CRD E&N Corridor Feasibility Study Estimates Note

Ministry of Transportation and Infrastructure

Date: September 14, 2017

• In March 2017, the former government announced that the ministry would undertake an evaluation of the feasibility of using all or part of the E&N Rail Corridor between Langford and Victoria as a regional transit corridor. A Working Group to review options for commuter rail service in the CRD was also formed. Due to timing of the election, the ministry was unable to properly consult with First Nations on the Terms of Reference for the study before the writ dropped. A Request for Proposals (RFP) was issued and closed during the interregnum period. Five applicants submitted proposals however due to the election results and delays in government being formed; the ministry did not award the contract.

ADVICE AND RECOMMENDED RESPONSE

s.13

BACKGROUND

- The Island Corridor Foundation (ICF) is a partnership of various local governments and First Nations communities along the railway, including 14 municipalities, 5 regional districts and 12 First Nations territories. The rail line is owned by the ICF and runs 225 km between Victoria and Courtenay.
- The Southern Railway of Vancouver Island (SRVI) operated the passenger service using one self-powered passenger car which was leased from VIA Rail. Passenger service was suspended in 2011 due to deteriorated track conditions.
- The ICF is a Canadian charitable foundation that owns all former Canadian Pacific and Esquimalt and Nanaimo Railway track on Vancouver Island. The ICF was created in 2003 and obtained rail track in 2006 when Canadian Pacific donated its portion of the E&N line to the ICF. Later that year Rail America also donated its portion to the foundation, leaving the ICF in control of the entire right of way.

Local, Provincial and Federal Funding:

- On March 22, 2016, the Regional District of Nanaimo (RDN) voted to provide the ICF a 60-day notice of termination of the 2014 Contribution Agreement to provide up to \$945,000 for rail upgrades to support passenger rail service on Vancouver Island.
- On October 4, 2016, RDN voted to return \$799,000 to taxpayers collected from them
 as part of the RDN's funding contribution, citing the ICF's lack of progress towards
 restarting the rail service.
- As part of the Province's \$7.5 million commitment initially made to this project in 2011, the province provided \$500,000 to fund a study of the 48 bridges and trestles on the E&N corridor between Victoria and Courtenay.
- Recently, the federal government set a deadline to the ICF that any outstanding funding for projects under the Building Canada Fund – Major Infrastructure Canada (BCF-MIC) program, must have approval-in-principle by March 31, 2017. The ICF was not able to meet this deadline.

s.13,s.16

Feasibility Study:

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s.13,s.16

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PROGRAM CONTACT

Cam Filmer, Executive Director Transportation Policy and Programs, 250-812-2377

> APPROVALS: Deborah Bowman, ADM Pat Marsh, CFO Carol Bishop, ED, Crown Agencies

Date Date

Rockerbie, Kirk TRAN:EX

From:

Bowman, Deborah TRAN:EX

Sent:

Tuesday, October 10, 2017 4:58 PM

To:

Harder, Derrick PREM:EX; Perry, Alisma, TRAN:EX

Cc:

Lewthwaite, Jennifer TRAN:EX; Gilmour, Lori TRAN:EX; Rockerbie, Kirk TRAN:EX; Filmer,

Cam A TRAN:EX; Walman, Bart TRAN:EX

Subject:

Oct 10 2017 - Draft EN Plan.docx

Attachments:

Oct 10 2017 - Draft EN Plan.docx

Good afternoon,

Further to our meeting last week with MLA Dean, please see attached and advise if this meets your office's expectations for next steps on this file based on that discussion. We will wait your confirmation and direction before initiating any further work. Please feel free to contact me if you have any questions.

Thank you, db

Deborah Bowman, Assistant Deputy Minister

Policy and Programs Department | Ministry of Transportation and Infrastructure Direct 250. 387-8490 | Mobile 250.818-1709

Rockerbie, Kirk TRAN:EX

From: Rockerbie, Kirk TRAN:EX

Sent: Friday, October 13, 2017 4:20 PM

To: Bowman, Deborah TRAN:EX

Cc: Gilmour, Lori TRAN:EX

Subject:E&N Studies - Summary.docxAttachments:E&N Studies - Summary.docx

Updated 415 pm

Page 07 to/à Page 08

Withheld pursuant to/removed as

s.16;s.13;s.17

E&N Corridor Feasibility Study Estimates Note

Ministry of Transportation and Infrastructure

Date: October 16, 2017

ISSUE

In March 2017, the Ministry announced that the Province would undertake an
evaluation of the feasibility of using all or part of the E&N Rail Corridor between
Langford and Victoria as a regional transit corridor. A Working Group to review
options for commuter rail service in the CRD was also announced. The Province was
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ADVICE AND RECOMMENDED RESPONSE

s.13

BACKGROUND

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s.13,s.16

Local, Provincial and Federal Funding:

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funding for projects under the Building Canada Fund – Major Infrastructure Canada (BCF-MIC) program, must have approval-in-principle by March 31, 2017. The ICF was not able to meet this deadline. s.13.s.16

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s.13,s.16

Financial Implications:

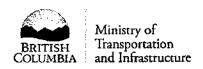
s.17

PROGRAM CONTACT

Cam Filmer, Executive Director Transportation Policy and Programs, 250-812-2377

APPROVALS:

Deborah Bowman, ADM Pat Marsh, CFO Carol Bishop, ED, Crown Agencies Aug 24/17 Date Date



BRIEFING NOTE FOR INFORMATION

DATE: November 8, 2017

PREPARED FOR: Honourable Claire Trevena, Minister of Transportation and Infrastructure

MEETING: With MLA Doug Routley (Nanaimo-North Cowichan), Graham Bruce, Executive

Director, Island Corridor Foundation, and Directors, Southern Rail Infrastructure,

Seaspan on November 9, 2017

ISSUE: E&N Railway - Rail Service and Track Infrastructure Plan

SUMMARY:

s.13

BACKGROUND:

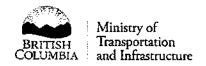
Island Corridor Foundation (ICF):

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Graham Bruce is the Executive Director of the ICF. He was appointed in 2009. In May 2016, his appointment was extended for an additional two years. The Executive Director reports to a 12 person Board of Directors that governs the ICF. Five directors represent the Regional Districts and five directors represent First Nations. The two additional Directors are designated as "at-large". Membership is limited to local governments and First Nation governments whose territories are wholly or partly within the geographic area of the Corridor.

s.13,s.16



s.13,s.16

Local, Provincial and Federal Funding

On July 23, 2015, the Ministry of Transportation and Infrastructure (MoTI) re-affirmed its commitment to provide \$7M to the ICF for upgrades to the E&N rail line. The provincial funds were contingent to the ICF once it had confirmed that \$7.5M in federal funding was in place and, through a tendering process, that the upgrade work could be completed within the \$20.4M it had budgeted. Recently however, the federal government set a deadline to the ICF that any outstanding funding for projects under the Building Canada Fund – Major Infrastructure Canada (BCF-MIC) program, must have approval-in-principle by March 31, 2017. The ICF was not able to meet this deadline.

s.13,s.16

On October 4, 2016, the Regional District of Nanaimo (RDN) voted to return \$799,000 to taxpayers collected from them as part of the RDN's funding contribution for track upgrades and repairs to support passenger rail service on Vancouver Island, citing the ICF's lack of progress towards restarting the rail service.

