

For Immediate Release

Federal Courts Dismiss First Nations Court Action

Prince Rupert, B.C.; September 22, 2006 – The Federal Court of Canada has dismissed the first of two judicial reviews initiated by the local Metlakatla and Lax Kw'alaams First Nations bands, known as the Coast Tsimshian, pertaining to the construction of the container terminal in Prince Rupert.

The purpose of the judicial review was in response to an application by the Metlakatla and Lax Kw'alaams Indian bands challenging a “pending decision of the Minister of Transport to authorize the Fairview Terminal Conversion.”

After hearing all of the evidence presented by the Crown on this issue, Mr. Justice von Finkenstein concluded: “In my view, this failure by the Applicants to properly plead their case is fatal and accordingly, I have no choice but to dismiss this application.”

While Mr. Justice von Finkenstein commented in the ruling on the need for the Crown to demonstrate the adequacy of the consultation process, this was outside the scope of the judicial review before the courts. A review of the Federal Government’s consultation process that commenced in 2004, as well as the subsequent offer of accommodation, have yet to be argued before the Courts. It is anticipated that this evidence will be presented before the courts in possible future court hearings.

However, the judge did note that: “On August 30, 2004, the two bands representing the Coast Tsimshian were informed of the proposed conversion of the Fairview Terminal. The Coast Tsimshian requested consultations on March 30, 2005. Correspondence was exchanged and meetings held over the next 18 months... Transportation Canada took the lead role in the consultations with the Coast Tsimshian on August 2005.”

Following extensive consultation and negotiations with the Metlakatla and Lax Kw'alaams bands, an offer of accommodation was presented on February 28, 2006. The \$7.65 million offer of accommodation features employment opportunities, human resource development initiatives, and support for First Nations business ventures associated with the Port development. Specifically, the proposed agreement includes:

- \$4 million to an Aboriginal Employment Training Organization;
- \$3.4 million to an Aboriginal Economic Development Organization;
- \$175,000 to employ a Skills Training Coordinator;
- \$150,000 for economic development studies and business planning.

The Coast Tsimshian have yet to respond to the offer.



“We look forward to the Crown demonstrating to the Court, at the appropriate time, that meaningful consultation did occur, that the consultation was appropriate, and that indeed a generous offer of accommodation was made as a result of that consultation,” said **Don Krusel**, Prince Rupert Port Authority President and CEO. “We remain on track with construction and are confident in the scheduled completion of the project during the Summer of 2007.”

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Contact: Barry Bartlett, Manager Corporate Communications & Public Affairs
Phone: (250-627-2509 Cell (250) 627-9693
Email: bbartlett@rupertport.com

200 - 215 Cow Bay Road • Prince Rupert B.C. • Canada • V8J 1A2 • Phone (250) 627-8899 • Fax (250) 627-8980 • email: pcorp@rupertport.com

Administration Portuaire de Prince-Rupert • 200 - 215, Chemin Cow Bay • Prince Rupert, Colombie-Britannique • Canada • V8J 1A2

www.rupertport.com

Canada¹³¹



Chief Councillor Garry Reece and Council
Lax Kw'alaams Indian Band
P.O. Box 459
Prince Rupert, BC
V8J 3R2

Chief Harold Leighton and Council
Metlakatla First Nation
P.O. Box 459
Prince Rupert, BC
V8J 3R2

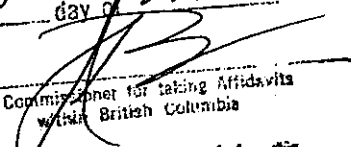
February 28, 2006

Dear Sirs:

This is further to the letter to you dated January 18, 2006 from the Honourable Stephen Owen which enclosed a revised proposal dated January 18, 2006, and in response to your counsel's letter to Ardath Paxton Mann, Assistant Deputy Minister, Western Economic Diversification Canada (WD), dated January 20, 2006 requesting further clarification of that proposal. We note that the parties respective legal counsel met for the purpose of providing such clarification and that representatives of the Bands, the Port and Western Economic Diversification Canada have had further discussions in that regard.

