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Responses to Questions asked by Membership

"... this past nine or ten months the Government of Canada approached the Squamish Nation and your spokesman on this matter, myself, and said while we are in court, is it possible for us to discuss a settlement? Negotiate a settlement not only of Kitsilano, but the Bouillon Lands, Third Street and a number of other issues that we are suing Canada on.

Their position was very clear - we are prepared to offer a compensation package, money - CASH ONLY, we will not talk about land, land is not on the table..."

—Chief Joe Mathias (Squamish Nation Membership Meeting, November 21, 1999)

Section 1: Questions on Land Issues:

[Q1. Why are we not getting land?](#)

A1. In the original 1977 Omnibus Trust Action there were a number of parcels of land that the Squamish Nation brought claims about.

These claims took two forms:

1. the Nation claimed that it continued to own lands and,
2. in the alternative, it claimed that if it did not own the land, the Federal government owed the Nation compensation for having lost the land.



Between 1977 and 1986, the Squamish Nation settled some of these claims by getting back certain lands. This included lands on Mission IR1, Capilano IR5, Stawamus IR24 and Kwum Kwum IR 28A.

> Much of the remaining land, however, is presently owned by third parties. For example, almost all of the Bouillon land north of Capilano IR5 is owned by third parties. The Federal government does not have the legal power to grant these lands to the Squamish Nation.

> Also, the person who negotiated the Settlement Agreement for the Federal government with Chief Joe Mathias...advised Chief Mathias at the very beginning of the negotiations, that he did not have authority or control of lands.

The Federal Negotiator stated that he could only negotiate if the Settlement Agreement involved money.

Q2. Why did we not get any land back?

A2. The Squamish Nation has recovered land as a result of the 1977 Omnibus Trust Action. The lands that we got back include:

- the Cut-Off Lands on Capilano IR5 (115.29 acres),
- Hornes Mill and the foreshore (10.79 acres) on Mission IR1,
- Defense Island or Kwum Kwum in Howe Sound (15.40 acres),
- Stawamus Island (12.06 acres) on Stawamus IR24. [Please See [Bulletin No. 6](#) for details on these Trust Action Claims that were previously settled].
- We also recently won a court case and got 10 acres of railway land at Kitsilano.

When Chief Joe Mathias negotiated this Settlement Agreement, he was told at the very beginning that the Federal negotiator . . .

- only had the power to offer money and
- not land.

Q3. If we agree to the Kitsilano Settlement, where will we get land in the future?

A3. There are a couple of ways that the Squamish Nation may gain more land in the future. It may be achieved through negotiating a treaty or land can be acquired by the Squamish Nation by purchasing it.

Q4. Would it be possible to receive a partial settlement for punitive damages to our ancestors and retain the land to lease to its present occupants?

A4. Punitive damages are awarded by a court. As with the question of land, the Federal government was not prepared to negotiate the question of punitive damages.

Q5. How much land exactly is going to be surrendered?

A5. The Settlement Agreement requires a surrender of:

- 76 acres at Kitsilano IR6,
- 74 acres of Bouillon lands at Capilano IR5,
- 163 acres at Yeakwaupsum IR18,
- 18.5 acres at Mamaquam IR20,
- 360 acres at Squamish Island IR21,
- 234 acres at Skwulwailum IR22,
- 292 acres at Ahtsam IR23,
- 82.3 acres at Stawamus IR24,
- 20.5 acres at Capilano IR5 that is now the railway,
- 4.48 acres at Mission IR1 that is now the railway,
- 7.54 acres at Seymour IR2 that is now the railway,
- 3 small parcels on Capilano IR5 that were originally given up in the Cut-Off Settlement and
- the land under Third Street on Mission IR1.

> However, the fact that the Squamish Nation is required to provide a Surrender of these lands does not mean that the Squamish Nation currently owns the land.

> Much of this land is presently owned and registered by third parties and it is highly unlikely that a court would declare that the Squamish Nation owns the title to their property.

