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POLICY ADVISORY & ECOLOGICAL SERVICES

PL 03

30350-40/Ashcroft-04

ePIC #	DM
RECEIVED JUL 16 2003 Log # 92303 Environmental Assessment Office	DSPP
	MCS
	PAD ✓
	PAM ✓
	PAO
	ePIC
	Other

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Pages: 4 including this page

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Date: 07/15/03

Re: **Bonaparte comments draft**
terms of reference

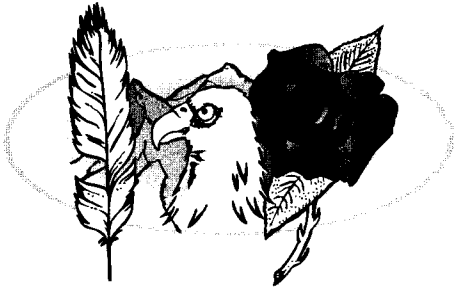
Fax No: 250-314-1788

X Urgent For Review Please Comment Please Reply Please Recycle

Martyn

There was a typo in the first para. re: when the Ashcroft Ranch was purchased. I have fixed this typo. Please use this as the official version.

Thanks



Bonaparte Indian Band

Stuctwesemc Indian Government of the Shuswap Nation
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30350-40/Ashcroft-04
ePIC # 15524
RECEIVED
JUN 21 2003
Log # 92303
Environmental Application for

DM	
DSPP	
MCS	
PAD	✓
PAM	✓
PAO	
ePIC	✓
Other	

Review of the February 28, 2003 DRAFT Terms of Reference for the Environmental Assessment Certificate, Greater Vancouver Regional District, Ashcroft Ranch, B.C. Produced by Golder and Associates

WJ
Aug 1/03

Bonaparte Indian Band
July 14, 2003

WITHOUT PREJUDICE

The Cache Creek Landfill, a component of the GVRD's solid waste management plan, will be filled to capacity by 2007. The Ashcroft Ranch Landfill project is an initiative by the Greater Vancouver Regional District (GVRD) to find a replacement landfill for the Cache Creek landfill. The Greater Vancouver Sewerage and Drainage District (GVS&DD) is one of four separate corporate entities under the umbrella of the Greater Vancouver Regional District (GVRD), referred to as the proponent in the February 28, 2003 DRAFT Terms of Reference prepared by Golder Associates Ltd.. As a result of an analysis contained in Golder's report 992-1892/7000 *Assessment of Resource Potential, Ashcroft Ranch, Ashcroft, B.C., Vol. II Landfill Resource*, in April 2000, the Ashcroft Ranch was purchased by the GVRD to provide the required municipal solid waste landfill capacity from 2007 and beyond. The landfill project consists of developing a municipal solid waste landfill, an access and perimeter road including an intersection with Highway 1, a sand borrow, surface water diversion works such as dykes, maintenance and office facilities, public drop-off, and equipment such as tippers, compactors, trucks and other earth moving equipment located within Ashcroft Ranch (Draft Terms of Reference, Golder Associates, February 28, 2003).

The process used by the GVRD to identify the area and scope of the project, and develop the general approach of the impact assessment, described in the February 28, 2003 DRAFT Terms of Reference, has failed to meaningfully involve and consult with the Bonaparte Indian Band and the Shuswap Nation Tribal Council. The Shuswap Nation Tribal Council and the Bonaparte Indian Band were not involved collection of information and the analysis contained in the Siting Study (prepared by Golder Associates, February 20, 2003), the development of the DRAFT Terms of Reference for the application, or consulted regarding the decision by the proponent, the GVRD, to develop a landfill site on the Ashcroft Ranch. The Peoples of the *Secwepemc* Nation have proprietary rights and interests in the proposed area and site of the Ashcroft Ranch landfill. The *Secwepemc* Peoples have lived on their traditional territories since time immemorial, and have never ceded, surrendered or abandoned their rights to this territory. Further, aboriginal title to and aboriginal rights in this territory have not been extinguished.

The proposed Ashcroft Ranch Landfill will impact and infringe aboriginal title and rights and thus, the Crown and the proponent have legal and fiduciary obligations to consult in good faith. This includes the development of processes to ensure that the Bonaparte Indian Band can express their interests and concerns in an informed, and meaningful manner in efforts to seek workable accommodations of aboriginal rights. Strategies and options will have to be developed to mitigate impacts and compensate the Bonaparte Indian Band and the *Secwepemc* Peoples for impacts on cultural values, and infringements of aboriginal title and rights. The accommodation of aboriginal rights requires that real and tangible benefits be provided. Therefore, options to accommodate aboriginal title and rights

should consider the payment of taxes or revenues to the Bonaparte Indian Band/Shuswap Nation for use of traditional lands.

