



KITSUMKALUM



UPDATE ON Liquified Natural Gas

COMMUNITY PROGRESS REPORT

This report informs readers about the Liquid Natural Gas projects that are proposed on Kitsumkalum's consultative boundary. **Where is Kitsumkalum on this and how does the legal landscape impact our position?**

SPRING 2016 | VERSION 1



✉ MESSAGE FROM



CHIEF DON ROBERTS

Kitsumkalum Tribe of the Tsimshian Nation

“As Chief, I have a responsibility to protect our Title, Rights and interests and to minimize negative environmental, cultural or socioeconomic impacts to us and our lands associated with these proposals.”

We’ve held several membership meetings and small focus group sessions, and are currently conducting a socioeconomic survey. Each one of you should have filled out and returned to us by now. If you would still like to provide feedback, there is time.

If impacts are unavoidable from construction or operations of the LNG facilities, than I need to ensure that Kitsumkalum is accommodated for those impacts. This is typically done through negotiations of an Impact Benefit Agreement.

Dear Kitsumkalum Members,

As you know, there are many Liquefied Natural Gas (LNG) proposals in and around our territory. We have staff, scientists and contractors engaged in consultation with both governments and proponents.

In June 2013, we invited all proponents and governments to speak with us regarding our values and how we expect to be engaged. We have had individual meetings with those groups to provide further details and instructions.



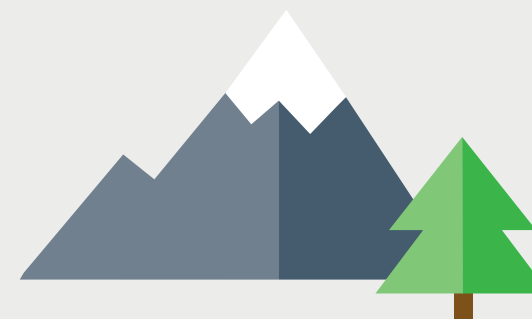
PHOTO: BIRGITTE BARTLETT

There are three main areas I oversee during these negotiations.

FIRST is a government to government level group who is in the process of negotiating benefit agreements with BC and Canada.

SECOND is an Environmental Assessment team who is engaged with BC, Canada and the proponents on technical levels, including environmental, cultural, socioeconomic and cumulative effects.

THIRD is to ensure Kitsumkalum has a meaningful role in the management of the Skeena River and Coastal Lands.



As you can appreciate, these are busy and important times. A number of communications have been sent to the community which has generally described what LNG is, which LNG projects are within our territory and the various stages of these projects.

Over the next few months, I will continue to update you on what is going on – that is my obligation to you, and the Kitsumkalum Community as a whole.

Sincerely,
CHIEF DON ROBERTS

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PHOTO: BIRGITTE BARTLETT



The purpose of this document is to provide an update on:



LNG in our territory



Legal obligation to Kitsumkalum by governments and proponents



View of how other First Nation are navigating this process



And get your feedback!

