

## Band launches legal challenge to Gas 'n' Go

### Philip Round

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A new front has opened up in the campaign to try to stop the proposed Gas 'n' Go station from being built on Comox (Dyke) Road.

Yesterday afternoon, a legal petition was served on Comox Valley Regional District on behalf of K'ómoks First Nation Chief Ernie Hardy and all members of the Band.

At its heart, it seeks a ruling from the Supreme Court of B.C. to quash the development permit for the gas station, convenience and liquor store.

The new petition follows hot on the heels of the failure of the Sierra Club Comox Valley legal challenge to the development - a move that saddled that organization with tens of thousands of dollars in litigation costs.

The K'omoks Band petitioners are also denouncing the inadequacy of consultation processes with the Band.

The petition was presented to the court office in Victoria by lawyers Woodward and Company, a company that specializes in helping First Nations clients.

The document seeks a declaration that the regional district board accepts that it "owed a duty to consult with and, if necessary, accommodate the K'ómoks First Nation prior to approving the development permit."

It also wants a declaration that the board accepts it breached its duty by allegedly not fulfilling that responsibility, and further that it also breached its duty of fairness - and procedural fairness - to the K'ómoks people in making its decisions on the development permit.

It is seeking an interim stay on the issue of a separate building permit for the work pending final judicial review of the call to quash the development permit.

The Band is also seeking costs from the regional district and "such further and other relief as this Court may order and deem just."

The petition states that the Band has made various efforts over the years to inform and educate the regional district about the rights, title, history, culture and interests of the K'ómoks First Nation.

In August 2007, when the development permit was being actively considered, the board "knew or ought to have known of the potential existence of strong evidence supporting K'ómoks' aboriginal rights to fish in the estuary" as well as the right to hunt in the surrounding area - including on the site of the proposed Gas 'n' Go - and had a prima facie case for those aboriginal rights, including title.

The petition acknowledges the board did email a referral about the gas station proposal to the Band in mid-August seeking any comments, and at the end of the month Chief Hardy registered the Band's opposition to the proposal.

But the petition suggests this consultation was inadequate in that "the board failed to consult K'ómoks with the intention of substantially addressing the concerns identified by K'ómoks prior to approving the development permit."

Further, "the board failed to provide full information to K'ómoks and failed to provide K'ómoks an opportunity to be heard and to have their concerns understood."

Those issues had been considered, the petition suggests, but the board "decided that no consultation was required and that K'ómoks did not require an opportunity to be heard in relation to its specific issues."

The regional district has 21 days to respond to the petition or the court can proceed to consider the issues. The petitioners estimate that if and when the matter does get to the Supreme Court, it will take two days to hear all the arguments in the case.

Regional district chief administrative officer Debra Oakman confirmed to the Echo that the petition had been served on the authority, and would be considered carefully by the authority in consultation with its lawyers.

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