We have considered carefully the substance of those discussions and we wish to present the enclosed proposal which we feel is responsive to your requests for clarification, and which we feel is a very fair and reasonable offer in relation to any potential impacts to your asserted rights and title claims with respect to Phase 1 of the Fairview Terminal Conversion Project. We also note that we have provided for an acceptance deadline of 12 noon on March 8, 2006, which we think is reasonable in the circumstances since the substance of the offer has been under consideration by you for several weeks.

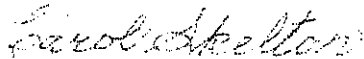
This is Exhibit "H" referred to in the
affidavit of Steve Rhoades
sworn before me at Vancouver
this 30 day of March 2006


A Commissioner for taking Affidavits
within British Columbia
I hereby Public in and for the
Province of British Columbia



For convenience of reference we have dated the revised proposal to
February 28, 2006.

Yours sincerely;



The Honourable Carol Skelton, P.C., M.P.
Minister of Western Economic Diversification
On behalf of Canada



The Honourable David Emerson, P.C., M.P.
Minister of International Trade and
Minister for the Pacific Gateway and the Vancouver-Whistler Olympics
On behalf of Canada

cc. The Honourable Lawrence Cannon, P.C., M.P.
The Honourable Jim Prentice, P.C., M.P.
Don Krusel, President and CEO, Prince Rupert Port Authority
Gregory J. McDade, Ratcliffe & Company



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Prince Rupert, BC
V8J 3R2

Chief Harold Leighton and Council
Metlakatla First Nation
P.O. Box 459
Prince Rupert, BC
V8J 3R2

February 28, 2006

Dear Sirs:

As you are aware, the proposed conversion of the Fairview Terminal from a bulk handling facility to a container handling facility involves, in general terms, the replacement of the current loading and unloading infrastructure with cranes and other infrastructure suitable for container handling, as well as, the extension of the dock to accommodate this activity and the anticipated container vessels. This proposal described as "Phase 1" of the "Fairview Terminal Expansion" is considered a stand-alone project as the success of the proposed container handling facility will largely determine whether, in fact, there will be any further expansion/development phases and what those future initiatives might entail. The conversion project is contingent on significant financial involvement and risk by various contributors including CN Rail, Maher Terminals of Canada Corp., the Government of the Province of British Columbia, Western Economic Diversification Canada and the Prince Rupert Port Authority. If this project succeeds, then the benefits will flow throughout the local community.

The environmental and constitutional consultative processes to date and the various communications between the representatives of the Metlakatla and Lax Kw'alaams, the Port, Transport Canada, Environment Canada, Western Economic Diversification Canada and their respective legal counsel have elicited a significant amount of information related to your asserted claims and concerns. Some of these claims and concerns, such as potential burial sites in the subsurface below the proposed dock extension, have resulted in mitigation measures in the environmental screening document. Other concerns relate to a greater involvement in the future development of the Port, and include the sharing of information and the availability of economic development and employment opportunities for Metlakatla and Lax Kw'alaams and other First Nations.



We have given serious consideration to this information and we would like to present to you the following offer. We feel this offer fairly addresses the concerns raised and reflects a genuine desire to work with you to provide for economic development and employment opportunities for Metlakatla and Lax Kw'alaams and other First Nations in the Prince Rupert area so that First Nations are able to participate directly in the anticipated success of the conversion project. In addition, it sets the stage for future involvement and cooperation between all parties.

A. To address your concerns in relation to stated needs for special employment opportunities we offer the following:

1. The Port will make reasonable efforts to ensure that Metlakatla and Lax Kw'alaams peoples are given special opportunities for employment in the construction of the container facility, in the operations of the container facility, and in economic development opportunities that flow from the operations of the container facility. More specifically:
 - a) during Terminal Construction, the Port will negotiate with the contractors to hire up to 45% of their required labour from qualified Metlakatla and Lax Kw'alaams people. Specifically:
 - The Port will request from each of the three primary construction contractors a list of positions that they plan to fill from the local employment market.
 - The list should identify the approximate number of positions to be filled, the position's qualification requirements (if any), and whether it is a unionized position.
 - When required, descriptions of applicable listed positions will be forwarded by the contractor to the proposed skills training coordinator (as described in section A(3)) to identify eligible candidates from the Metlakatla and the Lax Kw'alaams First Nations.
 - The skills training coordinator will have 10 business days to identify to the contractor such potential employment candidates and provide any reasonable information requested by the contractor (i.e. a resumé).
 - Candidates will be interviewed by the contractor to ensure they meet the position's qualification requirements.
 - Any positions remaining unfilled after 15 business days will be sourced from the North Coast region.

