remains that the Applicant's accommodations do not include any changes to the subdivision layout or the nature of the development reflective of Tsawout's concerns. I cannot deny the significance of the Island to Tsawout and I cannot deny that the proposed development will negatively impact Tsawout in irreversible ways. Therefore, I consider this to be significant missed opportunity for the reconciliation of both the Applicant's and Tsawout's interests on the Island.

97. The March 18, 2022, letter from Devlin Gailus Watson Barristers & Solicitors (on behalf of the Tsawout) addressed to the Applicant (cc'ed to MOTI) includes the following important paragraph which resonates with me and with which I agree:

*We appreciate that you have taken the time to explain why you believe that your client cannot propose an alternative subdivision plan. However, it is important to note that there was no consultation – in the Haida sense – on the zoning issue [referencing the approved Islands Trust rezoning of James Island]. More importantly, the reduction on the number of lots proposed was not in response to any consultation with our clients. We expect that there were a number of factors, which your client has not shared with us, eg. Archaeological sites, set-backs, significant ALR restrictions on development, construction limitations, availability of water, septic fields, economics, etc. that likely dictated the current proposed configurations. Importantly, the consultation was based upon an 80-lot configuration and the purported reduction that you claim as an accommodation of our client's constitutional rights happened at some point in time prior to the commencement of this consultation process. As such it is not an accommodation measure.*

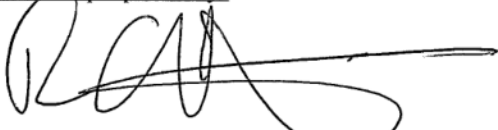
### Section 7: Conclusion

98. I am refusing to approve the Application for the reasons set out above. In accordance with s. 3(1)(e)(ii) of the BLSR, I consider the application to be against the public interest.

99. This is a decision which I do not make lightly, understanding its significance and the future challenges it may entail for the Applicant and Tsawout, among others. The issues discussed in the "public interest" section above, including the lack of local government support and the outstanding impacts on Tsawout's Aboriginal Interests, considered together and combined with British Columbia's commitments to UNDRIP and reconciliation with Indigenous peoples, cannot be overlooked for this specific proposal.

100. I am only rejecting the proposed subdivision in front of me at this time and this decision should not be considered any form of development moratorium for the Island. This decision does not detract from the significant care and attention the Applicant has otherwise made in development plans for the Island. Additionally, this decision does not bar owners of the Island to present different development plans in the future.

Decision prepared by:



Ryan Evanoff –Provincial Approving Officer, Ministry of Transportation and Infrastructure



**From:** [Olsen, Adam](#)  
**To:** [Fleming, Rob](#); [Rankin, Murray](#)  
**Cc:** [Rees, Jake LASS:EX](#); [Minister, IRR IRR:EX](#); [Transportation, Minister TRAN:EX](#); [Parker, Laura LASS:EX](#)  
**Subject:** 53291 - FW: Tsawout First Nation Letter, re James Island Subdivision Application  
**Date:** August 9, 2021 5:56:17 PM  
**Attachments:** [21 07 04 TFN Let to Min Rankin & Min Fleming w Attachments.pdf](#)

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**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Hello Ministers Fleming and Rankin,

Thank you for talking the time to meet with the leadership of Tsawout and myself at the end of May. I have received this letter dated August 4, 2021 and I share the disappointment expressed by Tsawout Chief Harvey Underwood that more has not been done to advance this significant issue forward.

I'm following up and seeking clarification on one issue in particular. During our meeting Minister Fleming stated that the decision is to be made by the statutory decision-maker, the approving officer, who is independent and arms length from the Minister.

However, as is stated in this letter from Tsawout, that perhaps the Lieutenant-Governor in Council also has powers that could be used in this situation.

Can you please provide me the details of those powers?