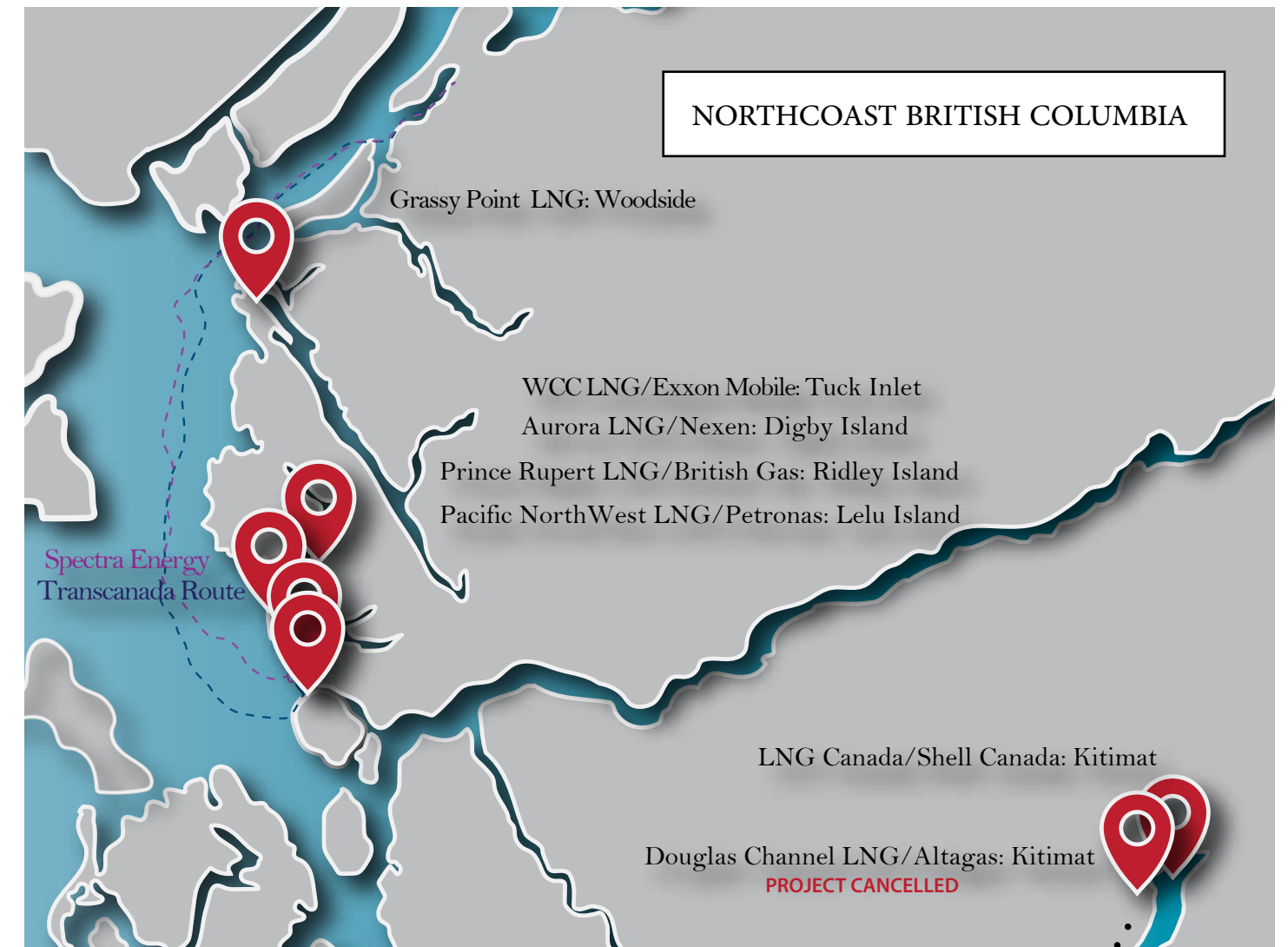
We have included information that describes these agreements and why proponents and governments have to negotiate these with us. It is important to understand that by law, Kitsumkalum must be accommodated for impacts to its Aboriginal Title and Rights as a result of projects such as the LNG. Kitsumkalum is engaged in the negotiation process, but has not signed any deals as negotiations are ongoing.

Chief Don Roberts

PROPOSED PROJECTS

There are currently 2 pipeline projects and 7 terminals associated with Liquid Natural Gas proponents which are located within Kitsumkalum Traditional Territory and are under review by the Kitsumkalum Referrals Staff.

It is important to note that none of the proponents have made a final investment decision to move forward with these projects. These Final Investment Decisions have been continually delayed due to economic, regulatory and government factors.





BOUND BY LAW

LEGAL OBLIGATIONS OWED TO KITSUMKALUM IN THE CONTEXT OF LNG



“The government’s duty to consult with Aboriginal peoples and accommodate their interests is grounded in the honour of the Crown... But, when precisely does a duty to consult arise? The foundation of the duty in the Crown’s honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.”

**HAIDA NATION V BRITISH COLUMBIA (MINSITER OF FORESTS),
2004 3 SCR 511**

WHAT OBLIGATION DOES THE GOVERNMENT HAVE TO KITSUMKALUM WHEN AN LNG COMPANY WANTS TO DEVELOP A PROJECT ON KITSUMKALUM LANDS?

When the governments of British Columbia or Canada considers any conduct (decision or activity), and there is a potential that the conduct will impact Kitsumkalum’s Aboriginal Title and Rights, the law says that the government owes a duty to consult and accommodate Kitsumkalum.

This obligation exists prior to Kitsumkalum proving its Title and Rights in court, and prior to Kitsumkalum concluding a treaty and beyond treaty.

