



November 18, 2020

Resort Municipality of Whistler (RMOW)
4325 Blackcomb Way
Whistler, BC V8E 0X5
Email: RLicko@whistler.ca

Attention: Roman Licko, Acting Senior Planner

**Re: Rezoning Application RZ1157 Consultation Referral for OCP Mapping
Amendment**

Our File: 09242020-001 RMOW Rezoning App RZ1157

We are writing to you in response to your letter dated September 24, 2020 providing notification proposed OCP mapping amendment for Rezoning Application RZ1157 – 5298 Alta Lake Road and asking us to submit our comments.

The rezoning application RZ1157 at 5298 Alta Lake Road is located within the traditional territory of the Lil'wat Nation. These lands have been used and occupied by the Lil'wat since time immemorial. The Province of British Columbia has been notified of the existence of the Lil'wat Nation's traditional territory.

The Lil'wat Nation asserts unextinguished title to its traditional territory, sovereignty over its traditional territory, and a right to self-determination. The Lil'wat Nation's aboriginal rights, including title, are protected under s. 35 of the *Constitution Act, 1982*.

A series of recent court decisions have:

- upheld the existence of aboriginal title in British Columbia;
- declared that aboriginal title coexists with crown title;
- limited the instances in which aboriginal title can be infringed by British Columbia or a third party;
- established strict criteria for any such infringement;
- declared that aboriginal title includes the right to choose the use to which the land is put;
- placed a legal duty on the Province of British Columbia to undertake meaningful consultation with First Nations and accommodate potential infringement; and
- declared that accommodation may have economic and/or cultural components.

Furthermore, the Supreme Court of Canada confirmed in the *Tsilhqot'in* decision that aboriginal title is real and meaningful, territorial in nature, and that First Nation consent is required for the use of its aboriginal title lands and resources. The decision also specifically states that aboriginal title confers:

. . . the right to decide how the land will be used; the right of the enjoyment and occupancy of the land; the right to possess the land; the right to economic benefits of the land; and the right to pro-actively use and manage the land. (at para. 73)

As a consequence of these decisions, British Columbia is under a legal obligation to consult with the Lil'wat Nation, and, where appropriate, seek consent from Lil'wat Nation and accommodate the Lil'wat Nation for infringements on its aboriginal title and rights.

We have reviewed the information provided with this referral regarding notification of the proposed rezoning application RZ1157 at 5298 Alta Lake Road. We do not have any comments at this time regarding this decision. However, if any new information were to arise during the course of this activity that indicates there may be impacts on Lil'wat aboriginal rights, title or interests, we would expect to receive notice and to have an opportunity to provide comments at that time. Furthermore, nothing in this letter is intended to affect the scope of, or the opportunity to exercise, any of Lil'wat's aboriginal rights, nor is it intended to accept any infringement of same.

Sincerely,



Harriet VanWart, Director
Land and Resources Department
Lil'wat Nation

c.c. Peter Baker, Director, Rights and Title, Squamish Nation
Email: Peter_Baker@squamish.net