Thank you kindly,

Adam Olsen, MLA

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s.16 ; s.18.1

# Adopted



## **Islands Trust North Pender Island Local Trust Committee**

### **Minutes of Special Meeting**

**Date:** April 1, 2021  
**Location:** Electronic Meeting (Zoom Webinar)

**Members Present:** Laura Patrick, Chair  
Benjamin McConchie, Local Trustee  
Deb Morrison, Local Trustee

**Staff Present:** Robert Kojima, Regional Planning Manager  
Phil Testemale, Planner 2  
Kim Stockdill, Island Planner  
Shannon Brayford, Recorder  
Maple Hung, Planning Assistant (Host)

**Public:** There were five (5) attendees the webinar.

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Laura Patrick, Chair

Certified Correct:

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Shannon Brayford, Recorder



The Corporation of the District of Central Saanich

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May 19, 2021

File No. 0400-70/21

Chief Dr. Nick Claxton  
Tsawout First Nation  
7728 Tetayut Road  
Saanichton, BC V8M 2E4

Dear Chief Claxton,

**Re: Tsawout First Nation Claim to LEL,TOS, James Island**

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At their May 10, 2021 Regular Council meeting, Central Saanich Council received the correspondence dated April 27, 2021 from Councillor Mavis Underwood which advised that the Tsawout First Nation is asserting their claim to LEL,TOS, James Island.

The District of Central Saanich acknowledges the Douglas Treaty rights and Aboriginal rights of the Tsawout First Nation, and supports the Tsawout First Nation's rightful to claim to LEL,TOS, James Island.

We look forward to hearing the results of your claim.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Barnett".

Brian Barnett  
Acting Chief Administrative Officer  
and Director of Engineering and Public Works

cc: Mavis Underwood, Councillor (via email)

**From:** [Cathy Webster](#)  
**To:** [Minister, IRR IRR:EX; Transportation, Minister TRAN:EX](#)  
**Cc:** [Tsawout First Nation Chief & Council; John Gailus; Harvey Underwood](#)  
**Subject:** 53291 - Tsawout First Nation Letter, re James Island Subdivision Application  
**Date:** August 5, 2021 12:44:49 PM  
**Attachments:** [21 07 04 TFN Let to Min Rankin & Min Fleming w Attachments.pdf](#)

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**[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.**

Good afternoon,

Please see attached letter from Chief Harvey Underwood, in relation to the subdivision application from JI Properties for James Island/LEL,TOS.

Cathy Webster  
Governance/HR Support  
Tsawout First Nation

**From:** [Evanoff, Ryan TRAN:EX](#)  
**To:** [Soloducha, Danielle TRAN:EX](#); [Rogers, James IRR:EX](#); [Staitte, Janelle A TRAN:EX](#); [Gordon, Max GCPE:EX](#); [Richter, Kevin J TRAN:EX](#); [Kojima, Robert ISLT:IN](#); ["John Gailus"](#); ["referrals@tsawout.ca"](#); [Harvey Underwood](#); [Scott, Maheen FLNR:EX](#)  
**Subject:** Final Decision - James Island Subdivision  
**Date:** May 25, 2022 4:03:13 PM  
**Attachments:** [image001.jpg](#)  
[2014-01343 James Island Final Decision \(May 25 2022\).pdf](#)

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Attached is the final decision for the James Island Decision.

The decision has been delivered to the applicant(s) and the file is now considered closed.

Copied from the attached for your quick reference:

### **Section 7: Conclusion**

1. I am refusing to approve the Application for the reasons set out above. In accordance with s. 3(1)(e)(ii) of the BLSR, I consider the application to be against the public interest.
2. This is a decision which I do not make lightly, understanding its significance and the future challenges it may entail for the Applicant and Tsawout, among others. The issues discussed in the “public interest” section above, including the lack of local government support and the outstanding impacts on Tsawout’s Aboriginal Interests, considered together and combined with British Columbia’s commitments to UNDRIP and reconciliation with Indigenous peoples, cannot be overlooked for this specific proposal.
3. I am only rejecting the proposed subdivision in front of me at this time and this decision should not be considered any form of development moratorium for the Island. This decision does not detract from the significant care and attention the Applicant has otherwise made in development plans for the Island. Additionally, this decision does not bar owners of the Island to present different development plans in the future.