With respect to LNG projects, the decision to consider granting approvals to proponents (LNG companies) to build their projects triggers the duty to consult and accommodate Kitsumkalum.

The duty to consult and accommodate is a legal requirement of the government.

The courts have told us that this consultation must be meaningful, and must occur at an early stage of the decision making process.

The Supreme Court of Canada, in Haida Nation and Taku River set out a spectrum to determine the extent of consultation that will be owed in a given circumstance. The extent of consultation and accommodation will depend on:

- A preliminary assessment of the strength of the claim supporting the existence of the title or right; and
- The seriousness of the potentially adverse effects upon the title or rights claimed.



Strength of claim is evidence supporting the First Nation's use and occupancy of the project area (evidence of its Aboriginal Title and Rights). Examples of evidence include:

- > Oral Evidence (Elders and Members interviews about how they used the project areas, and how their parents, and grandparents used the project areas).
- > Archival research
- > Genealogy
- > Archaeology / Cultural Remnants (i.e., village site, house pit)

Based on this evidence, the government assesses if the Nation's strength of claim is weak, moderate, or strong. The stronger the claim, the more consultation and accommodation is owed.

Next, the Province will consider the seriousness of the potential impact of the

proposed conduct on the rights claimed. For example, if the project is within an important fishing area of Kitsumkalum, and the project activities will prevent Kitsumkalum from fishing at that site, the impact will be assessed as high.

After considering both the strength of claim and potential impacts, the government will determine the level of consultation and accommodation required for the project. If the strength of the claim is weak, and if the impacts are not significant, then the government may only be required to give notice of a decision. If the claim is strong, and if the impacts are significant, the government will be required to accommodate, and consent for the decision will be required.

The government must be "correct" in this assessment. If they are not, the decision on the scope of consultation may be challenged in court.

STRONG STRENGTH OF CLAIM + SEVERE IMPACTS FROM PROJECT = HIGH ACCOMMODATION

The Supreme Court of Canada in *Tsilhqo'tin* took this a step further. Firstly, it found for the first time, that Aboriginal Title existed to a specific piece of land in British Columbia. Secondly, it advised government and proponents to obtain the CONSENT from First Nations when proposing a project on their Territory:

"Governments and individuals proposing to use or exploit land, whether before or after a declaration of Aboriginal title, can avoid a charge of infringement or failure to adequately consult by obtaining the consent of the interested Aboriginal group"

**TSILHQOT'IN NATION V.
BRITISH COLUMBIA [2014] 2 S.C.R. 257**

THE COURT ALSO WARNED OF THE IMPLICATIONS OF NOT OBTAINING CONSENT:

"For example, if the Crown begins a project without consent prior to Aboriginal title being established, it may be required to cancel the project upon establishment of the title if continuation of the project would be unjustifiably infringing."

**TSILHQOT'IN NATION V.
BRITISH COLUMBIA [2014] 2 S.C.R. 257**

The duty to consult and accommodate was built on a foundation of principles of Aboriginal Title and Rights law set by the Supreme Court of Canada. Principles from these seminal decisions include:

First Nations were living in organized societies on the land long before the settlers came. "This is what Indian title means..."

Aboriginal Title has never been extinguished.

Calder et al. v. Attorney General of British Columbia, [1973] S.C.R. 313

Aboriginal Rights were in existence at the time of 1982 and are protected under the Constitution Act, 1982. The government must justify any infringement on Aboriginal Rights.

The two-part "Sparrow Test" determines whether a government infringement can be justified. This test prioritizes Aboriginal Rights – in order to justify an infringement there must be a "compelling and substantial objective, such as the conservation and management of resources".

R.V. SPARROW [1990] 1 S.C.R. 1017

Aboriginal Title is a right to the exclusive use and occupation of the land.

Aboriginal Title includes the right to determine the uses of the land and has an inescapable economic component.

**DELGAMUUKW V. BRITISH COLUMBIA
[1997] 3 S.C.R. 1010**

The duty to consult and accommodate arises when "the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it."

The scope of the duty will depend on: the strength of the claim of aboriginal right; and the degree to which the Crown action would interfere with that right.

The government's duty to consult and accommodate is grounded in the Honour of the Crown.

The Crown must act honourably in all its dealings with Aboriginal Peoples.