As part of the total \$7.5M commitment initially made to this project in 2011, MoTI provided \$500,000 to fund a study of the 48 bridges and trestles on the E&N corridor between Victoria and Courtenay.

DISCUSSION:

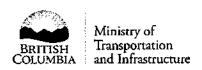
Use of the Corridor in Southern Vancouver Island

Local governments (Langford, Victoria, Esquimalt, and View Royal) have expressed their interest in having light rail or transit service operating on the 15-kilometre E&N corridor between Westhills in Langford and Victoria West. During the 2008 municipal elections, the City of Langford and City of Colwood included referendum questions regarding support for developing the E&N Rail Corridor and 93% of respondents responded in favour of development.

In March 2017, MoTI announced that the province would undertake an evaluation of the feasibility of using all or part of the E&N corridor between Langford and Victoria as a regional transit corridor. A Working Group to review options for commuter rail service in the CRD was also announced. s.13.s. s.13.s.16

In early August, MoTI reached out to those involved in the process to date, including the five bidders on the original Request for Proposal (RFP), in order to provide an update on the new approach. MoTI has been directed to begin working on expanding the terms of reference to include a comprehensive approach that can address transportation issues and congestion in the region.

FINANCIAL IMPLICATIONS:



s.17

| Appendic | es |
|----------|----|
|----------|----|

• Summary of studies related to the E&N corridor.

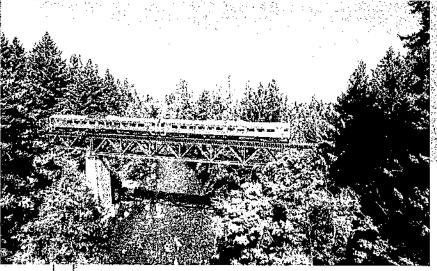
| PREPARED BY: | REVIEWED BY: | INITIALS: |
|---|---|-----------|
| Kirk Rockerbie, Manager, Transportation Policy Branch (250) 480-9729 Kathy Kirby, A/Executive Director Transportation Policy and Programs Branch Deborah Bowman, Assistant Deputy Minister, Transportation Policy and Programs Department Nancy Bain, Assistant Deputy Minister, & EFO | | |
| | Transportation Policy and Programs Branch | KK |
| | Deborah Bowman, Assistant Deputy Minister, | DB |
| | Transportation Policy and Programs Department | |
| | Nancy Bain, Assistant Deputy Minister, & EFO | |
| | Finance and Management Services | |

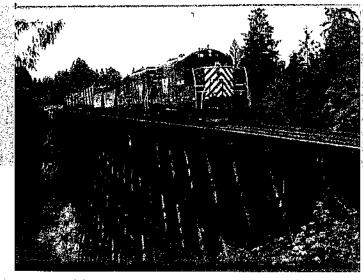
Page 15 to/à Page 16

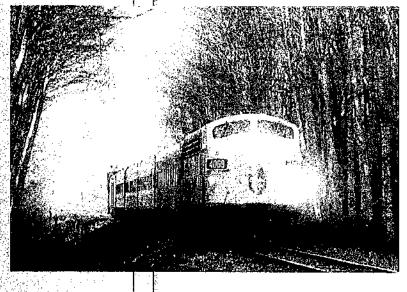
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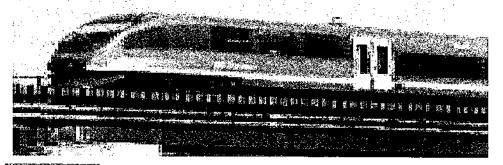
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Vancouver Island Rail Infrastructure <u>Upgrade Project</u>









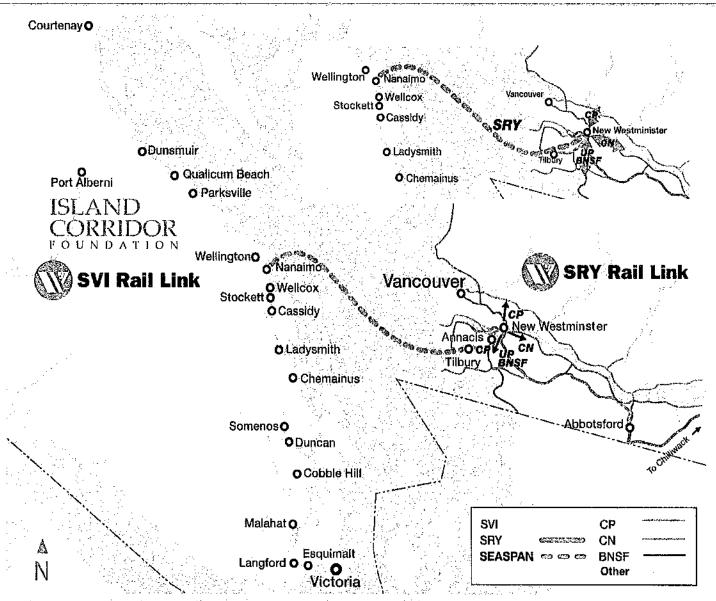


Island Corridor Foundation



November 9, 2017





November 9, 2017

Vancouver Island Rail Infrastructure Upgrade Project



Immediate Challenges

- > Valuable (\$360M) rail asset requires investment
- Island population growth transportation alternatives
- Community pressure for rail decision
- Highway congestion: Colwood crawl, Malahat, Duncan
- Highway capital / maintenance costs
- Environment reduction of GHG emissions
- Planning/Housing development along corridor
- Malahat North economic initiatives
 - First Nation rail-trail tourism
 - Nanaimo Port cruise ship expansion excursion train
 - Sand & Gravel
- Keeping a rail operator



ICF Rail Operator > SVI

Support for Rail on Vancouver Island with a Strong BC / Vancouver Island Presence



The Washington Companies

Marine Repair & Construction:







Marine Transportation:



Rail Transportation:











Rail Operator Contributions

- SVI is a highly competent rail operator
- Rail / Marine Connections SVI > Seaspan > SRY
- > Freight Rail Island access to North American markets
- SVI to underwrite VIA Intercity Passenger Rail (10 years)
- > SVI to pay track license fees
- SVI responsible for track & bridge maintenance
- Commuter Rail SVI willing operator
- Excursion / Tourism Rail SVI business plan
- > Future rail link Alberni, Nanaimo & Vancouver Ports



Current Rail Operations

Victoria Subdivision

- Active Rail Service to North Nanaimo (Superior Propane)
- Wellcox Yard, Nanaimo active "Transload" services
 - Agricultural feed grain Duncan
 - Utility poles out of Courtenay
 - Latex & GCC products for paper production Port Alberni
 - Cement product for concrete production
 - Fertilizers for forest development

Port Alberni Subdivision - Alberni Station to McLean Mill

- McLean Mill steam train tourist attraction
- Speeder car tourist run
- ➤ 500 Ties replacement completed 2017
- Bridge Repair two bridges