**Ryan Evanoff**

**Senior Manager Development Services**

**Highways and Regional Services Division – Ministry of Transportation and Infrastructure**

Ph: 778-974-2634





**From:** [Butterfield, Matthew IRR:EX](#)  
**To:** [Rogers, James IRR:EX](#)  
**Subject:** FW: Letter and Notice regarding Cascadia's installations and operations at James Island  
**Date:** May 2, 2022 10:56:59 AM  
**Attachments:** [2022-03-23 Letter to Cascadia re James Island - Final signed.pdf](#)  
[2022 05 02 Letter to Cascadia - Notification of Offences - signed.pdf](#)

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FYI

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**From:** Mayser, Rudi E FLNR:EX <Rudi.Mayser@gov.bc.ca>  
**Sent:** May 2, 2022 10:10 AM  
**To:** [mike@cascadiaseaweed.com](mailto:mike@cascadiaseaweed.com)  
**Subject:** Letter and Notice regarding Cascadia's installations and operations at James Island

Dear Mike Williamson,

In follow-up to my letter sent on March 23, 2022 (attached) Please find attached a Letter and Notice with today's date in regard of Cascadia's kelp farm installations and operations at James Island. Please note that action by Cascadia Seaweed is required by May 16, 2022 in order to avoid consideration of trespass and administrative actions on part of the Ministry of Forests.

Respectfully,

Rudi Mayser, R.P.F. (he, him)  
Resource Manager, Authorizations  
FLNRORD, West Coast  
250-668-9025 cell  
250-739-8364 skype

*I gratefully acknowledge that I live in the territory of the Snuneymuxw First Nation*



March 23, 2022

Cascadia Seaweed  
9774-C Third Street  
Sidney, BC  
V8L 3A4

*Transmitted via email: [mike@cascadiaseaweed.com](mailto:mike@cascadiaseaweed.com)*

Dear Mike Williamson:

I am contacting you regarding Cascadia's recent installation of infrastructure, including anchoring on the seabed, near James Island for the purpose of culturing marine aquatic plants (kelp) at this site.

First off, I would like to acknowledge Cascadia's collaborative and respectful approach of partnering with First Nations to advance the culture of kelp, thereby creating employment and business opportunities for many Indigenous communities across the coast.

When the Province was notified by Cascadia in October 2021 that Tsawout First Nation ("Tsawout"), following the earlier enactment of the Tsawout Marine Use Law (MUL), had issued a licence to Cascadia under the MUL for the culture of marine aquatic plants near James Island, the Province saw this collaborative relationship as a further positive step – both on Tsawout's and on Cascadia's part – in the advancement of Indigenous self-governance and economic self-determination through a joint-venture with your company.

The Province had expected that Cascadia would submit an application to FrontCounter BC in the weeks and months following the above notification in order to initiate the harmonized federal-provincial review process for aquatic plant culture with which Cascadia is well familiar. Unfortunately, this did not occur and it came to our attention recently that Cascadia proceeded on the basis of Tsawout's licence alone to install infrastructure for the purposes of marine aquatic plant cultivation within the waters near James Island.

The Province respects Tsawout's pursuit of meaningful self-governance and economic self-reliance and I commend Cascadia for having pursued and obtained a licence under Tsawout Nation's legal system. At the same time, I must be clear that under the

Page 1 of 2

Canadian legal system, Cascadia must apply for and receive the required provincial and federal authorizations in order to lawfully operate a kelp farm, including at site near James Island.

Accordingly, the Province hereby advises and notifies Cascadia that an application for the culture of marine plants for the site near James Island is required and must be submitted to the harmonized partners for review and adjudication. Information on the application process is available here –

<https://www2.gov.bc.ca/gov/content/industry/crown-land-water/crown-land/crown-land-uses/aquaculture>.

I am looking forward to receiving Cascadia's application at your earliest convenience.

If you have any questions, please do not hesitate to contact me at 250-739-8364 or by email at [Rudi.Mayser@gov.bc.ca](mailto:Rudi.Mayser@gov.bc.ca).

Respectfully,

A handwritten signature in black ink, appearing to read 'Rudi Mayser', with a stylized flourish at the end.

Rudi Mayser, R. P. F  
Resource Manager, Authorizations  
FLNRORD, West Coast



May 2, 2022

Cascadia Seaweed  
9774-C Third Street  
Sidney, BC  
V8L 3A4

Registered Mail, and  
email to: [mike@cascadiaseaweed.com](mailto:mike@cascadiaseaweed.com)

Dear Mike Williamson:

Further to my earlier letter of March 23, 2022 (enclosed), you were notified that an application must be submitted by Cascadia for the currently unauthorized infrastructure to culture aquatic plants which you recently installed near James Island, and an application was requested at your earliest convenience. FrontCounter BC staff have confirmed that to-date, no application has been received from Cascadia.