At all stages, good faith on both sides is required.

No sharp dealing.

The consultation process must be meaningful.

Aboriginal Nations do not have a veto over government decisions. However, governments must accommodate for impacts on Aboriginal Title and Rights.

Aboriginal people have an obligation not to frustrate attempts by the Crown to consult with them.

**HAIDA NATION V. BRITISH COLUMBIA
(MINISTER OF FORESTS),
2004 3 S.C.R. 511.**

**TAKU RIVER TLINGIT FIRST NATION V.
BRITISH COLUMBIA, 2004 SCC 74.**

Aboriginal Title is established on a specific tract of land for the first time in British Columbia.

If the strength of claim increases, the scope of the duty to consult and accommodate increases.

Governments and proponents should obtain the consent of the Aboriginal group before using the land in order to avoid failing to consult properly.

If consent is not obtained, and a Nation establishes Title, all decisions approving a project may become invalid.

**TSILHQOT'IN NATION V.
BRITISH COLUMBIA [2014] 2 S.C.R. 257**



KITSUMKALUM PARTICIPATES IN THE LNG DISCUSSIONS
BASED ON THIS LEGAL FOUNDATION.



PHOTO CREDIT: BIRGITTE BARTLETT

KITSUMKALUM RESOURCES

In order to do this right we've got to have resources. **Resources** means communication materials and people with expertise.



Kitsumkalum Staff



Advisors



Consultants



The website



The Informer



Phamplets



Community Sessions

Chief Don Roberts

MEET OUR TEAM

Negotiations Team: Chief Don Roberts, Siegi Kriegl, lawyers and negotiators are responsible to negotiate benefit agreements with BC and Canada, as well as Impact Benefit Agreements with proponents.

Environmental Assessment, Land and Referral Teams: Chief Don Roberts, Siegi Kriegl, Rina Gemeinhardt and several scientists, lawyers, and consultants are responsible to engage with BC, Canada and proponents on the technical aspects of the Environmental Assessment process. We also bring our Fish and Wildlife, Health, Treaty and Economic Development departments in to provide input.



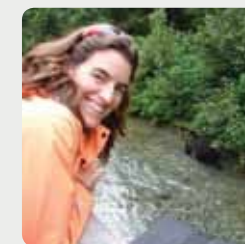
Don Roberts
Chief



Rina Gemeinhardt
Environment,
Lands & Referrals



Siegi Kriegl
Environment, Lands
& Referrals Team



Nicole Wallace
Environmental
Consultant



Debra Stokes
Social Economic
Consultant



Quinton Ball
Lands & Referrals
Consultant



Bram Rogachevsky
Legal Advisor



Jennifer Hill
Legal Advisor



Dave Haggard
Impact Benefits
Negotiator

WHAT HAVE WE BEEN DOING?

2013

Meetings with BC, Canada and proponents to outline our values and expectations.

2014

Created an LNG Negotiations Team made up of Kitsumkalum staff and consultants who have a mandate as they negotiate with each of the proponents.

Environmental Assessment team increased capacity in response to an increase number of proponents in our territory.

2015

Creation of TESA (Tsimshian Environmental Stewardship Authority)– working with other Tsimshian communities in a technical capacity to protect the land base with a scientist/technical approach.

ONGOING

Negotiating Environmental Assessment Engagement Agreements with the proponents to secure funding for Kitsumkalum to participate in working groups and environmental assessment processes and to undertake independent scientific reviews and studies.

The funding ensures that we are not out of pocket for any technical work we undertake. The money from these agreements pays for our staff and consultants which we engage at various stages of the scientific works on a given project.

2016

Kitsumkalum is currently at the accommodation tables with both the Province and Proponents primarily for the proposed Pacific NorthWest LNG project at Lelu Island.

With the Proponent in Impact Benefit Negotiation:

- Pacific NorthWest LNG (facility)
- Prince Rupert Gas Transmission Project (pipeline)

With the Province in accommodation negotiations:

- Pacific NorthWest LNG (facility)
- Prince Rupert Gas Transmission Project (pipeline)
- Westcoast Connector Gas Transmission Project (pipeline)

REFERRALS



Before a proponent starts the environmental assessment process, the provincial government gives them instructions on how to proceed and who to consult with First Nations and stakeholders. That document is called a Section 11 Order which is a requirement of the Environmental Assessment Act.

