



TSAWOUT FIRST NATION

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July 5, 2017

Barbara Desjardins, CRD Chair
Capital Regional District Board
490 Atkins Avenue
Victoria, B.C. V9B 2Z8

Dear Ms. Desjardins,

Re: Tsawout First Nation's response to the draft Island View Beach Regional Park Management Plan.

The Tsawout First Nation does not support the current draft *Island View Beach Regional Park Management Plan*. The Management Plan does not recognize Tsawout's Douglas Treaty¹ and aboriginal rights² to access and use resources in the park. It also does not provide a decision-making role for the Tsawout First Nation in the management of our traditional lands that are included within the park.

Recent decisions coming from the case of *Tsilqot'in Nation v. British Columbia* (year)³ clearly recognize that "...the doctrine of *terra nullius* (that no one owned the land prior to Europeans asserting sovereignty) has never applied to Canada, affirmed the territorial nature of Aboriginal title, and rejected the legal test advanced by Canada and the provinces based on 'small spots' or site-specific occupation."⁴ As Douglas Treaty signatories, this decision affirms that Tsawout has inherent title and rights to all the lands and waters within the W̱SÁNEĆ territory. When the Douglas Treaty was signed in 1852, this was the territory-wide worldview we held, and this is the view that governments must also take when engaging with indigenous peoples. Tsawout is committed to having open and ongoing discussion to establish a nation-to-nation relationship

¹ Claxton, Nicholas. (2003). The Douglas Treaty and the W̱SÁNEĆ traditional fisheries: a Model for Saanich peoples Governance. Unpublished MA Thesis, University of Victoria. Also see the court case where these rights were upheld: Saanichton Marina Ltd. v. Claxton, 1987 CanLII 2805 (BC SC), <<http://canlii.ca/t/2196m>>

² UBC First Nations Studies, 2017. "Aboriginal Rights." Accessed on July 4, 2017 from <http://indigenousfoundations.web.arts.ubc.ca/aboriginal_rights/> Aboriginal rights are enshrined in Section 35 of the Canadian Constitution, and in Section 25 of the Charter of Rights in Freedoms where the government ensured that Charter rights cannot "abrogate or derogate" from Aboriginal rights.

³ Osler, 2014. "Tsilqot'in Decision: The Sky is Not Falling." Osler website accessed on July 4, 2017 from <<https://www.osler.com/en/resources/regulations/2014/tsilqot-in-decision-the-sky-is-not-falling>>

⁴ Mandell Pinder, 2014. "Tsilqot'in Nation v. British Columbia 2014 SCC 44 – Case Summary" Accessed on July 4, 2017 from <<http://www.mandellpinder.com/tsilqotin-nation-v-british-columbia-2014-scc-44-case-summary/>>

with the local, regional, provincial, and federal governments, as well as having shared decision-making authority for how to best manage the lands and waters in the W̱SÁNEĆ traditional territory.

This past year, Tsawout First Nation participated in the RELAW (Revitalizing Indigenous Law for Air, Land and Water)⁵ project, which focused on revitalizing, articulating, and applying W̱SÁNEĆ laws ‘on the ground’ to real world environmental issues of concern. Tsawout First Nation and the W̱SÁNEĆ people⁶ have always had ancestral laws and have a long history of applying these laws to defend, protect, and manage the water and lands within the W̱SÁNEĆ traditional territory. We will continue to do so in the co-management of the shared lands and waters of Island View Beach.

The Tsawout First Nation hosted a workshop on Tribal parks in January 2017 which emphasized the core value that the Tsawout community places on ŁENENITEL (kwananital) “working together”. CRD Regional Park staff attended the workshop. However, this core value has not been incorporated into the Management Plan.

We have seven main concerns regarding the Management Plan:

1. The Tsawout are more than neighbours to the regional park and have legally protected Douglas Treaty and Aboriginal rights to resources and the use of lands and connected aquatic habitats in the regional park. Nowhere in the Management Plan are Douglas Treaty and aboriginal rights mentioned, which form Tsawout’s legal basis for use and interest in the management of the park. It is a serious omission that indicates that the CRD does not understand the importance of Island View Beach to the Tsawout First Nation, and legal basis for our role in protecting, managing, and using this landscape. The CRD needs to work more closely with Tsawout to co-write this section of the management plan because this presents an opportunity to educate park users, CRD staff, and the greater Capital Region about Tsawout, W̱SÁNEĆ people, the Douglas Treaty, Aboriginal Rights and Title, and the history of the lands in general.
2. The Management Plan does not adequately address the impacts of expanding recreational use on ecological and cultural values including wildlife, plant communities, and rare species. Under the Douglas Treaty, members of the Tsawout First Nation have the right to hunt in the park, to harvest food and plants, as well as to fish and hunt on the adjacent shorelines. These rights may be compromised by expanding recreational use of the park by dogs, horses, and people.
3. The Management Plan states that the CRD will be “working with the Tsawout First Nation to address their interests in the park” and that “regional parks staff will seek to work collaboratively with the Tsawout First Nation”. However, there is no defined process or mechanism to address shared management decisions. The Tsawout First Nation cannot support the Management Plan without a clearly defined decision-making

