

**Memorandum of Understanding (MOU) to Establish an
Effective Government-to-Government Working
Relationship for the Management of Archaeological
Resources**

BETWEEN:

The Ktunaxa Nation, represented by the Ktunaxa/Kinbasket Tribal Council (“K/KTC”)

AND:

Her Majesty the Queen in right of the Province of British Columbia, represented by the Assistant Deputy Minister, Land Information BC, Ministry of Sustainable Resource Management (“British Columbia”)

(each a “Party” and collectively the “Parties”)

Whereas section 35(1) of the *Constitution Act, 1982*, recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada.

Whereas for the purpose of treaty negotiations in British Columbia, the K/KTC has identified as the Ktunaxa Nation’s traditional territory the geographic area within British Columbia identified in its Statement of Intent received by the British Columbia Treaty Commission and shown schematically in Appendix A (herein the “Traditional Territory”).

Whereas the Parties have an interest in exploring ways to achieve an effective, pre-treaty, government-to-government working relationship regarding the management of cultural resources generally to inform and expedite their treaty negotiations and agree that the management of archaeological resources is an important component of this broader relationship.

Whereas the Parties share an interest in the Management of Archaeological Resources.

Whereas the Parties wish to describe how they will work together on matters pertaining to the Management of Archaeological Resources.

Therefore the mutual understandings of the Parties are as follows:

Definitions

1. In this MOU:

“Ancient Aboriginal Remains” means a burial place that has historical or archaeological value or human remains or a heritage object from a burial place that has historical or archaeological value;

“Aboriginal Rights” means aboriginal rights, including aboriginal title, pursuant to section 35(1) of the *Constitution Act, 1982*;

“Archaeological Resources” means an aboriginal archaeological site protected by the *Heritage Conservation Act* or a burial site containing Ancient Aboriginal Remains that is located within the Traditional Territory and that may be of cultural significance to the Ktunaxa Nation, including the information associated with sites and artefacts;

“Ktunaxa Nation” means the Ktunaxa people (formerly referred to as Kootenay), including any member Bands of the K/KTC;

“Management of Archaeological Resources” means the identification, conservation, protection, management and interpretation of Archaeological Resources;

“Minister” means the Minister in Right of British Columbia having the responsibility, from time to time, for the exercise of powers in respect of the matter in question and includes a person appointed to serve, in the department over which the Minister presides, in a capacity appropriate to the exercise of those powers;

“Permit Applications” means an application for a permit pursuant to sections 12 and 14 of the *Heritage Conservation Act*; and

“Provincial Heritage Site” means a site designated to be a heritage site under British Columbia provincial legislation.

Purpose

2. This MOU describes how the Parties will:

- 2.1. develop a shared understanding of and cooperative relationship for the Management of Archaeological Resources; and

- 2.2. exchange views and develop approaches regarding the Management of Archaeological Resources that are within the management scope of the Parties.

Scope

3. This MOU applies to the Management of Archaeological Resources within the Traditional Territory.

Objectives

4. The objectives of this MOU are to:
 - 4.1. establish an effective, cooperative, government-to-government, working relationship, based on mutual respect and understanding, which will provide the Ktunaxa Nation with a greater role in and influence over the Management of Archaeological Resources;
 - 4.2. provide a venue for the Parties to discuss issues pertaining to the Management of Archaeological Resources;
 - 4.3. enable the Parties to work together at a strategic level on initiatives that will lead to enhanced Management of Archaeological Resources;
 - 4.4. help the Parties to coordinate their respective management activities and to identify and implement any opportunities to share responsibilities;
 - 4.5. assist the Parties to develop and implement processes for obtaining and sharing the information required to support sound decisions regarding the Management of Archaeological Resources; and
 - 4.6. provide clarity respecting the processes for reviewing and making recommendations on Permit Applications.

Management Principles

5. While recognizing any existing Aboriginal Rights and respecting the culture, traditions and history of the Ktunaxa Nation, the Parties agree that in developing approaches for the Management of Archaeological Resources they will be guided by the information available to them and by provincial and federal statutes.
6. Cooperative management processes adopted by the Parties will: (i) be operationally pragmatic; (ii) utilize existing management processes to the greatest extent possible; and (iii) reflect an

incremental, adaptive management approach, growing as relationships mature and the Parties' capacities change.

7. Matters regarding other First Nations' Archaeological Resources interests on shared areas within the Traditional Territory will be dealt with by the appropriate Party outside of this MOU.