There are two different engagement levels: Schedule B First Nations need to be consulted with fully, Schedule C First Nations need to be consulted very lightly. For some projects Kitsumkalum was put on Schedule B from the beginning, other projects we were put on Schedule C.

Our team had to do a lot of work and fighting to get us moved from Schedule C to B. We have been successful in all the cases we attempted to get changed up. Our fight for full acknowledgment of our Title and Rights from BC is continuing.

Proponents are required to provide an Environmental Assessment referral to Kitsumkalum when they submit their project application to the regulatory agencies. This initiates a defined process where our referrals team has an opportunity to review the information and ask hard questions regarding the technical and scientific merit of the reports.

Environmental Assessments look to identify any impacts to the air, water, land, fish/wildlife, archeology and people, including socioeconomic, cultural and human health impacts that a particular project may cause. Kitsumkalum referrals team and contractors work hard to ensure that issues are not missed and that the above criteria are adequately addressed.

Our referrals team review thousands of pages of reports, research papers and data. Staff then provide feedback to the proponent and government with Kitsumkalum's perspective for their consideration.

We have received referrals for the following projects:

Pipelines

- PRGT/TransCanada Pipelines (to PNW LNG)
- West Coast Gas Transmission pipelines / Spectra Energy (to PR LNG)

Facilities

- PNW LNG/Petronas (Lelu Island)
- WCC LNG/ Exxon Mobile (Tuck Inlet)
- Aurora LNG/Nexen (Digby Island)
- Grassy Point LNG/Woodside (Grassy Point)
- Prince Rupert LNG/British Gas (Ridley Island)
- LNG Canada/Shell (Kitimat)
- Douglas Channel LNG (Kitimat)



HOW DO KITSUMKALUM STAFF ENSURE THAT KITSUMKALUM INTEREST ARE ADDRESSED IN THE ENVIRONMENTAL ASSESSMENT PROCESS?

Kitsumkalum Environment team send field technicians and staff to check on many of these projects and where applicable, Kitsumkalum Staff are involved in the actual research for the projects.

Kitsumkalum Environmental Staff focus on the issues that are most important to Kitsumkalum band.

Through community meetings and feedback from the leadership, Kitsumkalum Environmental staff work to incorporate community concerns, environmental concerns, social and economic concerns and traditional use/heritage concerns into our comments to the proponents and the appropriate government organizations.



IMPACT BENEFITS... WHAT IS KALUM NEGOTIATING FOR?

We are negotiating for accommodation.

What does Accommodation look like?

Legally, the Crown is responsible for ensuring Kitsumkalum is meaningfully consulted and accommodated. Practically, the proponent plays an important role.

Accommodation is usually done by proponents through agreements called Impact Benefit Agreements.

Impact benefit Agreements give consent to the proponent to build its project, in exchange for benefits to Kitsumkalum.

Impact Benefit Agreement (IBA) is a negotiated agreement between Kitsumkalum Leadership and the Proponent and/or the Government. It looks at the impacts to Kitsumkalum and provides benefits to the Band to help mitigate those impacts. This could be a monetary agreement, land, training, employment, community infrastructure or a number of other items.

It is a contract that outlines the impacts of a project, the commitment and responsibilities

of both parties and how the associated aboriginal community will share in the project's benefits of the operation.

Elements of benefits in an Impact Benefits Agreement include:

- Employment and training
- Education and scholarships
- Business / Contracting Opportunities (i.e., Kitsumkalum Band-owned and Member-owned businesses obtain contracts for the project, for example, clearing trees, making access roads, etc.)
- Financial Compensation / Revenue Sharing
- Community Infrastructure



NEGOTIATION MANDATE

The following lays out the overall mandate, objectives and strategy for the Kitsumkalum Negotiations Team as they engage each of the proponents.

Revenue Sharing

Secure Revenue Sharing Agreements from all of the LNG Terminal and pipeline proponents and governments. The objective of revenue sharing will be to provide Kitsumkalum with an ongoing, annual and predictable revenue stream. The intent will be to negotiate a revenue sharing formula that is easy to understand and communicate within the community.



Procurement

Acquire direct award contracts that support existing Kalum business (aggregate operations, Logistics Park, rail car loading and unloading). Direct award contracts will continue to support existing business, increase local community business capacity, provide long term employment for Kalum members beyond project construction and provide additional long term stable funding to Kalum.