This letter serves to reconfirm that all federal and provincial authorizations will be required for Cascadia's aquaculture operations. There are several reasons why due process must be followed with regard to application submission and subsequent review by all parties who have an interest or mandate that is potentially affected by a proposal for the use of Crown land and resources, including:

- Consultation with all First Nations whose traditional territories overlap the site of the proposal to ensure potential impacts on their Aboriginal rights or Treaty rights are identified and appropriately avoided, mitigated or accommodated; in the case of your site near James Island, apart from Tsawout First Nation, 11 other First Nations have overlapping territories;
- Consultation with the public and referrals to other agencies and local governments whose mandates may be affected;

Page 1 of 3

- Thorough statusing and identification of known resource, environmental and other values, including archaeological features, as well as legal and/or administrative encumbrances that need to be considered and factored into the decision-making process; and
- Proper recording in the Crown land registry and other publicly-accessible data bases once an authorization is issued in order to ensure recognition and consideration of the disposition (licence or lease) in the event of overlapping future proposals.

All of the above must be carried out in order to generate the relevant, fact- and site-specific information necessary for provincial decision-makers to make informed, transparent, fair, equitable and durable decisions.

As previously noted, we understand that Tsawout First Nation have provided Cascadia with an authorization pursuant to their governance system. Cascadia's collaborative and respectful approach with Indigenous partners in developing its business is to be commended. An authorization from Tsawout First Nation will be taken into consideration during provincial decision-making, both as evidence that Cascadia's kelp farm is consistent with Tsawout's vision for the use and development of the area and as evidence that Cascadia's business model and practices are acceptable to Tsawout First Nation.

However, under provincial law, Cascadia's operations at James Island have not undergone the required process pursuant to the BC *Land Act* (LA) and the BC *Fish and Seafood Act* (FSA). Tsawout First Nation's authorization is not sufficient on its own for Cascadia's operations to operate legally.

#### **NOTICE:**

**Cascadia's installations and operations at James Island constitute an offence under section 60 of the *Land Act*, specifically occupation and use of Crown land without lawful authority and construction of works without the authorization of the responsible minister.**

**Pursuant to the *Fish and Seafood Act*, failure to obtain a licence is an offence under section 4, and possession or distribution of aquatic plants in contravention of the Act is an offence under section 5.**

Please be advised that unless an application by Cascadia for the culture of kelp near James Island is received at FrontCounter BC by May 16, 2022 in the required form, the ministry may consider trespass action in accordance with section 59 of the LA, and may consider administrative action against Cascadia's existing FSA licences pursuant to section 10 of the FSA.

Furthermore, Cascadia's non-compliance with provincial laws at James Island may be considered, where relevant, in the on-going review and decision-making for Cascadia applications elsewhere in BC.

Respectfully,

A handwritten signature in black ink, appearing to read 'Rudi Mayser', with a stylized flourish at the end.

Rudi Mayser, R. P. F  
Resource Manager, Authorizations  
Ministry of Forests, West Coast Region

Attachment: Letter to Cascadia dated March 23, 2022



## DRAFT

March 21, 2022

Cascadia Seaweed  
9774-C Third Street  
Sidney, BC  
V8L 3A4

*Transmitted via email: [mike@cascadiaseaweed.com](mailto:mike@cascadiaseaweed.com)*

Dear Mike Williamson:

I am contacting you regarding Cascadia's recent installation of infrastructure, including anchoring on the seabed, near James Island for the purpose of culturing marine aquatic plants at this site.

First off, I would like to acknowledge Cascadia's collaborative and respectful approach of partnering with First Nations to advance the culture of kelp, thereby creating employment and business opportunities for many indigenous communities across the coast.

When back in October of 2021, the Province received notification that Tsawout First Nation had issued a licence to Cascadia under its recently enacted Marine Use Law for the culture of marine aquatic plants near James Island, the Province saw this as a further positive step – both on Tsawout's and on Cascadia's part – in the advancement of indigenous self-governance and economic self-determination through joint-venture with your progressive company.