Train Service & Infrastructure Plan

Phase I - Nanaimo to Victoria

- 1. Intercity VIA Passenger Rail
 - Twice daily return service Nanaimo-Victoria
- 2. Cruise Ship Excursion Train Nanaimo Port to Chemainus
- 3. Development opportunities for Excursion/Tourism Rail services on the rail corridor Nanaimo / Ladysmith / Cowichan Valley / Shawnigan / Victoria
- 4. Freight Rail
 - Nanaimo Wellcox Transload Operations
 - Nanaimo-Wellington Propane to Superior
 - Other opportunities for freight expansion Nanaimo Greater Victoria
- 5. Commuter Rail Track Base Improvements
 - Langford Victoria
 - Shawnigan Lake / Cowichan Valley Victoria

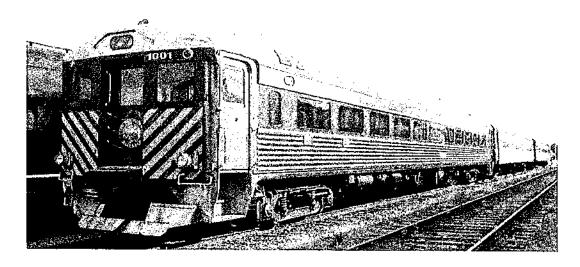
^{*}All subject to commuter equipment selected and Transit Authority established

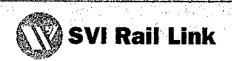


Commuter Rail Options, Rail Diesel Car (RDC)

Victoria - Langford - 19 min. with upgrade

- Equipment Options:
 - Rail Diesel Car (RDC) 100 passengers seated & standing per car (ex. 3 car train Capacity (= 300)) —
 - Two Train Concept potential 1200 passengers per hour
- Option to Cowichan Valley
- Track Capacity
- Rail Traffic Control
- Siding at Esquimalt





perdical.

Rail Infrastructure Upgrade Nanaimo-Victoria Major Elements \$42.7 Million

➤ Tie Renewals – 120,000

s.13

- ➤ Ballast / Surface 70,000 tonnes / 6 inch Lift
- Bridge Repairs & Upgrades
- Siding Rehabilitation
- Safety Sight & Sound Barriers First Nation Communities
- Crossing Safety Improvements
- Bridge / Trail Walkway Chemainus Bridge



Nanaimo-Courtenay in Future Phases Pending Snaw-Naw-As First Nation Settlement

Infrastructure providing further expansion / development:

- Linkage to Port Alberni Subdivision
- Intercity VIA Passenger Rail Courtenay to Victoria
- Freight Rail Service
- Excursion/Tourism Rail Significant island wide tourism initiative with rail & trail development
- First Nation Economic Tourism



Port Alberni Subdivision

Future Opportunities:

- Port to Port "Land Bridge" Concept
- Support for Port Alberni Trans-shipment Hub ("PATH") development
- Excursion/Tourism Rail Expansion Support for Nanaimo Cruise Ship Terminal

Potential Phased Upgrade by Segments:

- 1. Parksville Coombs
- 2. Coombs Port Alberni



Train Service & Track Infrastructure Plan Nanaimo to Victoria - Required \$42.7M

Federal Infrastructure Funding:

- Infrastructure Canada
- Federal government requires provincial approval & participation
- 1. Does the government support Island train service?
- 2. What is government response to the SVI/ICF Train Service & Infrastructure Plan?
- 3. Should SVI/ICF make a formal submission?
- 4. Will the province support the submission?

Next steps & timing

- Government response
- Formal application to be made by ICF/SVI



Reports & Studies 2006 to Date

- ➤ MNP Report on E&N Railway 2005
- BC MoTI / IBI Group Evaluation of the E & N Railway Corridor Foundation Paper – 2009
- > ICF / SVI Potential for Tourism Service on Vancouver Island 2009
- ▶ ICF / SVI Potential for Freight Expansion 2009
- SVI The Advantages of Rail vs. Truck Transportation of Coal on Vancouver Island – 2010
- BC MoTI / Associated Engineering / Benesch Bridge Inspection and Assessment – E&N Railway, Vancouver Island, BC, Canada – 2012
- Island Explorer Excursion Train Feasibility Study SVI -Sept/2014

Page 30 to/à Page 37

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No.

Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

FEB 0 9 AFTWEEN:

SEENUPIN (CHIEF ANDREW THOMAS) and COUNCILLORS BARBARA
ECOY, ROBERT THOMAS, MILDRED MODESTE AND GORDON MODESTE,
—ACTING ON THEIR OWN BEHALF and ON BEHALF OF ALL OTHER
MEMBERS OF THE ESQUIMALT NATION

and the said ESQUIMALT NATION

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by THE ATTORNEY GENERAL OF CANADA

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

- 1. The Plaintiffs, Seenupin (Chief Andrew Thomas), and Barbara Lecoy, Robert Thomas, Mildred Modeste, and Gordon Modeste, are the Chief and Councillors of the Esquimalt Nation at the time of the commencement of this action. Seenupin is the traditional name of Chief Andrew Thomas, who is the hereditary Chief and Headman of the Esquimalt Nation. They bring this action on their own behalf and on behalf of all the other members of the Esquimalt Nation and as representatives of the said Esquimalt Nation itself (collectively referred to in this Notice of Civil Claim as the "Esquimalt Indian Band" or the "Esquimalt Nation").
- The Esquimalt Nation are Indians as that term is defined in the Indian Act, RSC 1985, Chapter I-5 and are an Aboriginal people within the meaning of section 35 of the Constitution Act, 1982.
- 3. The Esquimalt Nation is a "Band" as that term is defined in the *Indian Act*, RSC 1985, Chapter I-5 and is known as Esquimalt Indian Band.

The Lekwungen:

- 4. At all material times prior to and after 1850, a distinctive aboriginal tribe lived in southern Vancouver Island collectively known as the Sangees, Songish, Songhees or Sangies, and also, eventually, as the Lekwungen, Lekungen or Lekwungen people (the "Lekwungen").
- 5. The Lekwungen collective was organized by themselves in six local subgroups, consisting of identified themselves with each of the following six sub-groups: the Teechamista, the Whyomilth, the Checkonein, the Swengwhung, the Chilcowitch, and the Kosampsom (the "Sub-Groups").
- 6. The Sub-Groups among themselves had a shared collective identity; in particular, they:
 - (a) shared the same Straits Salish language, known as the Lekwungen Dialect;

- (b) shared the territory used for hunting, gathering, and other sustenance related activities and the lands and waters in between;
- (c) shared access to seasonal village sites; and,
- (d) shared common traditions, laws and customs.
- 7. One of the Sub-Groups was, in and around 1846, known as the Kosampsom (in this Notice of Civil Claim, a reference to the "Lekwungen" means the Lekwungen collective and includes the "Kosampsom" Sub-Group).
- 8. At all material times after 1846, the Lekwungen Sub-Groups, including the Kosampsom, combined, joined together, and intermarried, such that by 1877 and to the current day the Esquimalt Nation is a modern day successor of the Kosampsom Sub-Group and the Lekwungen collective.