- b) to endeavour to secure Metlakatla and Lax Kw'alaams participation in the terminal operations, the Port will work with the International Longshoremen and Warehouse Union, Maher Terminals of Canada Corp., CN Rail, and the Canada Border and Security Agency in an effort to ensure that their work forces reflect the current demographics of the general Prince Rupert population.
- c) to provide Metlakatla and Lax Kw'alaams business opportunities as well as employment participation in such operations, the Port, in consultation with Metlakatla and Lax Kw'alaams, will establish a policy and action plan for the awarding of contracts to qualified Metlakatla and Lax Kw'alaams businesses providing port-related services such as warehousing or security:
- (i) with respect to the Canadian Border Security Agency's container examination facility the Port will include in its request for proposals that one of the selection criteria in awarding this turnkey building and service contract will be the level of First Nation involvement with the proponent from a financial and business perspective;
 - (ii) with respect to Port security, the Port's intention is to negotiate and in good faith attempt to come to an agreement with Metlakatla and Lax Kw'alaams on the following partial list of items which would form the basis of a contract between the Port and the Metlakatla and the Lax Kw'alaams for Port-controlled security services,
 - Scope of Work: this would define the nature of the security services to be provided
 - The contract amount and/or price table, if appropriate
 - The number of security positions
 - Position qualification, such as valid class 5, bondable, first aid. Facility Security Officer transport Canada Training Course, security background check satisfactory to the Port, etc.
 - Any equipment requirements, such as uniforms, vehicles, or safety devices
 - Security Performance criteria
 - Insurance requirements
 - Reporting requirements
 - Contract term, renewal options and conditions
 - Termination clauses
 - (iii) with respect to a fuel tender, Maher Terminals has indicated to the Port that it will consider special arrangements with the Metlakatla and Lax Kw'alaams under certain conditions.

2. Canada will seek authorization to provide, and upon obtaining such authorization will provide in the aggregate, \$4 million to an "Aboriginal Employment Training Organization" ("Organization"). This funding would be non-repayable, would be provided over a period of four years, and would be spent on skills training and development and program administration. Of the \$4 million dollar fund, \$2.67 million will be specifically dedicated for the benefit and use of the Metlakatla and Lax Kw'alaams First Nations.

Canada will work with the Metlakatla and the Lax Kw'alaams First Nations and other First Nations on the structure and control of the Organization and to establish a formula for allocation of the \$1.33 million balance to the different eligible First Nations groups. This formula would be tied to Band demographics and geographic location.

3. The Port will provide a further \$175,000 over three years to the above Aboriginal Employment Training Organization to enable the Organization to employ a skills training coordinator.
 4. Canada will seek authorization to provide, and upon obtaining such authorization will provide a contribution to the Community Futures Development Corporation of the Pacific Northwest to undertake a training Needs Assessment for Metlakatla and Lax Kw'alaams and other First Nations in the Prince Rupert and Terrace areas. This needs assessment will be developed with, and inclusive of, First Nations.
- B. To address your concerns in relation to the need for special assistance to better equip the Metlakatla and Lax Kw'alaams First Nations peoples to exploit business opportunities in relation to the Port's container operation, we offer the following:

1. Canada and the Port will seek authorization to provide, and upon obtaining such authorization will provide in the aggregate, \$3 million to an "Aboriginal Economic Development Organization" ("Organization"). The Organization would, in turn, loan the funds to aboriginal businesses that propose to exploit business opportunities associated with the operations of the Port and that can demonstrate potential for economic viability. Of the \$3 million dollar loan fund, \$2 million will be specifically dedicated for loans for the benefit and use of the Metlakatla and Lax Kw'alaams First Nations. This funding would be provided by the Government and the Port over a period of four years. The intent is that the Organization would establish a revolving loan fund with loans made to qualifying aboriginal businesses.