The Province had expected that Cascadia would submit application to FrontCounter BC in the weeks and months following the above notification in order to initiate the harmonized federal-provincial review process for aquatic plant culture which Cascadia is well familiar with. Unfortunately, this did not occur and it came to our attention recently that Cascadia went ahead on the basis of Tsawout's licence alone to install

Page 1 of 2

infrastructure for the purposes of marine aquatic plant cultivation within the waters near James Island.

The Province respects Tsawout's enactment of the Marine Use Law in the context of the Nation's pursuit of meaningful self-governance and economic self-reliance. As you may be aware, the Province is working to align its laws with the United Nations Declaration on the Rights of Indigenous Peoples, pursuant to the process set out in the Declaration on the Rights of Indigenous Peoples Act. As the alignment of laws work continues, the Province maintains a burden of responsibility for ensuring protection of the environment and public safety. Having said that, the Province is interested in exploring with Tsawout the potential for including the Nation's application and review process for aquaculture under its Marine Use Law into the existing federal-provincial harmonized aquaculture review and decision process.

Meanwhile, the Province advises and hereby notifies Cascadia that an application for the culture of marine plants for the site near James Island is required and must be submitted to the harmonized partners for review and adjudication. Information on the application process is available here –

<https://www2.gov.bc.ca/gov/content/industry/crown-land-water/crown-land/crown-land-uses/aquaculture>.

I am looking forward to receiving Cascadia's application at the earliest convenience.

If you have any questions, please do not hesitate to contact Jessica Outhwaite, Aquaculture Section Head, at 250-736-6933 or by email at [Jessica.Outhwaite@gov.bc.ca](mailto:Jessica.Outhwaite@gov.bc.ca).

Respectfully,

Rudi Mayser, R. P. F  
Resource Manager, Authorizations  
FLNRORD, West Coast





## DRAFT

March 21, 2022

Cascadia Seaweed  
9774-C Third Street  
Sidney, BC  
V8L 3A4

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Page 1 of 2

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Respectfully,

Rudi Mayser, R. P. F  
Resource Manager, Authorizations  
FLNRORD, West Coast

## Confidential Issues Note - ADVICE TO MINISTER

<b>Ministry of Indigenous Relations and Reconciliation</b> <b>Updated:</b> Aug. 8, 2018 <b>Minister Responsible:</b> Hon. Scott Fraser	<b>Tsawout First Nation claim for James Island</b>
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### RECOMMENDED RESPONSE:

- **The Provincial government respects and recognizes that Tsawout First Nation has a historic Douglas treaty.**
- **The Crown must act with honour and integrity, and interpret the treaty in a manner that gives meaning to promises made by the Crown and benefits the people of Tsawout First Nation.**
- **The Province was required to respond to Tsawout's notice of claim through the court.**
- **However, as part of our commitment to reconciliation, the Province has reached out to Tsawout to seek to resolve these issues outside of the court, government-to-government, based on building a respectful relationship.**
- **The Province is committed to building relationships with Indigenous peoples based on respect and recognition of rights, as guided by the United Nations Declaration on the Rights of Indigenous Peoples, the Truth and Reconciliation Commission Calls to Action and case law.**

### KEY FACTS:

- On Jan. 24, 2018, Tsawout First Nation filed a notice of claim seeking the return of James Island. Tsawout assert the island was a village site and should have been set aside as per its Douglas Treaty.
- B.C., Canada and JI Properties Inc. (owner of James Island) are named as defendants. B.C. filed its response on May 1, 2018, and Canada filed on May 14, 2018. No dates are set.
- Ministry of Indigenous Relations and Reconciliation has reached out to Tsawout, but no discussions have taken place. MIRR has no agreements and has had little engagement with Tsawout.
- James Island is private property located off the Saanich Peninsula currently owned by U.S. telecom billionaire Craig McCaw, through JI Properties Inc.
- Tsawout is organizing a public event on Sept. 2, 2018, to highlight their claim, with a breakfast, a paddle around the island, followed by a feast in the Tsawout community.
- Tsawout is one of the successors of the Saanich Tribes which concluded two treaties in February 1852 with James Douglas, governor of the Colony of Vancouver Island. Douglas treaties provide signatory First Nations and their successors the right to hunt over unoccupied lands and to fish "as formerly," as well as reserving enclosed fields and village sites for the First Nations' use and benefit.
- The notice of claim states that "LEL,TOS" (James Island) held a village site exclusively occupied by Tsawout, and was used by members for hunting, fishing and foraging. It also had a burial site. The

## Confidential Issues Note - ADVICE TO MINISTER

claim states James Island was not included in lands purchased by James Douglas, and was never surrendered. Tsawout's reserve is directly across from James Island.