The Lekwungen hold Aboriginal Title to their Traditional Territory:

- 9. At all material times before and in 1846, at the time of assertion of British sovereignty over British Columbia, the Lekwungen exclusively occupied and claimed as their own particular heritage the lands comprising their Traditional Territory the lands now known as the "District of Victoria" and have done so for over one thousand years. In particular, the Lekwungen exclusively occupied, possessed and intensively utilized the resources of the land and the surrounding seas for their sustenance and livelihood, and the exclusive occupation and utilization of these lands was of central significance to their distinctive culture.
- 10. At all material times before and in 1846, the Lekwungen lived in six Sub-Groups and occupied permanent winter villages, and, among themselves, they had customary rights over certain tracts of land, including over the burial sites of their ancestors, and resource areas such as camas fields, root patches and fishing locations. The areas of land in respect of which relief is sought in this litigation fall within the boundary of the lands in respect of which the Kosampsom Sub-Group held customary rights. The claim areas are identified in the maps attached as Schedules "1" "2" "3" and "4" (collectively referred to as the "Claim Areas") and which are collectively identified for reference in the map attached as Schedule "5" to these pleadings.
- 11. For greater certainty, at the time of assertion of sovereignty, the Lekwungen held Aboriginal Title to their Traditional Territory, the lands which are now known as the District of Victoria.
- 12. The Lekwungen have not at any time surrendered their Aboriginal Title to their Traditional Territory.

- 13. At no time did the Defendant, Her Majesty the Queen in Right of Canada ("Canada") or its predecessors in sovereignty lawfully extinguish the Lekwungen's Aboriginal Title to their Traditional Territory.
- 14. The Lekwungen continue to hold Aboriginal Title to their Traditional Territory, which includes the lands, waters, foreshores and other submerged lands within the boundary of the District of Victoria.

The Lekwungen's Aboriginal Title has been established by Treaty:

- 15. On or about the 29th and 30th of April, 1850 and the 4th of May, 1850, James Douglas, acting on behalf of the Hudson's Bay Company and the Imperial Crown, entered into One Oral Treaty with the entire Lekwungen who then inhabited the lands of what is now described as the District of Victoria and who lived collectively together in the six Sub-Groups, at one public gathering of the Lekwungen together summoned by James Douglas for that purpose (the "One Oral Treaty").
- 16. The terms of the One Oral Treaty can be particularized as follows:
 - a) The Lekwungeh would keep exclusively their village sites, including the sustenance resource lands and the burial grounds associated with the village sites and with the inhabitants of the villages;
 - b) The Lekwungeh would keep exclusively all their sustenance lands, whether in the immediate vicinity of village sites or not, including camas fields, potato patches, and berry and herb-gathering areas;
 - The Lekwungen would keep exclusively the burial sites of their ancestors, whether in the immediate vicinity of the village sites or not;
 - d) The Lekwungen would keep exclusively their fishing grounds and could fish as they had always done;
 - e) Subject to conderns arising from living compatibly with the settlers in the Lekwunger Traditional Territory, the Lekwunger could continue to hunt over the whole of their lands;
 - f) The Lekwungen and the Hudson's Bay Company with its sponsored settlers would live compatibly together in the Lekwungen Traditional Territory, each with due regard for the maintenance of the symbiosis on which the continued harmony of their relationship depended, and with whatever consultation was required to maintain that harmony; and,
 - g) The title to all the lands within the Lekwungen Traditional Territory, including village sites and associated sustenance fields, was to remain unaffected by the Treaty.

17. Pursuant to the terms of the One Oral Treaty, James Douglas, on behalf of the Hudson's Bay Company and the Imperial Crown, recognized and acknowledged the Aboriginal Title held by the Lekwungen in respect to the Lekwungen Traditional Territory, including the lands comprising the Claim Areas.

The Federal Crown has and continues to unlawfully and unjustifiably infringe the Lekwungen's Aboriginal Title:

- 18. At all material times in and after 1846, Canada, and its predecessors in sovereignty, did, and continue to unlawfully and unjustifiably infringe the Aboriginal Title held by the Lekwungen, in that they:
 - Interfered with the Lekwungen's right of exclusive enjoyment and occupancy of the Claim Areas;
 - b) Interfered with the Lekwungen's right to possess the Claim Areas;
 - c) Interfered with the Lekwungen's right to determine how the Claim Areas will be used;
 - d) Interfered with the Lekwungen's right to enjoy the economic benefits of the Claim Areas;
 - e) Interfered with the Lekwungen's right to pro-actively use and manage the Claim Areas; and,
 - f) Interfered with the Lekwungen's right to exercise their aboriginal rights, including burial rights and gathering rights in respect to the Claim Areas.
- 19. For greater certainty, at all material times in and after 1846, Canada, and its predecessors in sovereignty, breached the One Oral Treaty, breached the honour of the Crown and breached their fiduciary duty by purporting to transfer title of Lekwungen Traditional Territory to the Crown, to agents of the Crown in their personal capacity, and to other third parties, by developing and otherwise alienating the said lands:
 - a) Without consultation with or the consent of the Lekwungen;
 - b) Without accommodating the interests of the Lekwungen to a reasonable extent or at all;
 - Without a compelling and substantive objective;
 - d) By fraudulently recording and falsely representing the purported sale by the Lekwungen of all or some of their Traditional Territory to the Crown;
 - e) By forcibly expelling the Lekwungen from their Traditional Territory and burning their villages to the ground; and,
 - f) By the Hudson's Bay Company and employees, and other agents

of the Crown, conducting themselves with other acts of prejudice or malevolence towards the Lekwungen in relation to their Traditional Territory.

Part 2: RELIEF SOUGHT

WHEREFORE the Esquimalt Nation claims against Canada:

- (a) A Declaration that the Lekwungen hold unextinguished Aboriginal Title in respect to some or all of the Claim Areas identified in Schedules "1", "2", "3", and "4" and collectively identified for reference in Schedule "5" to this Notice of Civil Claim:
- (b) A Declaration that Canada has in the past and continues to unlawfully and unjustifiably infringe the Lekwungen's Aboriginal Title held in respect to some or all of the Claim Areas;
- (c) A Declaration that Canada has breached the Duty to Consult owed to the Lekwungen in respect to Canada's actions in some or all of the Claim Areas;
- (d) A Declaration that Canada has breached its Fiduciary Duty owed to the Lekwungen;
- (e) A Declaration that Canada has breached the Honour of the Crown;
- (f) A Declaration fixing the location and extent of the Claim Areas;
- (g) An order for possession of the lands within the Claim Areas;
- (h) An order providing for the fixing of compensation for the wrongs done by the Defendant to the Plaintiffs as set out in the Notice of Civil Claim and the declarations sought;
- (i) Costs; and
- (j) Such further and other relief as this Court considers just.

Part 3: LEGAL BASIS

- 1. The Lekwungen's Aboriginal Title in respect to the Claim Areas is an "aboriginal right" within the meaning of s. 35 of the Constitution Act, 1982.
- The One Oral Treaty is a "Treaty" within the meaning of s. 35 of the Constitution Act, 1982. In particular, the One Oral Treaty established, by acknowledgment and confirmation, by the Imperial Crown, of the Aboriginal Title held by the Lekwungen in respect of the Claim Areas.