Canada will work with the Metlakatla and the Lax Kw'alaams First Nations and other First Nations on the structure and control of the Organization and to establish a formula for allocation of the \$1 million balance to the different eligible First Nations groups. This formula would be tied to Band demographics and geographic location.

2. As part of the above total, the Port will contribute \$400,000 to the above Aboriginal Economic Development Organization for the purpose of administering the loans and providing guidance and mentoring to businesses that borrow the funds.
3. Canada will seek authorization to specifically allocate, and upon obtaining authorization will specifically allocate a minimum of \$150,000 under Western Economic Diversification Canada's existing departmental economic development programming for the benefit of the Metlakatla and Lax Kw'alaams First Nations to support feasibility studies and business planning related to opportunities resulting from Phase 1. Proposals to Canada must meet all program criteria and will be subject to a due diligence review.

C. The Prince Rupert Port Authority, in consultation with First Nations, will develop a proposal supporting a recommendation to Canada to establish a permanent position on the Prince Rupert Port Authority's Board of Directors and to provide for the nomination by First Nations of a director to fill that position.

The conditions tied to acceptance of this offer are that:

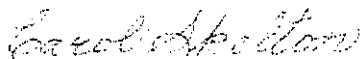
1. the Parties undertake to execute such other documents as may be required to carry out the terms of this offer;
2. the Lax Kw'alaams and Metlakatla will take all necessary steps to immediately withdraw the application for Judicial Review filed in the Federal Court of Canada on October 25, 2005 (Court file T-1890-05) and the application for Judicial Review filed in the Federal Court of Canada on January 17, 2006 (Court file T-89-06);
3. upon acceptance of this offer, the Lax Kw'alaams and Metlakatla agree that the Crown (including the Port) has fulfilled all obligations under the Canadian Environmental Assessment Act and the Canadian Environmental Protection Act respecting Phase 1;

4. upon obtaining authorization for the programs set out in clauses A (2), A(4), B (1) and B(3), the Crown (including the Port) will have fulfilled any obligations that the Crown (including the Port) may have to consult and accommodate the Lax Kw'alaams and Metlakatla interests respecting Phase 1;
5. the Port and Canada will proceed diligently and in good faith to implement the terms of this offer;
6. so long as the Crown and the Port are proceeding diligently and in good faith to implement the terms and conditions of this offer, the Lax Kw'alaams and Metlakatla will not commence or take any action or proceeding or do any act that would directly or indirectly impede, stop or otherwise interfere with the carrying out to completion of Phase 1, including without limitation any funding in relation to Phase 1 and any disposal at sea of dredged material; and
7. the Metlakatla and Lax Kw'alaams will use their best efforts to have the Hereditary Chiefs of the Metlakatla and Lax Kw'alaams support, and where applicable, approve and agree to the terms and conditions of this offer.

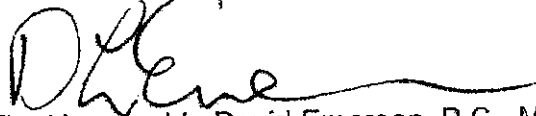
We would like to provide sufficient time for you to consider the foregoing offer and accordingly this offer will remain open until 12 noon on March 8, 2006. The acceptance of this offer must be in writing, be executed by, or on behalf of, both the Lax Kw'alaams and the Metlakatla First Nations and be delivered to my attention at the address for delivery set out below.

We of course would be pleased to discuss any aspect of this offer if you have any questions or require clarification.

Yours sincerely;



The Honourable Carol Skelton, P.C., M.P.
Minister of Western Economic Diversification Canada
On behalf of Canada



The Honourable David Emerson, P.C., M.P.
Minister of International Trade and
Minister for the Pacific Gateway and the Vancouver-Whistler Olympics
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The Honourable Jim Prentice, P.C., M.P.
Don Krusel, President and CEO, Prince Rupert Port Authority
Gregory J. McDade, Ratcliffe & Company

This offer is hereby accepted this ____ day of _____, 2006 by:

On behalf of the Lax Kw'alaams First Nation

On behalf of the Metlakatla First Nation

Please return to:

The Honourable Carol Skelton, P.C., M.P.
Western Economic Diversification Canada – BC Office
Suite 700, 333 Seymour Street
Vancouver, British Columbia
V6B 5G9