In the coming months the Negotiations Team will develop a list of additional business interests that will be added to our direct award contracts.

Community Investment

To secure community funding for projects that will be identified within the community. May include new offices, land acquisition, schools, church, Port Essington Restoration. Proponents will be approached with the intent of securing support for specific projects within the community.



Employment and Training

To secure resources for targeting training activities as identified by Kitsumkalum Education and Human Resource staff.

Third Party Investment

To secure long term funding and employment and to be advanced by Kitsumkalum pursuing other business interests. Current areas of interest include Biomass and Run of the River Independent Power Projects, Forestry, Environmental Services, Land Development and Financial Services. Individual LNG proponents will be targeted for specific third party business potentially as customers, partners or investors.

Environmental Stewardship

Environmental Stewardship is a long term requirement of the project and as such, those activities and costs associated with environmental monitoring and studies will be approached as an on-going business expense.

This is one area where we would be prepared to look at all eventual projects and pool financial resources in order to develop and implement a comprehensive environmental stewardship plan.

The directions given to the Negotiating team includes using Environmental stewardship as a business opportunity to develop capacity and depth within Kalum to undertake environmental assessment activities, not just for Kalum but for other business entities and governments.



PHOTO: BIRGITTE BARTLETT

PIPELINE BENEFIT AGREEMENTS WITH THE BC GOVERNMENT

THE BC GOVERNMENT HAS NEGOTIATED A TOTAL OF 18 PIPELINE BENEFIT AGREEMENTS SINCE 2014 FOR THREE PROJECTS:

- COASTAL GAS LINK PIPELINE PROJECT
- PRINCE RUPERT GAS TRANSMISSION PROJECT
- WESTCOAST CONNECTOR GAS TRANSMISSION PROJECT.

The Project Payment which ranges from \$390,000.00 to \$5,070,000.00 is paid half up front and the remaining once the pipeline is operational.

There is also an Additional Payment, which ranges from \$78,000 to \$1,014,000 and is contingent upon signing an agreement with the proponent or to waive that right. In addition, there is \$10,000,000 annually that will be shared between communities which have signed the agreements.

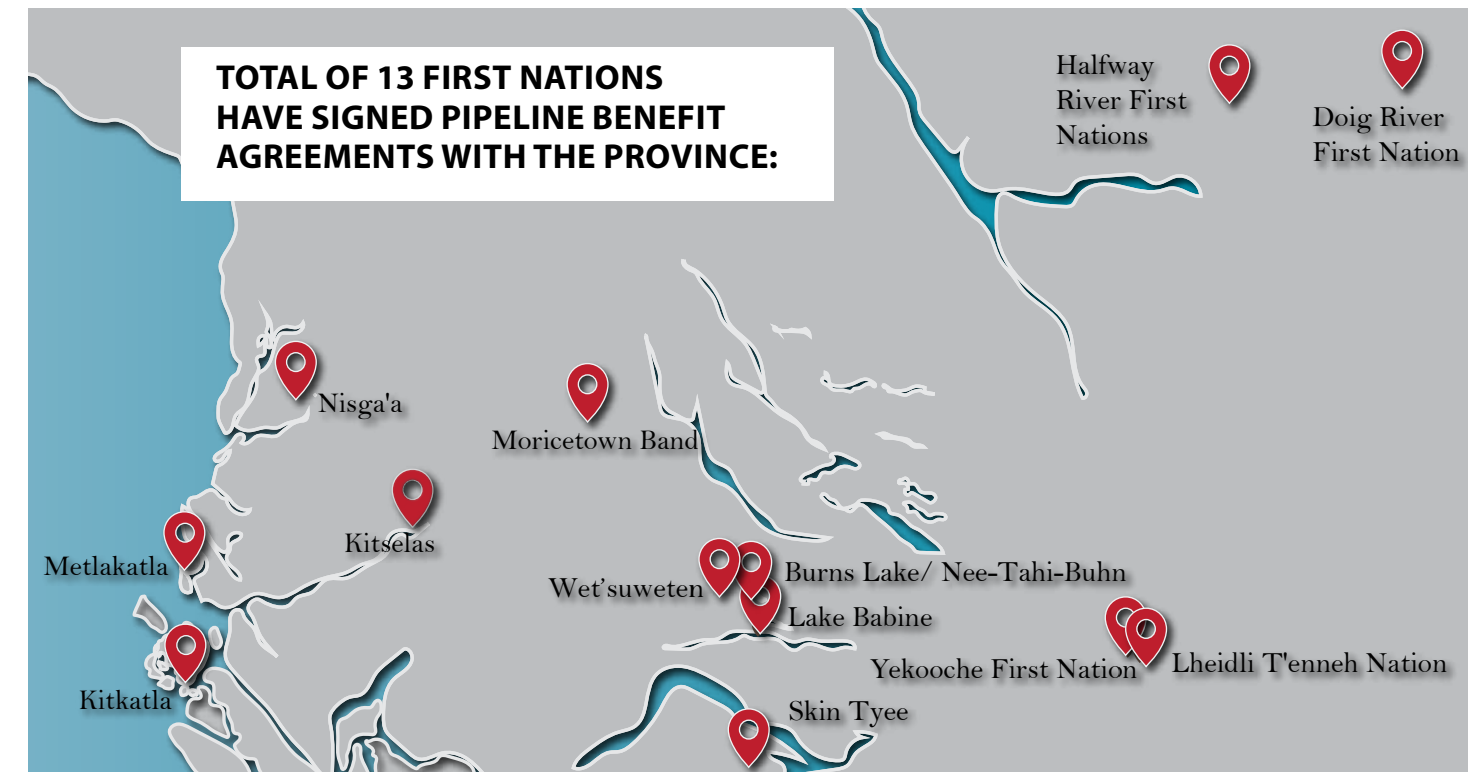
It is up to each First Nation involved to collectively determine the split.

