INTERFACE 2010

PLANNING FOR WET'SUWET'EN CROWN-SETTLEMENT INTERFACE LANDS
Friendship Centre - June 17-18th

WET'SUWET'EN PERSPECTIVE ON INTERFACE PLANNING

Wet'suwet'en have over 250 years experience Interfacing with the Crown, its agencies, and settlers on our traditional territories. This Interface, or point of contention, is primarily about recognition of Wet'suwet'en title, rights and governance based on the Inuk Nu' at'en (Our Laws), and the asserted authority of the Crown over the land, water and resources on our traditional territories.

The following is a quick review of the historical Interface background of Wet'suwet'en versus the Crown.

In 1763, the Royal Proclamation stated *" Nations or Tribes of Indians with whom we are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such parts of our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them or any of them as their Hunting Grounds."*

The wording of this Act is a little confusing but it is the first recognition of aboriginal title on the land. The Public Lands of the Dominion Act of 1872 states:

"INDIAN TITLE: Article 42. None of the provisions of this Act respecting the settlement of Agriculture lands, or the lease of Timber Lands, or the purchase and sale of Mineral lands, shall be held to apply to territory the Indian Title to which shall not at the time have been extinguished."

English is a funny language. . . .it can be interpreted many ways, and is often used to benefit the speaker's self-interest. However, the following represents the Wet'suwet'en perspective and position.

Wet'suwet'en have never ceded, surrendered or in any way relinquished title to the traditional lands declared by the British Crown in 1763, and in 1997, recognized by the Supreme Court of Canada in the Delgamuukw decision.

Over the past 250 years, Wet'suwet'en have asserted title, rights and interests on the traditional territories that have sustained the people, provided an economic base to trade with other First Nations, and been under the stewardship of Hereditary Chiefs.

In response; the Crown has legislated to suppress traditional culture, supplanted spiritual beliefs with organized religion, enforced an education system designed to "take the Indian out of the Indian," practiced apartheid through the reserve system, and replaced traditional governance systems with Indian Act elected Band councils with no authority beyond the reserve.

Before European contact, an alliance of five Wet'suwet'en clans and thirteen house chiefs represented the territorial interests of their people over 22,000 sq. kms. of territory at the headwaters of the Wet'zinkwa (Morice/Bulkley Rivers) and the Fraser/Nechako Rivers.

Agreements with other nations, clans or houses on use of territories and resources, affirmation of alliances, dispute settlements, breaches of Wet'suwet'en law as well as births, deaths, and the passing on of names took place in the Feast Hall where everyone witnessed the business.

. . .3

Under Wet'suwet'en traditional governance House Chiefs and members were responsible for the well being of the people, and stewardship of the land, waters, and resources of the territories.

Our Inuk Nu' at'en (Our Laws) govern the title and use of lands and resources by House Chiefs and their members through the Feast system.

The Crown however, banned Feasts (Bahlats), community gatherings, and the potlatch system for many years and attempted to replace it with a European style governance structure under the Indian Act.

Whether this was a conscious strategy by the Crown to create internal divisions, tensions, and dependency among First Nations or blind ignorance of traditional governance systems is unclear, but the result has been very effective in destroying traditional indigenousness governance.

Today in BC, Crown agencies and government officials prefer to "consult" primarily with the elected Band chief and council. They do not recognize traditional governance systems, and ignore hereditary title-holders who "speak for the people of the land and resources."

The Crown recognizes only what it creates, and seems to believe elected Reserve Band councils represent the whole First Nation community.

Crown agencies meets their "legal obligation to consult. . .and accommodate" aboriginal title by notifying Band Councils with neither the legal authority on traditional territories, nor the mandate, or capacity to respond to *notifications* of land and resource planning decisions, changes to legislation, land alienation, or permitting of resource development by private developers. Responses are time limited, and no response is considered consent. This is unacceptable to Wet'suwet'en.

. . .4

The Government of Canada's Indian Act policies continue to deny aboriginal peoples the land and resources necessary to be active participants in the local, regional and national economy. The BC Government talks of treaty, a new relationship, shared decision making, revenue sharing and reconciliation of aboriginal title and rights, while accelerating the alienation of land and allocation of resources to private interests.

On the 10th anniversary of Delgamuukw, Wet'suwet'en Chiefs agreed they could no longer tolerate the alienation of our lands and exploitation of our resources without our free, prior and informed consent.

