

Specific Claims Information Document

Proposed Settlement IR #1 – 20 acre parcel (Brennan Lands)

I. Overview

The Cowichan Tribes has reached a proposed settlement with the federal government for Cowichan Tribes' claim that approximately twenty (20) acres of land located within the Cowichan Indian Reserve No. 1 was unlawfully granted to a settler, Patrick Brennan, in 1871.



A view of access road along the eastern border of the Brennan Lands, from Khenipsen Road looking north.

Before the settlement can be approved, Cowichan Tribes must authorize the approval through a ratification vote, which means all eligible members will be asked to vote whether to approve Canada's offer (by approving the Settlement Agreement) **on March 15, 2017**. More information on the vote is provided in this information package.

This document provides the details of Cowichan Tribes' claim, the resulting negotiation, and explains Canada's settlement offer to Cowichan Tribes.

II. Background

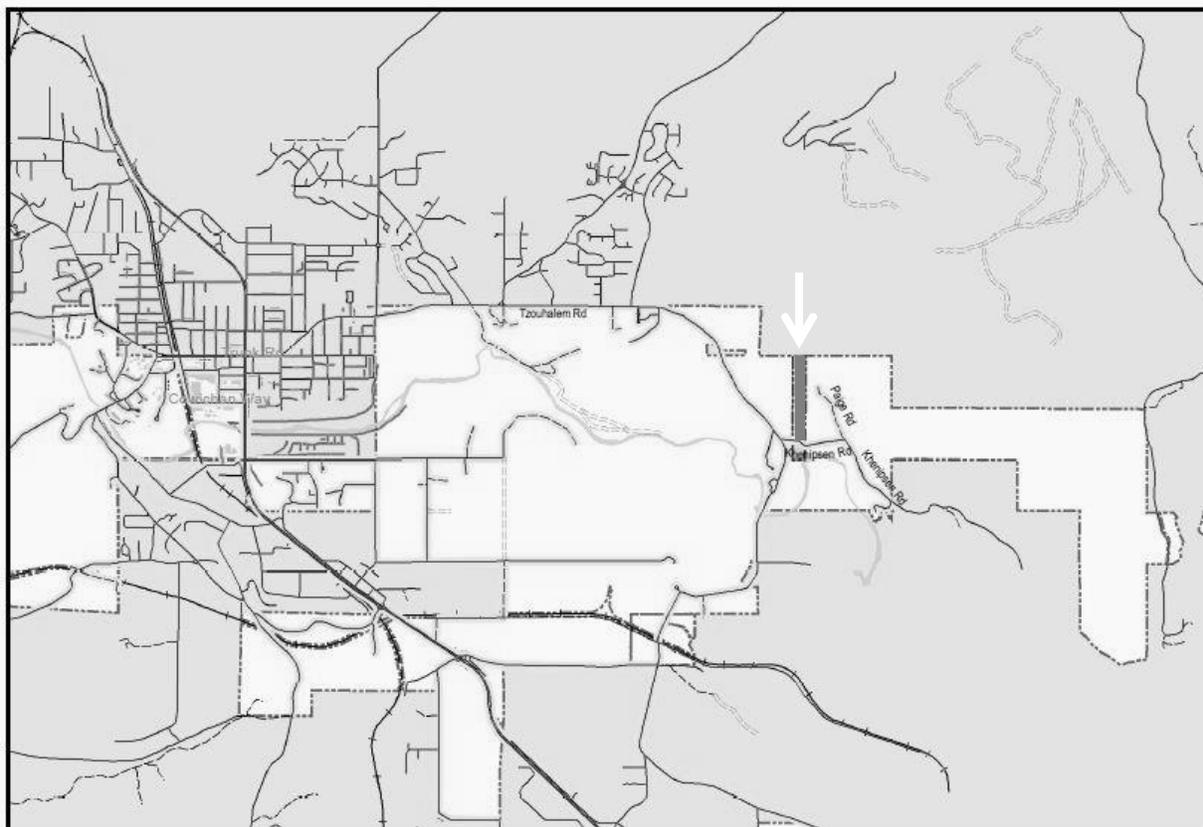
Indian Reserves were set up for Cowichan Tribes in the late 1850s by Governor James Douglas. The Reserves Governor Douglas had laid out were for the sole use and possession of the Cowichan Tribes. Indian Reserves were designated as off-limits to settlers who were looking to take up land.