Archaeological Resources Management Committee

8. Within sixty (60) days of signing this MOU, the Parties will take steps to establish the Archaeological Resources Management Committee (the "Committee").
9. The Committee will undertake the following activities, which will support their cooperative efforts to develop approaches for the Management of Archaeological Resources and will assist each Party in making its respective management decisions:
 - 9.1. coordinate the collection and exchange of information respecting Archaeological Resources so that each of the Parties has access to the best available information;
 - 9.2. identify current or emerging threats to Archaeological Resources and develop approaches for providing protection from or mitigating the potential impacts of these threats;
 - 9.3. identify actions of other agencies that are of concern and assist in bringing these concerns to the attention of those agencies;
 - 9.4. develop cooperative approaches for facilitating compliance and enforcement;
 - 9.5. subject to British Columbia's confidentiality requirements, review proposals to amend legislation respecting the Management of Archaeological Resources and proposed designations of Provincial Heritage Sites;
 - 9.6. review the content of interpretive signs and other types of interpretive materials prepared for Archaeological Resources;
 - 9.7. review and make recommendations regarding Archaeology and Registry Services Branch's operational policies and procedures; and
 - 9.8. facilitate the resolution of disputes that may arise in response to Management of Archaeological Resources.
10. In developing approaches for the Management of Archaeological Resources, the Parties may prepare documents describing processes that they agree to implement and with the written consent of both

Parties may append those documents to this MOU and thereby include them as part of this MOU.

11. The Parties agree that one of the initial priorities for the Committee will be to develop a review process and a process for sharing information. A sample review process is attached as Appendix B.
12. The Parties will each appoint two representatives to the Committee.
13. The Committee may establish rules and procedures for its internal operations.
14. The Committee may invite other governments to participate in the cooperative processes established under this MOU.
15. Each Party will be responsible for its own costs to participate.
16. The Committee will be responsible for attempting to resolve issues that arise regarding the funding of the operations of the Committee.

Notice

17. Where in this MOU any notice or other communication is required to be given by any of the Parties, it will be made in writing, and will be effectively given by:
 - 17.1. delivery to the address of the Party set out below, on the date of delivery;
 - 17.2. pre-paid registered mail to the address of the Party set out below, on the date the registered mail is delivered;
 - 17.3. facsimile to the facsimile number of the Party set out below, on the date the facsimile is sent; or
 - 17.4. electronic methods of communication, once these are developed and implemented with the agreement of the Parties.

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| K/KTC 7468 Mission Road Cranbrook, BC V1C 7E5 Fax: (250) 489-2438 Attn: Manager, Lands and Resources | Ministry of Sustainable Resource Management PO Box 9375 Stn. Prov. Gov. Victoria, BC V8W 9M5 Fax: (250) 952- 4188 Attn: Manager, Archaeology Permitting Section |
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Nature of this MOU

18. This MOU describes

- 18.1. the framework for a cooperative working relationship between the Parties, and
 - 18.2. processes which may form a component of consultation, but the MOU itself may not wholly satisfy the Crown's legal obligation to consult.
19. This MOU is not intended to:
- 19.1. be a legally binding contract;
 - 19.2. be a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*;
 - 19.3. create, amend, define, affirm, recognize, abrogate or derogate from, any Aboriginal Rights;
 - 19.4. be interpreted or implemented in a manner that fetters the discretion of statutory decision-makers;
 - 19.5. limit the positions either Party may take in any legal or administrative proceedings; or
 - 19.6. constitute any admission of fact or liability.
20. For additional clarity, the Ktunaxa Nation asserts that its agreement to enter into this MOU does not mean that it accepts British Columbia's assertion of jurisdiction or authority respecting the Management of Archaeological Resources.

Dispute Resolution

21. When a dispute arises between the Parties during the term of this MOU regarding the interpretation or implementation of this MOU, the Committee may employ voluntary dispute resolution measures that may include mediation conducted in good faith and in an informal and non-adversarial manner.
22. With the written agreement of both Parties, other dispute resolution procedures may be used to assist Committee members to achieve consensus.

Amendment

23. The Parties agree to review this MOU and its effectiveness from time to time at the request of any Party but not more frequently than annually.
24. Any amendments to this MOU will require the written consent of the Parties and will take effect upon signing.

Termination

25. Any Party may terminate this MOU by giving the other Party thirty (30) days advance written notice of the intent to terminate the MOU and the reasons for terminating the MOU.

Signed on the ___ day of _____, 2004.