- 3. Aboriginal Title has the following legal incidents, in particular:
 - a) The right to decide how the land will be used;
 - b) The right of enjoyment and occupancy of the land;
 - c) The right to possess the land;
 - d) The right to the economic benefits of the land;
 - e) The right to pro-actively use and manage the land; and,
 - f) The right to exercise aboriginal rights in respect to the land.
- 4. For greater certainty, to justify infringement of the Aboriginal Title held by the Lekwungen the Crown must show that:
 - a) It discharged its procedural duty to consult and accommodate the Lekwungen;
 - b) Its actions were and are backed by a compelling and substantive objective; and,
 - c) Its actions were and are consistent with the Crown's fiduciary obligation to the claimant group.
- As a result of the actions of Canada and its predecessors in sovereignty, the Aboriginal Title held by the Lekwungen in respect of the Claim Areas is at present unlawfully and unjustifiably infringed.
- 6. As a result of the actions of Canada and its predecessors in sovereignty, Canada has breached its Fiduciary Duty owed to the Lekwungen.
- 7. As a result of the actions of Canada and its predecessors in sovereignty, Canada has breached the Duty to Consult owed to the Lekwungen.
- 8. For greater certainty, an unlawful and unjustifiable infringement of the Lekwungen's Aboriginal Title constitutes a breach of the Honour of the Crown.
- 9. For greater certainty, a breach of the Duty to Consult constitutes a breach of the Honour of the Crown.
- The Esquimalt Nation is the modern day successor to the Kosampsom Sub-Group and the Lekwungen people.
- 11. Canada is the lawful successor to the Crown's sovereignty previously exercised with respect to the Lekwungen traditional territory, inter alia, the Hudson's Bay Company as agent for the Imperial Crown, the Colony of Vancouver's Island, and the Colony of British Columbia.

- 12. Pursuant to the *British Columbia Terms of Union*, 1871, Canada is subject to all of the obligations, duties and liabilities that the Imperial Crown, the Colony of Vancouver's Island, and the Colony of British Columbia had or owed to the Plaintiffs.
- 13. The fundamental objective of the modern law of aboriginal and treaty rights is the reconciliation of aboriginal peoples and non-aboriginal peoples and their respective claims, interests and ambitions [Miskew Cree First Nation v. Canada. [2005] 3, S.C.R. 388].

Plaintiff's addresses for service:

c/o Kelliher & Turner Suite 16 Shoal Point 21 Dallas Road

Victoria, BC, V8V 4Z9

Fax number address for service:

250-386-6804

Place of Trial: Victoria, British Columbia

The address of the registry is:

Ministry of Justice

Court Registry

P.O. Box 9248 Stn Prov Govt 2nd Floor, 850 Burdett Street Victoria, BC, V8W 9J2

Dated fellow 5th, 2016

Steven M. Kelliher

Lawyer for the Plaintiffs

Rule 7-1(1) of the Supreme Court Civil Rules states:

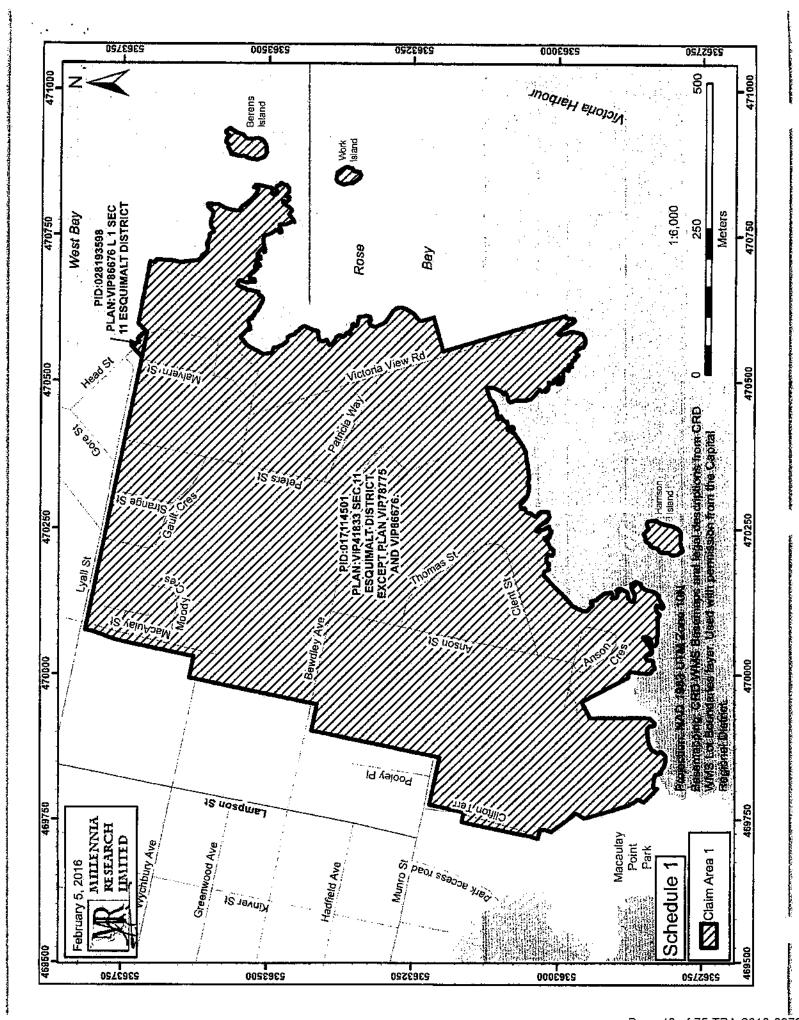
- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