In 1859, Governor Douglas had Cowichan Tribes Indian Reserve No. 1 and included the 20-acre parcel that is the subject of Cowichan Tribes' claim.

The 20-acre parcel was illegally occupied by Patrick Brennan starting in 1861. In June 1871, the colonial government issued a Crown grant for the 20-acre parcel to Patrick Brennan even though the land was Indian Reserve land. This resulted in the Crown recording Cowichan IR #1 in 1871 as less the 20-acre parcel.



Photo of Brennan Lands from the North looking South towards Cowichan Bay



Map showing the Brennan Land in dark grey .

III. Negotiating the Claim

In 1995, Cowichan Tribes submitted a claim for a remedy for the unlawful taking of the 20-acre parcel under the Specific Claims framework. For lands that were taken without legal authority, the Specific Claims framework allows **compensation** equal to (i) the current, unimproved market value (“CUMV”) of the claimant’s land, and (ii) the value of the loss of use of the claimant’s lands brought forward to the current value of the loss.

The Specific Claims framework does not authorize the return of wrongfully taken lands.

Canada accepted the claim for negotiation for settlement in 2008.

Chief and Council appointed Dora Wilson, Albie Charlie, Chip Seymour and Dianne Hinkley to the Negotiating Committee. This group worked with our legal advisors to negotiate this settlement.

Cowichan Tribes and Canada jointly retained a land appraiser to assess the Current Unimproved Market Value of the 20-acre parcel of land, and the value lost to the surrounding Reserve land because of the land being privately held (or the severance value).

Following Cowichan Tribes' and Canada's approval of the appraisal, Canada made an initial offer to Cowichan Tribes on February 8, 2013, but due to lengthy negotiations on the terms of the settlement agreement, Canada agreed to update their offer to reflect the fact that the value of the 20-acre parcel and the compensation related to Cowichan's loss of use of the lands had increased over the period of the negotiation.

Cowichan Tribes retained the same appraiser that carried out the first valuation to update the value for CUMV and the severance value.

The appraiser assessed the CUMV of the land to be \$965,000, and the severance value to be \$125,000. In addition, Canada applied their formula for calculating the historical loss of use value for the 20-acre parcel to be \$1,024,111. **The total of these figures is: \$2,114,111.**

IV. The Settlement Offer

Canada provided an updated settlement offer on July 5, 2016 and a draft Settlement Agreement on August 22, 2016. The Settlement Agreement sets out the details related to the offer.

Canada's settlement offer to Cowichan Tribes consists of a **financial payment of \$2,682,907** and an option to apply to have up to **22 acres of land be added to Cowichan Tribes' Reserve land base** (article 4.0 of the Settlement Agreement). Canada's offer is proposed as compensation for:

- (i) the Current Unimproved Market Value of the land;
- (ii) the value lost from severance;
- (iii) the historical loss of use value;
- (iv) costs incurred by Cowichan Tribes' to negotiate and ratify the agreement; and
- (v) costs if Cowichan Tribes decides to apply for land to be added to Reserve (costs for land acquisition, surveying, environmental assessment, etc.)

An important part of the Settlement Agreement is that Cowichan Tribes' approval of the offer means Cowichan formally gives up, or surrenders, all rights to the 20-acre parcel of land (see article 3.0 of the Settlement Agreement). Cowichan Tribes' approval of the Settlement Agreement also means that Cowichan gives up any future claim against Canada related to the unlawful taking of the 20-acre parcel (see article 5.0 of the Settlement Agreement).

V. Ratifying the Settlement Agreement

The Cowichan Tribes Specific Claims Committee and Cowichan Tribes' Council has approved the offer and terms of the Settlement Agreement. However, in order to receive this settlement, Cowichan Tribes' electorate must ratify, or approve, the Settlement Agreement by voting on it. The Settlement Agreement will not take effect until it is successfully ratified and then signed by Cowichan and Canada.