- Tsawout is seeking:
  - A declaration that James Island in whole or part is a village site or enclosed field of Tsawout; or alternatively that it has Aboriginal title to James Island in whole or part;
  - Compensation from Canada for a breach of its treaty obligation to set aside James Island.
  - Damages for loss of use and enjoyment of James Island;
  - An order for the owner (JI Properties Inc.) to transfer ownership of James Island to Tsawout, subject to compensation for the owner from the Crown.
- The Province's response includes:
  - The Saanich Tribes through their Douglas treaties surrendered lands as described in the treaties, "entirely and forever," including James Island, except for villages and enclosed fields;
  - The Saanich Tribes did not maintain villages or enclosed fields on James Island; and if they did, such villages and fields were abandoned prior to the treaties;
  - Saanich Tribes did not seek possession of James Island through two federal commissions on Indigenous peoples, nor through colonial officials (federal commissions did set aside a number of other lands on nearby islands for the use and benefit of Saanich Tribes);
  - If dispossession of James Island is an infringement of a Douglas treaty, (which B.C. denies) it pre-dates B.C.'s entry into Confederation with Canada, and thus is the sole responsibility of the federal government (known as a "pre-Confederation liability").
- In a press release, Tsawout Councillor Mavis Underwood said: "The Crown has not honoured the Douglas Treaties, which has forced us to take court action. We have many village sites that were not reserved for our benefit and our rights to hunt and fish 'as formerly' have been diminished to the point of extinction."
- Media stories state that Tsawout has made a number of claims to gain ownership or possession of James Island, however no such claims have been filed in provincial or federal court. Tsawout has filed three federal Specific Claims, but James Island is not among them.
- s.13; s.16
- Tsawout is a signatory to a protective writ, in which the WSANEC (Saanich) First Nations are seeking Aboriginal title to their traditional territories, which includes James Island. The protective writ preserves the ability for the First Nations to reactivate their Aboriginal title claim.
- The Douglas Treaties are 14 historic treaties with Vancouver Island First Nations signed by the colonial government between 1850 and 1854, and involve a series of 14 land purchases. Successor nations include: Songhees; Esquimalt; Beecher Bay; T'sou-ke; Malahat; Tsawout; Tsartlip; Pauqhachin; Tseycum; Kwakiutl; and Snuneymuxw.

Communications contact: Edward Hill;

Program Area Contact: Hugh Gwillim (JAG), Wisty Chaytor, Gracie Wilcox



## MEETING BRIEFING NOTE

**DATE:** May 17, 2021  
**PREPARED FOR:** Honourable Rob Fleming, Minister of Transportation and Infrastructure  
**ISSUE:** Tsawout First Nation concerns over proposed James Island Subdivision  
**MEETING:** Tsawout First Nation, May 27, 2021

### PROPOSED KEY MESSAGES:

- Ministry staff appreciate the concerns raised by the Tsawout First Nation (TFN) about the proposed subdivision on James Island and have been in consultation with TFN since 2019.
- Ministry staff have shared these concerns with the Ministry's Provincial Approving Officer (PAO) who has the final approval authority on this subdivision.
- Evaluation of the subdivision proposal is underway by the ministry's PAO and no decisions have been made.

### PAST INTERACTIONS:

- None.

### BACKGROUND:

James Island is a 780-acre private island (owned by Discover Land Company) located off of the Saanich Peninsula and falls within the Island Trust in the North Pender Local Trust Area. It can only be accessed by water and air. The island currently has a 5,000 square-foot principal residence, as well as six guest cottages, private docks, an airstrip, pool house, 18-hole golf course and the manager's residence.