In 2007, Wet'suwet'en began actively asserting title, rights, and interests on our 22,000 sq. kms of traditional territories. Case law supports our title, strength of claim, and negotiation with private sector proponents is cheaper then litigation with the Crown, and more time sensitive. Time is money in the private sector.

Progressive private sector land and resource development proponents realize they must communicate and accommodate Wet'suwet'en title, rights and interests *before* applying for land and resource development permits to ensure investors learn if the project is acceptable. This action is gathering momentum with the private sector, and hopefully the attention of provincial statutory decision makers and political leaders.

Wet'suwet'en want recognition as first peoples, of their governance system, respect as title-holders, and reconciliation through dialogue, negotiation, and agreements on our title, rights and interests in the territories.

Today, Wet'suwet'en Hereditary Chiefs, clan and house members continue to practice their a traditional role and responsibility to ensure their territories sustain the people, and future , through acceptable, environmentally responsible use and development of land and resources.

. . .5

The Wet'suwet'en Hereditary Chiefs and Office of the Wet'suwet'en appreciate this unique opportunity to participate in early discussions on the challenges of Interface planning, community and First Nations collaboration, lands in dispute, were Wet'suwet'en, Crown and Settlement authorities overlap, and jurisdictions compete.

Continued dialogue on Interface planning could lead the Crown to "Reform it's relationship with First Nations to ensure more First Nations' involvement in decision-making, increase environmental and cultural protection, and balance the potential benefits among all key stakeholders" (Title Holders?).

Wet'uwet'en interface concerns and issues arise where House territories intersect with rural, urban, community and private sector development. These developments include water use, forest harvesting, mining, agricultural expansion, and transfer of Crown land (lands in dispute) to private interests which may infringe on the Aboriginal Right to determine the use of territories.

SUMMARY:

In conclusion. . . planning, management and development of lands, waters and resources on Wet'suwet'en territories is particularly complex given that international and Canadian law require special protection for First Nations.

Canada is party to international human rights and environmental treaties that recognize the unique connection between indigenous peoples and the land. In addition, Canada has a duty under international environmental law to encourage sustainable development and protect the quality of its environment.

First Nations have a Constitutional right to self-determination, which includes the right to decide how their traditional lands and resources are used. They also have a right to practice their culture which requires access and use of traditional lands.

. . .6

The United Nations declaration on the Rights of Indigenous Peoples emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions and to pursue their development in keeping with their own needs and aspirations.

It also prohibits discrimination against indigenous peoples and promotes their full and effective participation in all matters that concern them, and their right to remain distinct and to pursue their own visions of economic and social development.

The Canadian Constitution, meanwhile, establishes aboriginal rights at the domestic level, and a growing body of Canadian case law, notably the 2004 *Haida Nation v. British Columbia* decision, has strengthened the protection of First Nations by mandating consultation with and accommodation of the communities.

Consultation and accommodation by the Crown's definition is "good faith efforts to understand each other's concerns and move to address them."

First Nations bear an unfair burden at every point in the land and resource development process, and urgent law reform is needed to shift at least some of that burden onto government and industry.

Current law presumes what is an acceptable use of a piece of land, but the presumption must consider aboriginal title, rights and interests that require heightened scrutiny of the Crown's land and resource development decisions with recognition of the aggregate or cumulative impacts to the territories.

Reform should ensure First Nations' involvement in the ***initial*** decision-making process, increase environmental and cultural protection, and ensure First Nations benefit from use and development of their land and resources.

. . .7

International and constitutional standards provide a framework for the protection of First Nations that calls for heightened scrutiny of projects affecting these indigenous peoples and the incorporation of aboriginal rights into domestic law.

The Office of the Wet'suwet'en Natural Resource department's terms of reference for stewardship of the territories is based on a holistic, eco-based, approach that looks not only on the specific land or resource development but the cumulative ramifications of project development in context with previous disturbance, current demands and future ecological equilibrium of the land, water and resources.

Together we can influence future of land and resource planning policy through the inclusion and collaboration of all title-holders.

The recognition of Wet'suwet'en Hereditary Governance, and integration of Wet'suwet'en (aboriginal) title, rights and interests by Interface planners and their agencies is the first step to moving forward as one for the betterment of all.

Prepared by: David G. Belford, Office of the Wet'suwet'en
Date: June 3, 2010