For Example: the land under Denny's Restaurant or Earl's Restaurant on Marine Drive is owned by those parties (ie -"Third Parties").

Q6. Why are we surrendering lands?

A6. It is critical to understand that, even though the Squamish Nation is providing a surrender to certain lands, there is a strong possibility that the Nation does not now have a legal interest in the lands. Much of the land that is being surrendered is currently owned by 'Third Parties', who

have homes and businesses on the land.

In many cases, such as the Squamish Valley reserves and the railway through Capilano IR 5, the Squamish Nation surrendered these lands and received compensation years ago.

In order to gain these lands, the Squamish Nation would have to continue the Omnibus Trust Action on each parcel of land.

This would involve not only the government of Canada, but each land owner that would be affected. For the Squamish Nation, this would be extremely expensive and would probably take another 20 to 25 years.

In the end, it is very probable that a court would not award the land to the Nation.

However, in order to ensure that this Settlement Agreement puts an end to the dispute over these lands and provides legal certainty, the government of Canada has made it a requirement that the Settlement Agreement contains a surrender.

Preamble to Question 7:

Absolute Surrender

The Settlement Agreement requires that the Squamish Indian Band absolutely surrender to Canada all of the rights and interests of the Squamish Band in the Surrendered Lands.

Q7. Does this surrender include not only the reserve interest in those Surrendered Lands but also the Aboriginal Title to those Surrendered Lands (pursuant to S. 35 Constitution Act)?

A7. It is an unresolved question of law whether a surrender under the Indian Act extinguishes aboriginal title. We would argue that it does not, as it is directed at the interest in Reserves. However, a surrender may have the consequence of extinguishing the entire Indian interest in the Reserve lands identified in the Surrender. A surrender of a particular parcel of land does not affect other lands, whether they are reserve or unsurrendered aboriginal title lands.

Preamble to Question 8:

Fair Market Value

In the Settlement Agreement the Surrendered Lands are described as:

- a) all of Kitsilano Indian Reserve No. 6, save and except the CPR Lands;
- b) the approximately 74 acres of Capilano Indian Reserve No. 5 transferred to Alfred Bouillon and Joseph Bouillon;
- c) the approximately 2.44 acres of Mission Indian reserve No. 1 known as the Third Street Extension;
- d) portions of approximately 130 acres of Capilano Indian Reserve No. 5 cut-off lands;
- e) portions of the reserves of the Band that were taken pursuant to Interim Reports made under the authority of section 8 of the McKenna McBride Agreement dated September 24, 1912; and
- f) Ahtsam Indian Reserve No. 23, Skwulwilemi Indian Reserve No. 22, Skwawmish Indian reserve No. 21 and Mamaquum Island Indian Reserve No. 20 and parts of Yekwaupsum Indian Reserve No. 18 and Stawamus Indian Reserve No. 24

and

In Bulletin No. 6 dated November 19, 1999, the value of the 'cut-off' lands alone was stated to be estimated in excess of \$100 million.

Q8. In view of the settlement offer of \$92.5 million for all of the Surrendered Lands has there been an independent appraisal done of the fair market value of the Surrendered Lands?

- *If so, what are the results of the appraisal of each individual parcel ?*
- *If So, what is the appraised total value of the Surrendered Lands?*

A8. Harry Slade of Ratcliff & Company provided an extensive answer to this question respecting independent appraisal, at the meeting of June 18, 2000. Mr. Slade pointed out that an appraisal of the fair market value of the surrendered lands was an inappropriate approach to determining a settlement value in a claim for land and damages. Expert advice respecting land values was sought and considered by Squamish Nation negotiators in arriving at the settlement. Additionally, various risk factors were considered. Some of the "Surrendered Lands" have been released, expropriated, or surrendered in prior transactions, with compensation being paid. Some aspects of these transactions are in dispute in the various actions. Much of the land is in the hands of third parties, who are not parties to the Actions. The Crown is not in a position to return those lands.

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