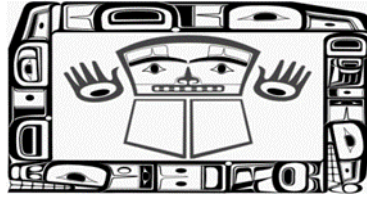


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### **Submission to Expert Panel on Canadian Environmental Assessment Act, 2012 (CEAA 2012)**

Lax Kw'alaams is aware that your mandate is to review federal environmental assessment processes associated with the Canadian Environmental Assessment Act, 2012 (CEAA 2012), which includes consultation with indigenous groups.

On your recent trip to Prince Rupert, the panel heard from a number of indigenous groups, but did not hear from Lax Kw'alaams, who together with Metlakatla, is the aboriginal title holder to the territory where the panel met. Lax Kw'alaams inability to participate in panel hearing that were hosted within its territories and the meagerness of this submission highlight some of the issues facing indigenous people in Canada, and particularly Lax Kw'alaams.

#### **Background**

Lax Kw'alaams' territory stretches across a vast land and seascape in the northwestern British Columbia from Terrace to the Nass Valley and westward (see attached map). Like Metlakatla, Lax Kw'alaams has been heavily impacted by the intensity of development within its territory. In the past, Lax Kw'alaams has been reliant on external lawyers and consultants to participate in these processes. The result has been a lack of knowledge retention and inability to develop capacity within the community.

Very recently, Lax Kw'alaams decided on a new approach to government administration and information flow. Rather than giving its knowledge and information to external experts, lawyers and consultants to develop expertise and become information brokers to the band and subsequent Councils, Lax Kw'alaams is creating an internal governance structure and implementing mechanisms, policies and controls so it will be capable of retaining its own valuable knowledge.

Unfortunately, the CEAA 2012 Expert Panel Review landed on Lax Kw'alaams in the midst of a tsunami of projects, and amid this brave internal undertaking. Since initiative such as internal capacity building for proper land and resource management take time, money, and intense planning, not to mention the significant commitment of Mayor and Council, an engaged administration, and mechanisms to communicate back to the membership, the ability to provide an elaborate submission was simply lacking at this time. However, over the longer-term government and industry will benefit from the effort of Lax Kw'alaams as it is better able to plan and engage in planning and responding to project proposals.

It will, however, require the cooperation of other governments, government institutions and, to some extent, industry.

#### **Meaningful engagement requires Capacity**

Lax Kw'alaams has been the primary steward of this territory for tens of thousands of years. Its unparalleled knowledge of the land, waters and habitat is essential to any environmental assessment. Like other indigenous nations in Canada, Lax Kw'alaams has been heavily impacted by the events of the past, which have been driven by the policies of the Government of Canada or its predecessor. This has resulted in a heavy reliance on a parade of external advisors, and the enrichment of external interests

while Lax Kw'alaams' economic base is slowly eroded. Lax Kw'alaams therefore considers it crucial that it be represented in all decisions respecting the use of its territory.

However, this is not possible if it lacks internal capacity to meaningfully engage with governments and proponents. If Lax Kw'alaam is reliant on outside advisors, it is effectively deprived of its voice, and while the Crowns may still be able to meet the formal legalities of the duty to consult, the sad reality is that meaningful consultation does not occur and the legacy of injustice continues.

Canada not only has a fiduciary relationship, but it has endorsed the *UN Declaration on the Rights of Indigenous Peoples* which recognizes Lax Kw'alaams' land rights, and, in part, a commitments to consult and cooperate with indigenous peoples through their own representative institutions, a right to free, prior and informed **consent** to a project, as well as the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

Canada has acknowledged the capacity deficit and a responsibility to address this for many years. However, the fact remains that the elements of reconstructing internal capacity to meet the intensity of resource development in Lax Kw'alaams territory means that processes such as the Canadian Environmental Assessment process will need to allow for this restructuring.

#### **A Collaborative Process**

To avoid conflicts, delays, and unnecessary expenditures with respect to Environmental Assessments, it is recommended that

- Lax Kw'alaams must be provided with sufficient funding support and ample opportunity to build its internal policy, administrative capacity, and accountability mechanisms;
- Timeframes must be sufficiently adaptable to enable proper accountability measures to be implemented such that they allow for internal consultation and proper decision-making;
- projects must be introduced to Lax Kw'alaams early, and it must be made clear to proponents that Lax Kw'alaams consent to developments in the territory is a necessary component of project approval;
- Lax Kw'alaams must be part of the decision-making processes for projects that occur within its territories;
- Lax Kw'alaams must be included in the monitoring of projects, including funding to support it in undertaking integrated environmental resource management on an on-going basis.

Lax Kw'alaams Band  
December 21, 2016