On behalf of the Ktunaxa Nation

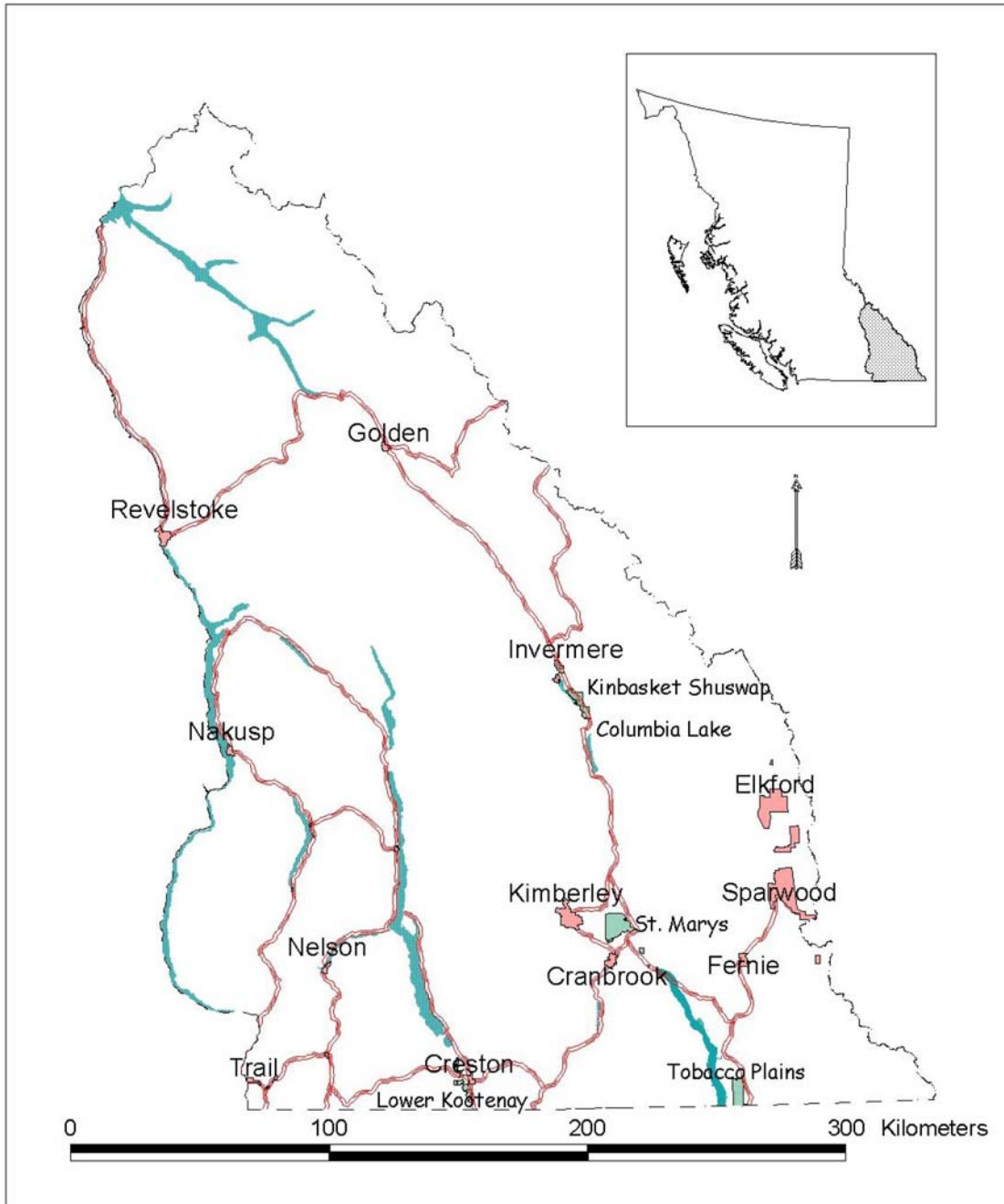
Kathryn Teneese
Administrator, Ktunaxa/Kinbasket Tribal Council

On behalf of Her Majesty the Queen in Right of the
Province of British Columbia

Allison Bond
Assistant Deputy Minister, Land Information BC,
Ministry of Sustainable Resource Management

APPENDIX A

Traditional Territory of the Ktunaxa Nation



APPENDIX B

Sample Review Process

- A. Upon receiving an application for a permit to conduct archaeological studies within the Traditional Territory, British Columbia will advise the archaeologist applying for the permit to contact the Ktunaxa Land and Resources Agency.
- B. British Columbia will provide new Permit Applications to the Ktunaxa Nation for review.
- C. British Columbia will make every effort to ensure that the Ktunaxa Nation is provided with appropriate information sufficiently in advance of any statutory decisions so as to provide the Ktunaxa Nation with adequate time to complete its review and to prepare recommendations for consideration by the relevant statutory decision-maker.
- D. The Ktunaxa Nation will provide a written response to British Columbia within fifteen (15) to thirty (30) days following receipt of a permit application.
- E. If British Columbia requests that a written response be provided in less than thirty (30) days, then British Columbia will provide a rationale for the request.
- F. The written response provided by the Ktunaxa Nation will describe any concerns it may have regarding the application and provide recommendations to address the concerns identified.
- G. The Ktunaxa Nation may request an extension to the original number of days specified for submitting a written response on a case-by-case basis and British Columbia will not unreasonably withhold its consent to a reasonable request.
- H. The Ktunaxa Nation and British Columbia will endeavour to address any outstanding concerns of the Ktunaxa Nation, as identified in the Ktunaxa Nation's written request for an extension, in a timely manner.
- I. In the event that British Columbia does not receive a written response from the Ktunaxa Nation that meets the requirements of paragraph F, the Minister will proceed with the decision-making process on the basis of the available information and will advise the Ktunaxa Nation of the decision and any conditions that have been attached to the application decision.