PORTEAU LANDS UPDATE (APRIL 18, 2016)

Summary

- **The Porteau Partnership has come to an end, and there is no longer an opportunity to gain further revenue from a development with Concord Pacific ("Concord")**
- **The partnership was formed when Concord agreed to pay the entire cost ($10.1Million) to purchase and develop the Porteau lands in consideration of the Nation providing only the option to buy the land. The option to buy the lands came out of years of negotiation with the Province of BC and BC Rail resulting in an accommodation agreement in Year 2000.**
- **In the partnership deal, the Nation got $2.9 Million prior to any proposed development and with no required cash investment at any time thus protecting the nation from taking on any future construction or market risk.**
- **The partnership stalled because the market went bad, and Concord couldn't justify paying 100% of the ongoing costs (i.e. mortgage interest) or investing any more infrastructure funds without the Nation agreeing to take on some of the risk and therefore having to provide significant cash to support the development moving ahead.**
- **The Nation wanted to continue the spirit and intent of the original partnership deal in which the Nation brought the opportunity to Concord in consideration for sharing 50% of any development profit.**
- **The Nation couldn't find any new partners to buy out Concord in time to take over on the same terms – to move forward and develop the land on economically favorable terms.**
- **The Concord and Nation buy-sell negotiations went on for several years but in the end it was the lack of value in the land that caused the Nation to walk away.**
- **The Nation is continuing to implement a strategy to protect our interest in Porteau into the future.**

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The Origin of the Lands deal with Concord (2004)

The Porteau lands are fee simple lands that were purchased for $10.1 Million in 2004. The money came from Concord. The option to purchase the lands came out of the earlier BC Rail accommodation agreement, so it was an opportunity that came out of aboriginal rights and title, not purely commercial, and we got additional lands as well.

That option was set to expire in February 2004. Council had decided that it did not want to purchase these lands for Reserve, given the high infrastructure costs to develop the lands. Instead, Council convinced the Province to agree to alternative lands, allowing for future purchase of a different 1200 acres which could be added to Reserve which was later exercised in the ATR lands strategy.

The opportunity on the Porteau lands would then have been lost, even though the lands were likely worth more than the option price. Ten days before the option was set to expire, Concord agreed to put up the funds.

Given the shortness of time, the parties agreed to proceed by a simple letter agreement (dated February 16, 2004) and finalize the detailed agreement later. It was agreed that if they were unable to conclude a partnership then the lands would be disposed of, and the $505,000 deposit paid back to Concord from the sale. Mandated by Council, the team attempted to negotiate the partnership details for the development of the lands. The terms negotiated with Concord were that they agreed to put up all the financing and equity, and take all the risk – for 50% of the profit. This was a very good deal for the Nation. Concord agreed to recognize the higher land value brought by the Nation’s opportunity in the form of a $2.9M allocation to the Nation, which was ultimately secured by a mortgage against the lands.

Chiefs and Council’s highest concern was to ensure the Nation took on no risk – ie, that it would not be required to contribute any funds or take any risk with respect to the project. As the Nation was not required to provide any capital or other funding to the project, however, Concord insisted that the partnership agreement contain provisions to protect it, and allow it an exit strategy, including a buy-out provision.

The Nation accordingly could become entitled to at least $2.9 Million that would have been lost without Concord, with the possibility of greater profits in the future, with no investment or risk. The Nation’s determination to avoid any commercial risk led to reduced leverage in allowing Concord to protect itself. Although the Nation did discuss the buy-out and other clauses in the negotiations, Concord insisted, and the Nation ultimately decided to close the deal rather than lose it altogether. The Nation was fully advised of the options.

Council approved the partnership in February, 2005. In addition to the preferred distribution, the nation received a 50% interest in the partnership and was not required to contribute capital to the partnership. Had the partnership not been approved at that time the lands would have been sold and the Nation would have received nothing.

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The Market Change and Concord Relationship Change

In 2008 the worldwide financial lending crisis fundamentally changed the economics of the development. Not long after this point Concord advised that it was putting the development on hold. Concord's existing expenditures continued to gather interest, as the development was delayed.