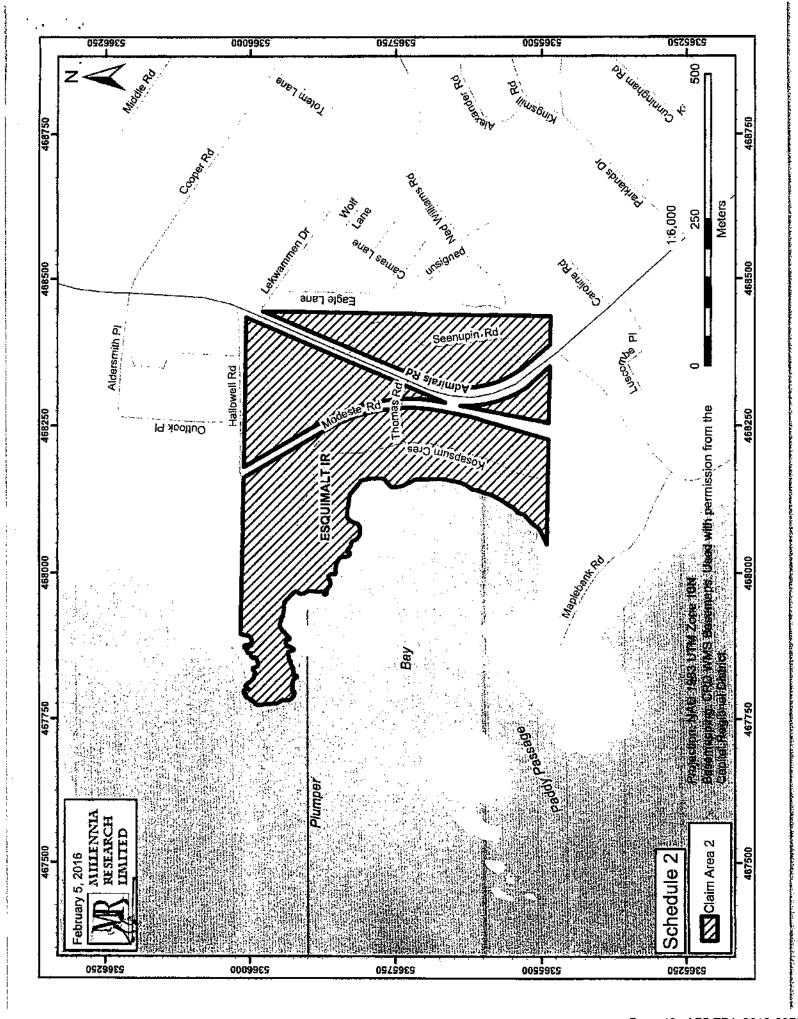
- (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

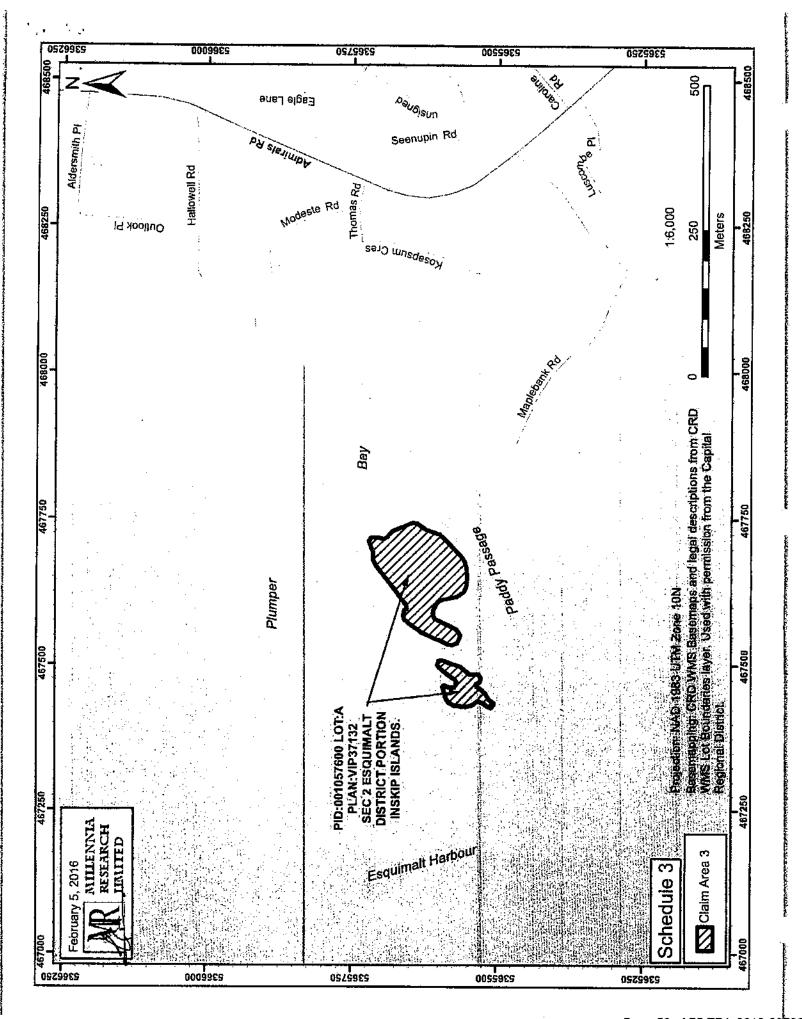
Appendix

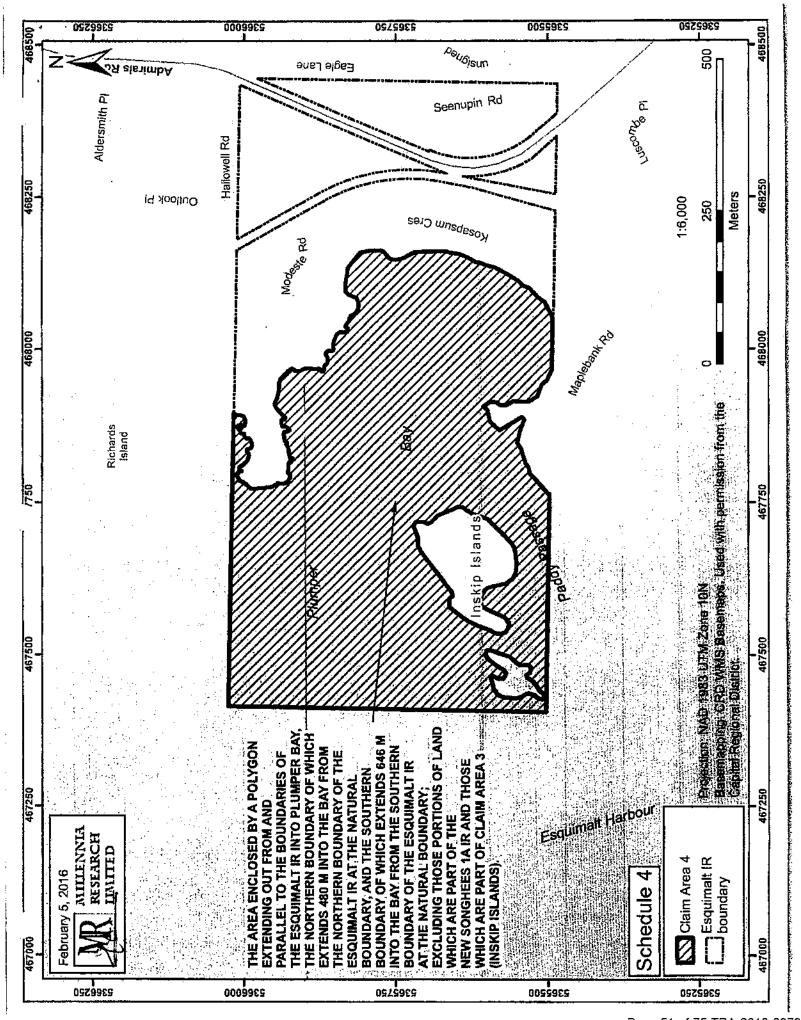
Part 1: CONCISE SUMMARY OF NATURE OF CLAIM: A claim for Aboriginal Title. Part 2: THIS CLAIM ARISES FROM THE FOLLOWING: [Check one box below for the case type that best describes this case.] A personal injury arising out of: [] a motor vehicle accident [] medical malpractice [] another cause A dispute concerning: [] contaminated sites [] construction defects [] real property (real estate) [] personal property [] the provision of goods or services or other general commercial matters [] investment losses [] the lending of money [] an employment relationship [] a will or other issues concerning the probate of an estate [x] a matter not listed here Part 3: THIS CLAIM INVOLVES: [Check all boxes below that apply to this case] [] a class action [] maritime law [x] aboriginal law [X] constitutional law [] conflict of laws [] none of the above [] do not know Part 4: 1. Constitution Act, 1867.