Given imposed resource and time constraints for the review of the DRAFT Terms of Reference, comments provided below are preliminary, and do not abrogate the legal duties of the Crown and the proponent to meaningfully consult and accommodate *Secwepemc* aboriginal title and rights. In accommodating aboriginal rights, the proponent and the Crown must demonstrate that the process by which decisions are, and were, made reflect the prior interests of the Bonaparte Indian Band and the Shuswap Nation Tribal Council as holders of aboriginal title to the land (*Delgamuukw Decision*, para 167). The Bonaparte Indian Band, as the lead community on this project for the Shuswap Nation Tribal Council, has several concerns with impacts of the proposed landfill on environmental values, including water quality and wildlife, traditional uses and cultural resources and values, and the landfill siting criteria and analysis used by Golder Associates for the proponent to identify a municipal solid waste landfill site within the Ashcroft Ranch. Thus in the development of a general approach, before the environmental assessment process can proceed, processes need to be developed to ensure that the Bonaparte Indian Band has the technical and financial resources to be meaningfully involved in the review and environmental impact assessment, and where needed, to consult with neighbouring First Nations regarding the proposed Ashcroft Ranch Landfill project. Further, this preliminary review of the Draft Terms of Reference by the Bonaparte Indian Band should not infer that the Band supports the Ashcroft Ranch Landfill project. Given the potential impacts and infringements on aboriginal title and rights, cultural uses and values, water quality, wildlife and other environmental values of the *Secwepemc* Peoples, the Bonaparte Indian Band and the Shuswap Nation Tribal Council are opposed to a municipal solid waste landfill within their traditional territories.

The scope of the project needs to be expanded to allow for the involvement of the Bonaparte Band in baseline studies to determine impacts on vegetation, wildlife, environmental and cultural values, and impacts of modifications and improvements to Highway 1. The Bonaparte Indian Band also needs to be involved in developing standards and measures to protect aquatic resources, water quality, surface water, groundwater and aquifers. The Bonaparte Indian Band needs to be fully involved in development of the project setting (Section 7.0 of the DRAFT Terms of Reference), the collection of information and baseline studies to ensure that the assessment process examines project impacts on aboriginal rights, cultural and socio-economic interests and values. Further, the Siting Study may have to be fully revisited and revised due to the fact that the Bonaparte Indian Band and the Shuswap Nation Tribal Council were not consulted, and have several concerns with the analysis, the criteria selected and the weightings of the siting criteria (Golder Associates Report on Landfill Siting February 20, 2003). Involvement of the Band in these studies will provide the baseline information needed by the Band to have informed and meaningful input into the environmental assessment and review of project impacts.

The area of the proposed landfill site is of special cultural heritage significance to the Bonaparte Indian Band. Preliminary shovel testing for archaeological resources has revealed a significant number of finds of cultural importance. The Bonaparte Indian Band must be involved in the collection of more detailed information, and an assessment of impacts of the proposed project on past, present and future uses, and a cultural heritage inventory, to determine how the project will affect cultural values, and acceptable accommodation and compensation measures. Statements within the Landfill Siting Report prepared by Golder Associates (February 20, 2003 page 16) rating the potential for archaeological sites as moderate or high scientific significance are inappropriate, invalid and in no way reflect the cultural importance and value of the site to First Nations. Archaeological assessments and inventories provide only one layer of information, and in many cases when evidence from the activity was not left, minimizes and/or misses use and occupation of the area by First Nations. Cultural heritage overviews are more comprehensive and involve the community in the determination of uses and activities in the area such as hunting, gathering, spiritual quests, etc. that may or may not leave evidence. As such, cultural heritage

overviews provide a much better understanding of the uses of an area by First Nations. This information can also be used to identify culturally important landscape features as stated in Section 7.3.2. of the DRAFT Terms of Reference. Understanding the full range of activities and uses by First Nations is integral to understanding impacts of the proposed development on past, present and future uses and values, and in the development of fair options for compensation and accommodation.

The February 20, 2003 Siting Report prepared by Golder Associates states on page 19 that “data sufficient to evaluate the impacts of the Ashcroft Ranch landfill on local or regional wildlife populations were not available”. Thus, the impacts on wildlife values are unknown, but it is possible that the landfill will impact a wide variety of potential and documented Red and Blue-listed species and culturally important wildlife species that reside in and use the area. Wildlife inventories need to be conducted to assess impacts of the landfill on species at risk and critical habitat, and wildlife of cultural significance. Under Bill C-5, the new Species At Risk Act (SARA), recovery plans for affected red and blue listed species would need to be developed. The Bonaparte Indian Band needs to play a significant role in the wildlife inventories, and in the development of recovery plans or protection strategies for critical habitat for red and blue listed species.

The Bonaparte Indian Band is also concerned about the lack of independence in the environmental studies and work to date by Golder Associates. Golder Associates were employed by the GVRD, the proponent, to do the environmental studies. More information is needed to quantify the actual impacts of a landfill on land and water resources. To provide comparative information on landfill impacts, background information should include a study and assessment of the impacts of the Cache Creek landfill. This study could identify and provide information on landfill gas generation issues, leachate substances and issues, land contamination issues and impacts on air, water quality and other biophysical, environmental and socio-economic attributes, costs and benefits of a landfill. In efforts to ensure that the Bands rights, interests and values are meaningfully reflected in the management and use of lands and resources within their traditional territories, the Bonaparte Indian Band must be fully involved in the collection of baseline information and studies, and in the development of viable and acceptable solutions to minimize impacts on water quality, cultural, environmental and wildlife values and resources.