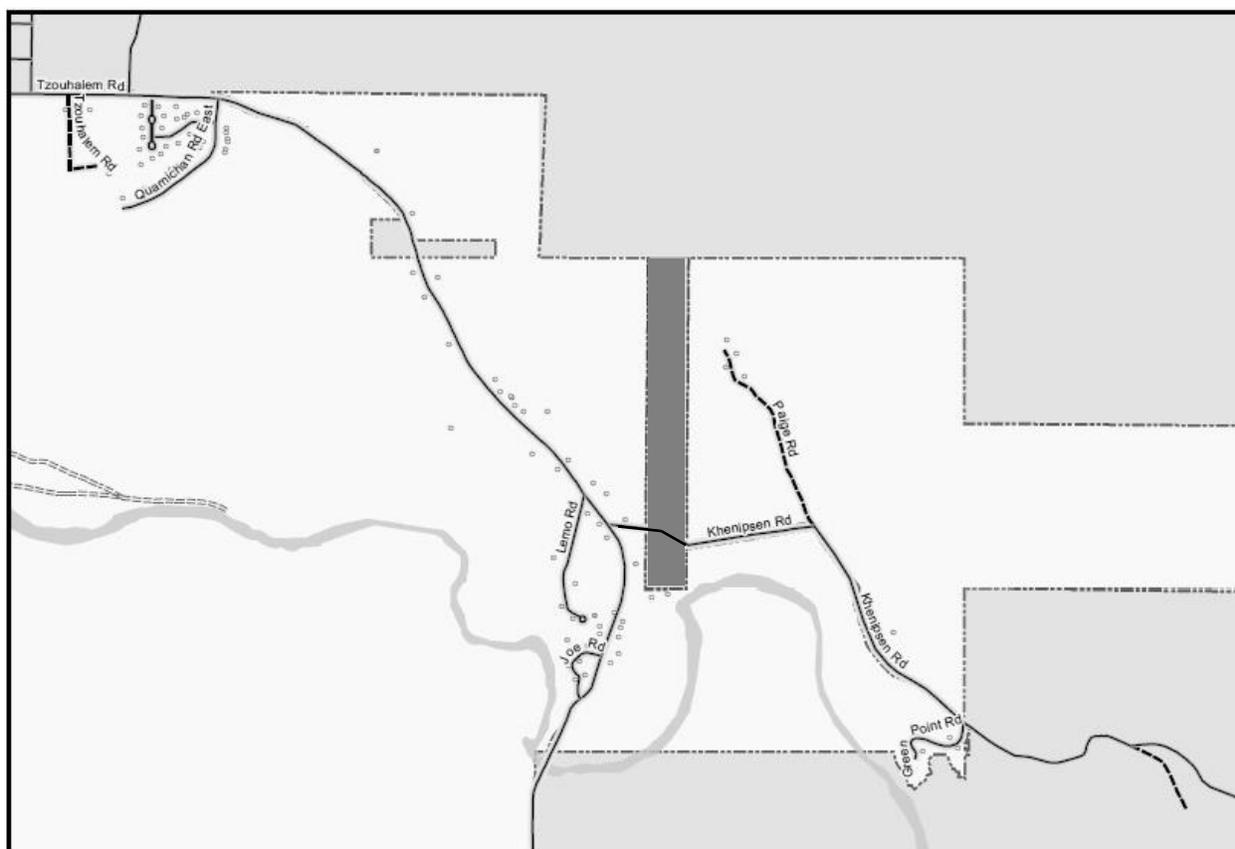
VI. Community Information Meeting

There will be a community information meeting on the Settlement Agreement on **Saturday February 25, 2017**, at the **Siem Lelum Gym**, 5574 River Road, Duncan, BC. Doors will open and coffee served at 8am, breakfast available at 8:30, and the meeting begins at **9am**.

If you have questions about the Settlement Agreement or anything else addressed in this Information Document, please contact Dianne Hinkley at 778-422-2255 or Dianne.Hinkley@cowichantribes.com.

VII. Voting Day

The voting day on the Settlement Agreement is **March 15, 2017**, in the same building as the temporary offices of Social Development and the Lands Department, at Temporary Council Chambers at the old VIU, **222 Cowichan Way** (just south of Superstore), Duncan, BC, V9L 6P4. **Polls are open 9 AM – 8 PM**. Off-reserve electors will also have the opportunity to vote on the Settlement Agreement by mail-in ballot.



A close up map of the Brennan Land in dark grey and showing nearby roads.