2. Constitution Act, 1982.

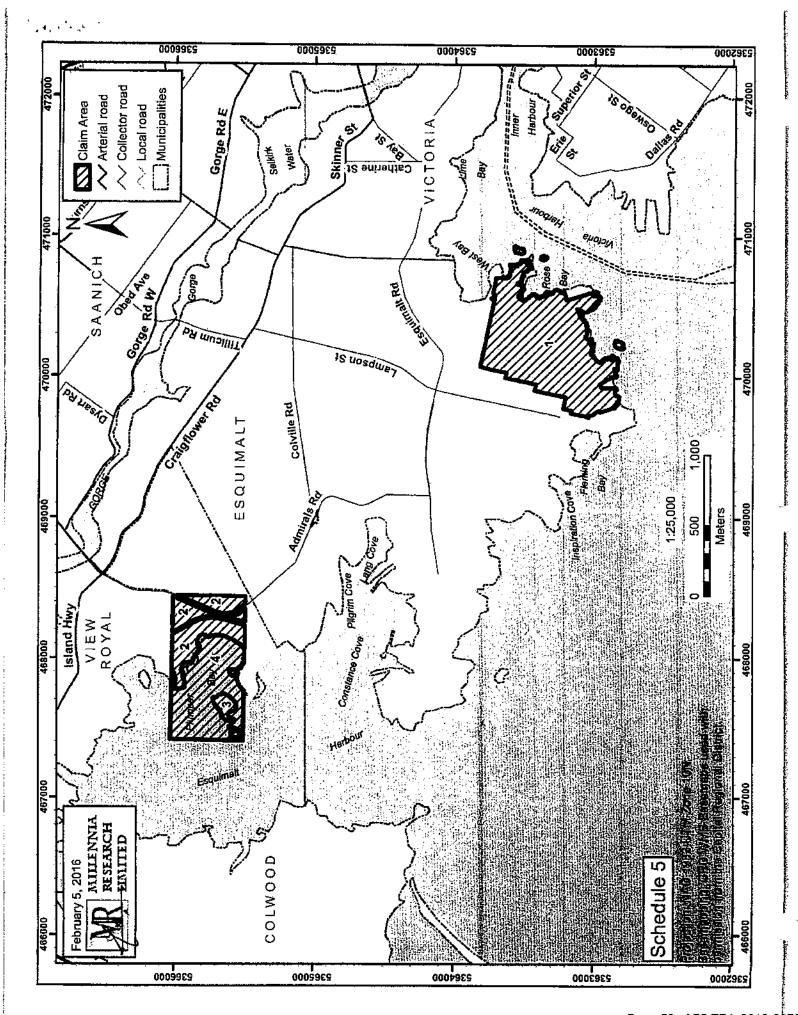








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E/N Rail Corridor Budget Estimates Note

Ministry of Transportation and Infrastructure

Date: January 26, 2018

ISSUE

E&N Rail Corridor in the Capital Regional District (CRD)

ADVICE AND RECOMMENDED RESPONSE

s.13

BACKGROUND

- The Island Corridor Foundation (ICF) is a partnership of various local governments and First Nations communities along the railway, including 14 municipalities, 5 regional districts and 12 First Nations territories. The rail line is owned by the ICF and runs 225 km between Victoria and Courtenay.
- The Southern Railway of Vancouver Island (SRVI) operated the passenger service using one self-powered passenger car which was leased from VIA Rail. Passenger service was suspended in 2011 due to deteriorated track conditions.
- The ICF is a Canadian charitable foundation that owns all former Canadian Pacific and Esquimalt and Nanaimo Railway track on Vancouver Island. The ICF was created in 2003 and obtained rail track in 2006 when Canadian Pacific donated its portion of the E&N line to the ICF. Later that year Rail America also donated its portion to the foundation, leaving the ICF in control of the entire right of way.

s.13,s.16

Local, Provincial and Federal Funding:

- On March 22, 2016, the Regional District of Nanaimo (RDN) voted to provide the ICF a 60-day notice of termination of the 2014 Contribution Agreement to provide up to \$945,000 for rail upgrades to support passenger rail service on Vancouver Island.
- On October 4, 2016, RDN voted to return \$799,000 to taxpayers collected from them as part of the RDN's funding contribution, citing the ICF's lack of progress towards restarting the rail service.
- As part of the Province's \$7.5 million commitment initially made to this project in 2011,

- the province provided \$500,000 to fund a study of the 48 bridges and trestles on the E&N corridor between Victoria and Courtenay.
- Recently, the federal government set a deadline to the ICF that any outstanding funding for projects under the Building Canada Fund – Major Infrastructure Canada (BCF-MIC) program, must have approval-in-principle by March 31, 2017. The ICF was not able to meet this deadline.

Financial Implications:

s.17

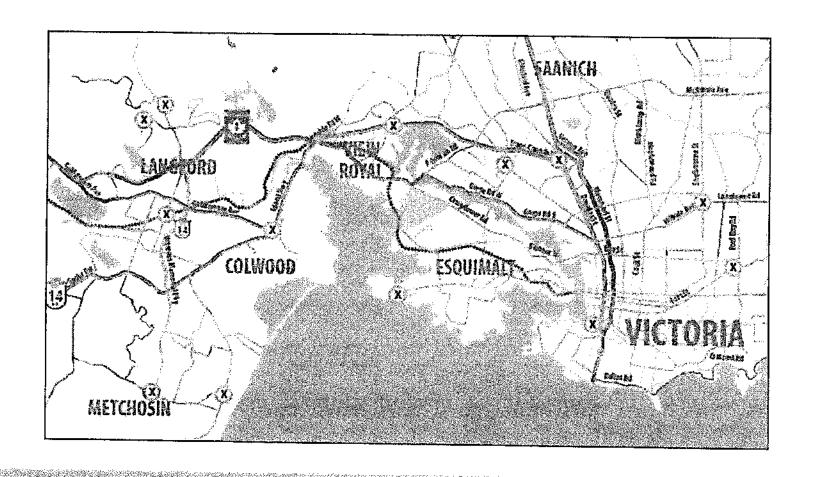
PROGRAM CONTACT

Kathy Kirby, A/Executive Director,

Transportation, Policy and Programs Branch, 250-588-3400

APPROVALS: Kirk Handrahan, AVADM Pat Marsh, CFO PM

Jan 26, 2018 Jan 31, 2018



CRD E&N Corridor - Overview



Ministry of Transportation and Infrastructure

Overview

- Complex variety of stakeholders
- Bayview Proposal
- Island Corridor Foundation Proposal
- S.13

- Vision for Transit in the Capital Region
- Vision for Transit: Douglas St. / Hwy 1
- Douglas St. / Hwy 1 Plan