Given mounting costs, and the delay in the development, Concord began to raise the issue of a change to the economics of the partnership. They no longer wished to carry all the costs indefinitely, with delays and increasing interest costs, with only 50% of a reduced expectation of profits. They wanted the Nation to either put up equity, buy them out, or put the property up for sale.

By March 2010 Bethel Corporation, rather than Concord , had been selected to be the development partner for the Squamish Nation and Lil'wat Nation's Alpine Whistler legacy lands. Although not agreed to by the Nation, Concord expressed a desire to develop those lands.

In April 2010, Concord reiterated its request for the Nation to become a full equity partner in writing (which would have required an approximately $15M equity contribution by the Nation, and later further funds). The Nation refused and advised Concord accordingly that it would rely upon the terms of the partnership agreement.

The Concord Negotiations

Concord proposed again in mid-2011 to restructure the relationship. At that time, their letter to Squamish said they wished "to address is the capital imbalance whereby Concord has a $30 million capital commitment to a project that has no equity".

In August 2011, Concord purported to trigger the buy/sell bidding process under the partnership agreement. The Nation pushed back, and Concord agreed to a number of extensions.

Starting in December 2011 a number of meetings were held to consider options. The Nation asked Ratcliff to advise on the commercial and litigation options.

Council was advised of the situation, and the options were fully discussed at a Council meeting on December 15, 2011. Council approved the strategy going forward, and specifically contemplated the option to buy out Concord (with Bethel's assistance) or to sell the units under the buy/sell provisions.

Regardless of the buy-sell, Concord's expenditures at this point had reached $32 Million, which was secured by a mortgage. Any offer by the Nation would have to consider the repayment of that mortgage. Concord was threatening to foreclose on the mortgage, which would have made the project bankrupt, and the Nation's $2.9 Million would have been lost.

Although the Nation had not entered into its current partnership with Bethel Corporation and Matthews Southwest at this time, the two developers were providing the Nation with business advice. Bethel and Matthews had indicated that they would be prepared to advance the Nation sufficient funds to repay

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Concord for the amount of its costs. Ultimately, our new partnership, the Bethel Matthews Squamish (BMS) was of the view that Concord would not sell the lands for this price and advised the Nation not to engage in a bidding war with Concord.

The Nation engaged a Chartered Accounting firm in early 2012 to evaluate options, and various scenarios on the development values. The options open to the Nation were limited. The material produced showed that the development opportunities were delayed and long-term, and therefore the value of the lands was less than the amount they could be acquired for. All scenarios were poor investments. Concord was not willing to continue to provide new funds endlessly, and had the ability to either foreclose on the mortgage, take the project into bankruptcy and sell the lands (with their money to come out first), or exercise the buy/sell provisions. The first two options would eliminate the Squamish mortgage of $2.9 Million unless the lands were sold at a high value.

The Nation could not buy out Concord, as it did not have the money, and its advice was that the lands were not worth what would be required to purchase the lands. Further, any purchase of the lands still required investment of new funds for infrastructure estimated at $30-$40 million, in addition to the purchase price. Its potential partners did not think the investment opportunity was as good as others available. The Nation continued to want to avoid taking on any potential liability or risk with Nation funds. The Nation therefore sought to buy time, and to encourage Concord to buy out the Nation on more favorable terms.

In May, 2012 Squamish representatives met with Concord, and were given a number of options -- including selling the lands for $40 Million, buying out Squamish for $4 Million (over a lengthy time), putting the lands up for sale (with Concord potentially to purchase), or simply increasing the carrying cost interest rate. Squamish, after consulting with its business advisers, eventually rejected each of those options for good reasons.

In November, 2012 Concord re-initiated the buy/sell provisions. The Nation continued to seek a better offer. Concord and the Nation continued to make offers back and forth through 2013, inside and outside of the buy/sell provision and timing. The Nation continued to entertain options for settlement from Concord who rejected all Nation offers to resolve this matter.

On April 20, 2013 the buy/sell process eventually concluded. The Nation refused to accept it. Despite that fact, additional offers continued to be exchanged, showing that Concord was uncertain about their legal position.