⁵ West Coast Environmental Law (2017). RELAW: Revitalizing Indigenous Law for Land, Air and Water. Accessed on July 4, 2017 from < <http://www.wcel.org/our-work/relaw-revitalizing-indigenous-law-land-air-and-water> >

⁶ The W̱SÁNEĆ people are collectively made up of the following four bands: Tsawout, Tsartlip, Pauquachin and Tseycum First Nations. While the four bands are divided under different “bands” under the Indian Act, they share the same traditional territory, history and descend from the same ancestors. Therefore, they collectively consider themselves to be one nation, known as the W̱SÁNEĆ people.

role in the management of the park. Tsawout has been working with the Parks staff to discuss this, but our concerns are an ongoing discussion that will require deeper and more meaningful consultation to adequately address the long-standing issues that have historically not been validated nor reconciled. This needs to be highlighted in the park management plan and made clear that as these discussions progress, changes may be made in the plan to reflect the concerns discussed as they arise.

If the CRD is serious about meeting the Truth and Reconciliation Commission's calls of action and is committed to establishing better relations with Tsawout and other First Nations within the CRD, then this process will take more time. There are many 'layers' of issues that need to be discussed openly and meaningfully to build a relationship based on a solid foundation of trust, respect, and transparency. Further, in the spirit of collaboration, the terms of engagement (not just consultation) should be defined by Tsawout to ensure that discussions are meeting our requirements according to WSÁNEĆ laws.


Tsawout has long prioritized that the coastal and aquatic habitats (including the wetlands that connect to Island View Beach Park) within Saanichton Bay and TIXEN (Cordova spit and the surrounding shores) be restored. These areas were rich in animal, fish, shellfish, and bird species that have been used for sustenance as well as ceremonial purposes. The integrity of the ecosystems that support these species are integral to the relationships we have with the lands, waters, animal and spiritual 'beings' that live among us. We have a sacred obligation and responsibility to take care of them, but it has been difficult for us to effectively live up to this obligation when our concerns have not been adequately addressed regarding the impacts from Island View Beach and the way this existing park management plan has been presented.

4. There appears to be no documentation regarding the proposed berm and the associated studies that were conducted. This is an important aspect that deserves to be mentioned, specifically the history and reason behind the decision to not go ahead with it. Tsawout understands that the studies confirmed that the cost and maintenance of the berm would not be cost-effective and overall would not accomplish the goal of effectively managing the water in the park. The berm and associated drainage has impacted the large wetland complex that is connected to our lands resulting in reduced wetland habitat and rapid vegetation change⁷.
5. Tsawout would ultimately like to see these wetlands protected and conserved, and are actively engaging our members regarding how this can be achieved. This will take a significant amount of time because there are competing interests for how to best achieve this. We are currently undergoing engagement with our members – specifically the CP landowners near the wetlands – to gain their input and views about how they want to manage their CP lands. The CRD needs to understand that we are actively doing this important work, but discussing land is a very sensitive issue with our membership and it will take a significant amount of time to ensure that we do this work in a way that respects WSÁNEĆ laws, as well as the wishes of the families and community members for how these lands and waters will be managed now and into the future.

⁷ Page, Nick, (2010). Cordova Shore Conservation Strategy. Capital Regional District and Raincoast applied Ecology.

6. Off-leash dogs are an ongoing concern in the regional park because of their impacts to birds such as Brant (*Branta bernicla*) that rely on the shoreline. It is well known that off-leash dog use extends north of the park into Tsawout lands and the adjacent shoreline. Instead of taking measures to reduce dog use in the park, the Management Plan creates a new trail that is accessible to on-leash dogs and promotes that park as a destination for off-leash dogs. Seasonal and voluntary restrictions on off-leash dogs have proven to be ineffective in managing the impacts of dogs in the parks, yet the Management Plan proposes more use of such restrictions. There remains to be some deeper discussions regarding this issue, and it needs to be highlighted that the CRD is committed to having conversations regarding this issue specifically.
7. Tsawout First Nation is severely understaffed when it comes to being able to actively address and participate in all discussions in a timely manner regarding lands and water management in our traditional territories. We are trying to do the best that we can, but often rely on external allies to help us. We understand the co-management of the lands and waters at Tsawout will require the collaboration of all parties involved to achieve our goals, and are committed to discussing how this can be achieved. We can not do this alone; we are obligated to protect federally-recognized species at risk on our lands which is impossible to achieve in isolation of one another, especially since the CRD and the District of Central Saanich lands are within the areas we want to protect and restore. There needs to be more efforts towards educating people, both within and outside Tsawout to develop realistic, achievable protection and management strategies.

We thank you for your time in reviewing this letter. We look forward to engaging more with the CRD regarding the Draft Island View Beach Park Management Plan, in the spirit of ƆENENITEL (kwananital) "working together." We look forward to having our responses included in the existing Management plan. If you have any further questions regarding this response, please do not hesitate to contact Gwen Underwood or Chief Harvey Underwood at the contact information provided.

Sincerely, 

Chief Harvey Underwood

Gwen Underwood, Tsawout Lands Manager