Complex Variety of Stakeholders

- Local Governments
 - Capital Regional District, Victoria, Esquimalt, View Royal, Colwood, Langford,
- First Nations
 - Esquimalt First Nation, Songhees First Nation
- Developers
 - Bayview Properties Ltd.
- Island Corridor Foundation
- BC Ferries
- BC Transit
- Ministry of Transportation and Infrastructure

Bayview Proposal

 A business case was commissioned by Bayview Place to assist in pursuing the start-up of a commuter train passenger service on the E&N Railway between Langford and Victoria.

s.13,s.17

Island Corridor Foundation Proposal

Vancouver Island Rail Infrastructure Upgrade Project

- Projects supports Intercity Passenger Service (Nanaimo to Victoria).
- While the ICF remains optimistic regarding long-term upgrades along the full length of the north-south line (Victoria Sub), the ICF has identified and costed a series of infrastructure options that may be pursued between Victoria and Nanaimo.
- The total estimated cost of the project is \$42.7 million.
- ICF anticipates that a renewed passenger service would initially seek to serve weekday southbound passengers, likely with two daily return trips from Nanaimo (morning departures) to Victoria (returning late afternoon). Possibilities include integration with corridor trail networks for cycling/hiking trips and linkages with other transportation and tour operators (bus/ferry).

Vision for Transit in the Capital Region

- Population of the West Shore is expected to grow from 70,000 to over 115,000 by 2038.
 - By 2038, West Shore = 27% of region's population
- Between 2006-2016, traffic volumes along Hwy 1 increased 11%; additional 30% increase expected over next 25 years.
- Hwy 1 bus services carry between 340-450 passengers in peak directions, during peak hours.
 - Hwy 1 peak hour traffic volumes = apprx 2,000 4,000 vehicles in peak direction, during peak hours
- Investments in additional transit service and facilities are expected to increase transit ridership at a significantly faster rate than vehicle traffic.

Vision for Transit: Douglas St. / Hwy 1

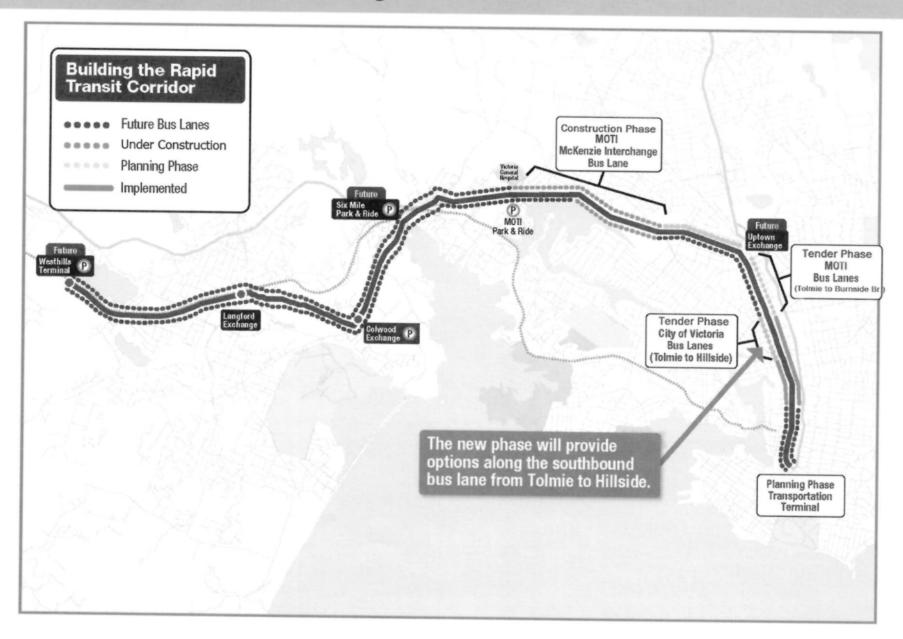
- BC Transit has developed a 25 year "Transit Future Plan" for the Victoria region
 - Endorsed by the VRTC, local governments and also supported by businesses and residents
- Recommends investment in transit between downtown Victoria and the Westshore
- Aligns with planned transit exchange at Uptown to act as major transit hub

S.

- Includes significant rework of interchange to accommodate efficient bus traffic
- The Ministry is committed to improving transit travel time and congestion along the Douglas St. / Hwy 1 corridor

February 15, 2018

Douglas St. / Hwy 1 Plan



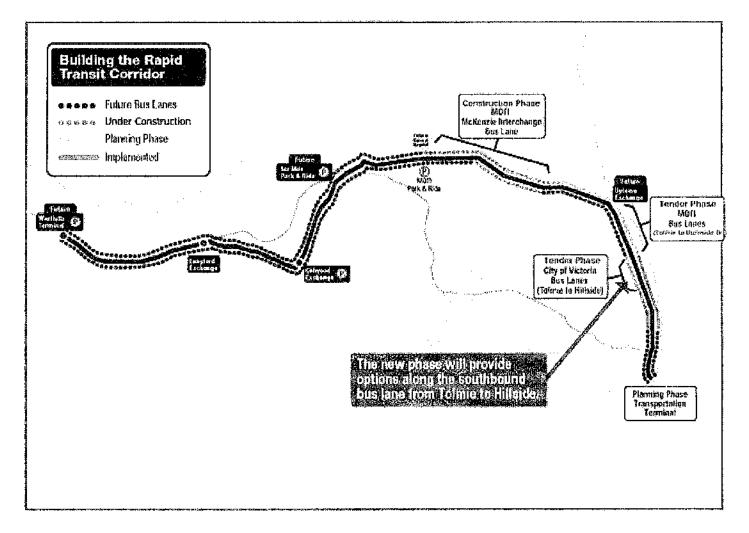
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APPENDIX 3 Douglas St. / Highway 1 Transit Infrastructure Upgrade Plans



Page 73 to/à Page 74

Withheld pursuant to/removed as

s.14;s.16;s.13;s.17

Commuter Rail in CRD Estimates Note

Ministry of Transportation and Infrastructure

Date: March 1, 2018

ISSUE

Use of the rail corridor in the CRD for commuter rail transit.

ADVICE AND RECOMMENDED RESPONSE

- The high commuter rail operational costs, and the level of potential ridership given transit bus alternative, create significant challenges to using the E&N corridor within the Capital Region as a potential commuter rail corridor.
- Consultation with the Esquimalt and Songhees First Nations must be taken into account as the E&N Corridor runs through their reserves.

BACKGROUND

- The viability of the E&N rail corridor, within the Capital Region District (CRD) and north to Courtenay, has been uncertain due to a number of ongoing issues:
 - Legal actions taken by the Snaw-Naw-As First Nation, Cowichan Tribes and the Halalt First Nation in respect of corridor lands;
 - o The efficiency of passenger rail or commuter services on the corridor; and,
 - The high cost to upgrade and operate the corridor in a safe and efficient manner.
- Congestion in the CRD has brought a renewed focus on the E&N corridor by a number of mayors, developers and the Province as a potential solution to address increasing commuter traffic between the Western Communities and Victoria.

PROGRAM CONTACT

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