

GOLDSTREAMNEWS

Tsartlip threatening legal action

By Edward Hill
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Band may sue developer over destruction of Skirt Mountain cave

The Tsartlip First Nation is mulling legal action against Bear Mountain developers for destroying a cave on Skirt Mountain, in the wake of rejecting a mediated settlement.

Chief Chris Tom said the Tsartlip's membership set out a mandate to protect the cave and any other sites deemed sacred to First Nations. The band has cast a wide net, vowing to protect sites throughout the Saanich Peninsula and the West Shore.

"Our community won't stand back. Developers better think twice before developing in our area," Tom said at a press conference Tuesday. "We will stand tough and fight back."

Tom said negotiations, prompted by the cave dispute, were biased toward the developers and never properly dealt with preserving the site. The grievances go deeper. They want the province to open up the Heritage Conservation Act to account for sacred areas.

Tsartlip Coun. Don Tom said the band was seeking legal advice on pressuring the government to rewrite the HCA, and for compensation from Bear Mountain for the cave. "I still believe we are in negotiations," Coun. Tom said. "The No.1 goal is to save the cave. If it is destroyed, we are seeking legal counsel so other sites are not destroyed."

Bear Mountain developer Les Bjola confirmed Tuesday the cave had indeed collapsed due to blasting in the area. He said work restarted after signing an agreement with the Songhees and Esquimalt First Nations last week. Bjola said the cave was discussed "at length" during the week of negotiations at the end of November. "Everything was on the table and no one prevented anyone from expressing their point of view."

He dismissed the Tsartlip's claim of seeking compensation, saying Western Forest Products transferred 23 acres to the Tsartlip five years ago as part of a contract not to claim land in the area. That agreement was transferred to Bear Mountain Resorts.

At the press conference, Chief Tom denied that contract absolved the Tsartlip of rights to protect the land. Bjola says they have it in ink. "Where do they come off thinking they can be compensated for something, when they got 23 acres and signed an agreement not to get in the way of development," Bjola said. "This is private land," he continued. "If they are able to lay claim for a spiritual purpose, private property means nothing in this province."

Spiritual sites are not covered under the Heritage Conservation Act, a legal point at the heart of this dispute. Such sites are usually kept secret to within families in aboriginal bands and are rarely spoken about. Earlier this year, some First Nations claimed the cave as a past bathing site and sacred location, but it was also deemed geologically unstable. In November, archeological consultants drained and filled it with tires and matting to preserve any midden or aboriginal artifacts, in anticipation of an eventual collapse.

That action, plus the announcement that the cave's roof would be removed to continue the archeological survey, spurred First Nations to stage a protest. That led to negotiations and the agreement signed last week by Bear Mountain, Langford, the province, and Songhees and Esquimalt First Nations. Tsartlip were partners in the talks, but did not sign. The agreement outlines protocols to protect other sacred sites on the mountain, to form a permanent working group to address aboriginal concerns, and commits to building a First Nations interpretive centre. It also commits to transferring \$1 million and 20 acres of Provincial Capital Commission land, near the future Spencer Interchange, to the Songhees. That land was already on Songhees treaty table negotiations. Although not in the agreement, Langford Mayor Stew Yong and View Royal Mayor Graham Hill are seeking a new casino revenue sharing schem with the municipalities and local First Nations. First Nations economic development, in the form of a small casino, is also still in the works.