The Nation entered into its partnership with Bethel and Matthews Southwest in September of 2013 (BMS). The Nation also concurrently assigned its rights to receive payment of its mortgage from Concord to the new BMS Partnership, and received the $2.9 Million in cash.

In November 2013, Concord initiated arbitration under the partnership agreement to enforce the buy-sell provision. The Nation defended. The alternative was to allow the lands to pass in 2013.

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<u>The Arbitration</u>

The purpose of the arbitration was to continue to contest the lands, in the hopes a solution could be found. It was hoped that the BMS Partnership would find a way to purchase the property, or that a fair payment from Concord could be obtained.

The Nation did not want the lands listed for sale, and we made one further offer to purchase the lands from Concord for $40 million (with the BMS Partnership's assistance). The offer was rejected by Concord.

In February, 2016, the BMS partners recommended to Council that the arbitration be ended. Council approved it in February. Steps are being taken to have the partnership units and lands with all accompanying debt transferred to Concord. In the meantime, the Nation is continuing due diligence to implement strategies that protect our interest in Porteau now and into the future.

<u>Conclusion</u>

The Porteau Lands produced a profit of $2.9 Million without investment or risk to the Nation. The opportunity for greater profits in future was lost largely because of the market downturn of 2008, and Concord's inability or unwillingness to carry large liabilities and invest further funds without a change to the agreement.

The Nation did not make a mistake in business or legal judgment, even in hindsight. The original deal in 2004 was the best available under the circumstances at that time, and the choices made in 2011-2015 were based upon full considerations of the merits of numerous scenarios and options, limited by the Nation's unwillingness to take on large liabilities or make new investment. The Nation had strong due diligence, and business advice from experts.

The 'loss of the lands' did not stem from the buy-sell agreement, or any particular unusual acts or failures to act by staff, business advisers or legal counsel throughout the extended dealings with Concord. The partnership with Concord was no longer sustainable, given the change in market conditions. Once Concord decided they would not advance further funds without a change in the bargain, the Nation' choices were limited by economic realities. The highest priority to the Nation through these dealings was to protect its $2.9 Million commitment, and to avoid taking on market risk or development liability. The Nation recovered that money successfully, and avoided any loss.

The potential projected profit numbers which have been rumored (eg $250 Million or $550 Million, by various uninformed parties) are simply fantasy. The lands were never appraised higher than $50 Million (which even our partners rejected), and there was more than $35 Million in charges against the land, with no immediate likelihood of development, and an additional $30-40 million required in immediate infrastructure investment. Concord may, in the long term, succeed in developing some of this project, but it is entirely possible they will abandon the project or lose money doing so. The likelihood that Squamish Nation could recover a significant profit was greatly eroded by the market events in 2008, and further

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diminished by the long-term negative impacts of on-going interest from funds for substantial infrastructure investments which will continue to compound the longer the project is delayed.

Benefit of B.C. Rail Agreement

1. Addition to Reserve (ATR) Lands
    a. 1200 acres for $16.6 million which we took a loan from the Squamish Nation Trust (SNT) and paying the SNT interest
    b. Provincial support for ATR lands
2. Site A
    a. 80 acres in the Squamish Estuary
3. Site B (1/3 interest)
    a. We then negotiated the remaining 2/3 in Sea to Sky Agreement to have it 100%
4. Porteau Lands (Partnership with Concord – 50% interest in profits)

Deemed too expensive to use for Reserve Lands which resulted in Nation purchasing 7 parcels of land in Squamish Valley (for additions to reserve).

Respectfully,

Squamish Nation
Chiefs & Council

Alroy Baker
K'etximtn

Deborah Baker
K'ána

Richard E. Baker
Kasalus

Veronica Baker
Tiyaltenaat

Chief Ian Campbell
Xàlek/Sekyú Siýam

Carla George
Kwitelut Kwelaw'ikw

Byron Joseph
Ts'élkwílem Siýam

Dennis Joseph
xwechtàal

Joshua Joseph
Skwetsi7meltxw

Christopher Lewis
Syetáxtn

syexwáliya
A. Whonnock

Danielle Mellish

Anthony Moody
Tsetsímshtn

Ann Whonnock
Syexwáliya

Chief Richard Williams
Xwélxwelacha Siýam

Wilson Williams

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