A subdivision application was originally received by MOTI in 2009. An updated Preliminary Layout Review (PLR) was granted in 2014. One of the conditions of the 2014 PLR included the need to hire a qualified archeologist to determine AIA requirements, as records indicated the presence of Archeological Sites protected under the Heritage Conservation Act. The current development proposal is for a 79 lot bare land strata development (76 residential lots and three commercial lots).

s.13; s.16

### DISCUSSION:

s.13; s.16; s.17



s.13; s.16

The ministry expressed ongoing willingness to the presentation of new information from the Nation regarding impacts. Subsequent meetings with TFN occurred on April 13<sup>th</sup> and 27<sup>th</sup> 2021, s.13; s.16

s.13; s.16

The ministry intends to send the TFN a letter (by the end of May) responding to the specific concerns they have raised with the subdivision proposal and the TFN will be asked to provide a response within 60 days to ensure the interests and concerns of TFN are fully understood by the ministry.

On April 1, 2021, the North Pender Local Trust Committee (NPLTC) passed a resolution to not approve the subdivision as they do not believe it is in the public interest. The concerns expressed by the TFN as well as the resolution of the NPLTC will be shared with the ministry's PAO who is typically the final approving authority on whether or not this development can proceed.

The PAO's decision is guided by the following legislation: the Local Government Act, the Land Title Act, the Strata Property Act and Bare Land Strata Regulations. Under this legislation, it is a requirement that a PAO must consider and may hear from any parties who may be affected by the subdivision. A final decision on the subdivision has not been made at this time.

On rare occasion, there is an alternate approval process in which the Lieutenant Governor of British Columbia could be asked to consider the subdivision under Section 90 of the Land Title Act (LTA).

*Land Title Act Section 90 - Power of Lieutenant Governor in Council to prohibit deposit of plan*

- (1) The Lieutenant Governor in Council may, when it appears that the deposit of a subdivision plan is against the public interest, order the registrar not to receive the plan for deposit.

Given this proposed subdivision is a strata, the approval is subject to the Bare Land Strata Regulations. There is nothing specific in those regulations that are similar to Section 90 of the LTA; however the BC Government is able to submit an opinion to the PAO regarding the public's interests, which would be considered by the PAO in their review of the file.

**GBA+ OR DIVERSITY AND INCLUSION IMPLICATIONS:**

The ministry is aware of the presence of Archeological Sites protected under the Heritage Conservation Act and has been engaging with the TFN to ensure their interests and concerns are fully understood. This information will form an important aspect of the materials the PAO considers in making a final decision on the file.

**FINANCIAL IMPLICATIONS:**

- None.

**Attachments:** (if applicable)

1. James Island Location Map and Aerial Photo



**PREPARED BY:**

Mike Pearson, P. Eng. District Manager  
Vancouver Island District  
(250) 713-2815

Janelle Staite, P.Eng  
Deputy Director, SCR  
(250) 713-8763

**REVIEWED BY:**

Kevin Richter, Associate Deputy Minister  
Highway Operations

Nancy Bain, Executive Financial Officer  
Finance and Management Services Department