There are financial benefits for each community that sign these agreements, only if the proponent makes a Final Investment Decision to build the pipeline.

WHAT DOES SIGNING AN IMPACT BENEFITS AGREEMENT (IBA) MEAN?

- It means Kitsumkalum consents to the specific project being developed on its Land.
- It means all the benefits provided under the Impact Benefit Agreement represent sufficient accommodation and Kitsumkalum agrees that the Government and LNG Company has fulfilled their obligations to Kitsumkalum for the Project.

Because the LNG industry is so big and so important to the Province, the Province is also offering accommodation to Kitsumkalum, both for the LNG terminals and for the pipelines that will bring gas to the terminals.



The directions given to the Negotiating team includes using Environmental stewardship as a business opportunity to develop capacity and depth within Kalum to undertake environmental assessment activities, not just for Kalum but for other business entities and governments.

Summary

There will be developed and provided to Chief and Council, individual project proponent's negotiation tactics list, which will identify the priority items that will be pursued at each of the respective negotiating tables.

Based on this mandate the Negotiation team will provide monthly updates to Council on the status of negotiations, progress that is being made, issues as they arise and to re-confirm or adjust the mandates as required.

The Negotiation Team will endeavor to keep the treaty negotiators up to date on all negotiations and will not enter into any negotiations for items which would normally be considered Treaty related.



WANT TO SPEAK TO US ABOUT LNG DIRECTLY?

CONTACT OUR ENVIRONMENT, LANDS AND REFERRALS TEAM:

1-250-635-5000 or by email at:

Rina Gemeinhard at: rgemeinhardt@kitsumkalum.bc.ca

Siegi Kriegl at: skriegl@kitsumkalum.bc.ca



Find out more online!
www.kitsumkalum.bc.ca



WE WANT YOUR INPUT!

Your input and feedback is important to us. We are doing our best to get you the information as we receive it.

Find out more online!
www.kitsumkalum.bc.ca

HAVE A QUESTION ABOUT LNG?

Visit the LNG Questions tab where you can:

1. Ask a question!
2. Review responses from frequently asked questions asked by other community members
3. Or read the

LNG COMMUNITY UPDATE PACKAGE



You can also contact the following government agencies with questions and concerns

Provincial:

BC Environmental Assessment Office
2nd Floor 836 Yeates St.
PO Box 9426 Stn Prov. Govt.
Victoria BC V8W 9V1
Ph: 250.356.1763
E: eaoinfo@gov.bc.ca

Federal:

Canadian Environmental Assessment Agency
22nd Floor, Place Bell
160 Elgin St.
Ottawa ON K1A 0H3