Kaye Krishna, Deputy Minister

**DATE:**

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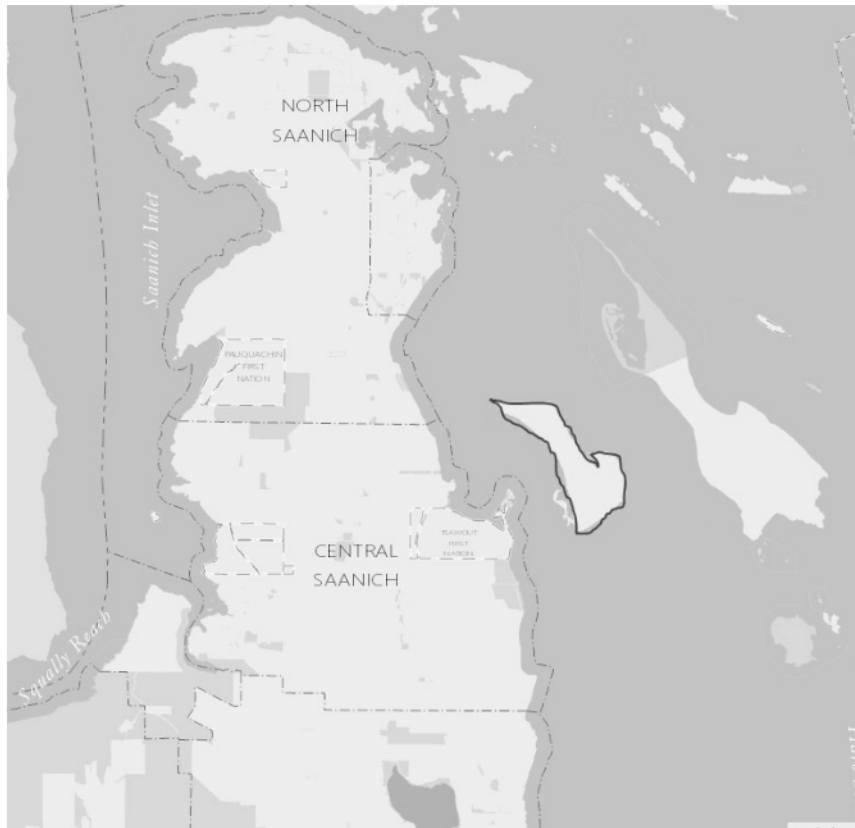


Figure 1: James Island Location Map



*Figure 2: James Island Arial Photo*



## Tsawout

---

From: Chaytor, Wisty IRR:EX <Wisty.Chaytor@gov.bc.ca>  
To: Lang, Sandra IRR:EX <Sandra.Lang@gov.bc.ca>, Fox, Amber IRR:EX <Amber.Fox@gov.bc.ca>, Butterfield, Matthew IRR:EX <Matthew.Butterfield@gov.bc.ca>  
Cc: Harvie, Christie IRR:EX <Christie.Harvie@gov.bc.ca>  
Sent: November 29, 2022 12:05:50 PM PST  
Attachments: FOR REVIEW - Media Response: Tsawout claim to James Island, FW: ADVICE PLEASE James Island - Media Request, RE: Tsawout question, Fwd: ADVICE PLEASE James Island - Media Request

Hi I found a couple more emails on James island that you may already have copies of. If not...

Thanks

Wisty

**Wisty Chaytor**

*Senior Negotiator,*

*Ministry of Indigenous Relations and Reconciliation*

*2957 Jutland Rd. 4<sup>th</sup> Floor, Victoria, BC*

*Tel: 250 818-6392 (cell)*

Page 410 of 413 to/à Page 412 of 413

Withheld pursuant to/removed as

s.14

Draft bullets for deputy's signature

Bullets due Oct. 10, to be sent to email address: ABR Correspondence Unit

- Thank you for your letter, dated Sept. 29, regarding your plan to develop a community health clinic on Tsawout First Nation land.
- The Provincial government recognizes that the gap in health outcomes between First Nations and other British Columbians is unacceptable and must be improved.
- I am pleased to read about your collaboration with your surrounding community, since a health clinic has the potential to benefit many people throughout the area.
- The Province is committed to closing the gap in health outcomes for First Nations, and we are fortunate to be partnered with the First Nations Leadership Council on our First Nations Health Plan, which prioritizes our actions to close the health gap, and supports the First Nations Health Blueprint for British Columbia.
- I recognize that the multi-jurisdictional health care system in British Columbia can create gaps and inadequacies in service.
- The provincial government recognizes we need to remove impediments to progress by establishing effective working relationships at all levels.
- One such action in the First Nations Health Plan is for the provincial government and First Nations to work with the federal government to improve prevention and primary health services on-reserve so that they meet or exceed those services provided off-reserve.
- As you are undoubtedly aware, many First Nations communities have established their own community health facilities in partnership with the First Nations and Inuit Health department of Health Canada.
- I was interested to read about your current agreement with First Nations and Inuit Health that enables you to provide a range of non-clinical health services and I trust you are including the department in your planning towards the development of a clinic.
- I am pleased that you have informed us of your planning. We welcome the opportunity to be brought up to speed following the completion of your feasibility study and business plan to explore ways in which we might be helpful to you.
- Thank you for inviting the provincial government to be a partner with the community on this project.
- At this time, we are not able to contribute funding