

Memorandum of Understanding (MOU) to Establish an Effective Government-to-Government Working Relationship for Land Use Planning

THIS AGREEMENT made the ____ day of _____ 2004

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA represented by the Minister of Sustainable Resource Management

AND

THE KTUNAXA NATION represented by the Ktunaxa/Kinbasket Tribal Council (“K/KTC”)

Hereinafter referred to individually as a “Party” and collectively as 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 purposes 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 1 (herein the “Traditional Territory”).

Whereas the Ministry of Sustainable Resource Management (“MSRM”) is the Provincial agency responsible for land use planning within the Traditional Territory.

Whereas the Parties wish to describe how they will work together on matters pertaining to land use planning within the Traditional Territory.

Whereas the Parties are interested in continuing to foster an effective collaborative relationship in areas within their respective mandates.

Whereas the K/KTC is developing an internal land use plan for the Traditional Territory which will be key to identifying Ktunaxa Interests.

Therefore the mutual understandings of the Parties are as follows:

1. DEFINITIONS

In this MOU, including the Appendices:

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

“**Guiding Principles**” means those principles set out in Section 5;

“**Ktunaxa Interests**” means the interests of the Ktunaxa Nation respecting:

- a) its asserted Aboriginal Rights;

- b) employment and economic opportunities;
- c) protection of culture and heritage resources; and
- d) environmental quality;

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

“**Land Use Plans**” means strategic plans and related policies and procedures prepared by the Province that address the use of land or resources, but does not include operational plans required to be prepared by licensees to operate on Crown land; and

“**Province**” means the Province of British Columbia.

2. SCOPE

- 2.1. This MOU applies to land use planning processes and Land Use Plans that may impact upon the lands, resources or Ktunaxa Interests within the Traditional Territory.

3. OBJECTIVES

- 3.1. This MOU sets out the principles and a framework for establishing an effective, collaborative working relationship between the Parties that is intended to:
 - 3.1.1. provide an appropriate vehicle through which the Parties may consult with one another on land use planning processes and specific Land Use Plans;
 - 3.1.2. assist the Parties to develop workable accommodations of Ktunaxa Interests related to asserted Aboriginal Rights and to address other Ktunaxa Interests in the Traditional Territory that may be affected by Land Use Plans;
 - 3.1.3. assist MSRM in meeting its mandate as well as any legal obligations owed to the Ktunaxa Nation.

4. NATURE OF MOU

- 4.1. This MOU describes:
 - 4.1.1. the framework for a cooperative working relationship between the Parties, and
 - 4.1.2. processes which form a component of consultation and accommodation, but the MOU itself may not wholly satisfy the Crown’s legal obligation to consult regarding any potential infringements of Aboriginal Rights and to seek workable accommodations as appropriate.
- 4.2 This MOU is not intended to:
 - 4.2.1 be a legally binding contract;
 - 4.2.2 be a treaty or land claims agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982;
 - 4.2.3 create, amend, define, affirm, recognize, abrogate or derogate from, any Aboriginal Rights;
 - 4.2.4 be interpreted or implemented in a manner that fetters the discretion of statutory decision-makers;

- 4.2.5 limit the positions either Party may take in any legal or administrative proceedings; or
- 4.2.6 constitute any admission of fact or liability.

4.3 For additional clarity, the Ktunaxa Nation asserts that its agreement to enter into this MOU does not mean that it accepts British Columbia's or Canada's assertion of jurisdiction or authority respecting Land Use Plans.

5. GUIDING PRINCIPLES

- 5.1. The following principles apply to the MOU as a whole and the relationship it creates.
 - 5.1.1. The relationship between the Parties is between two governments and each government has its own area of authority and responsibilities.
 - 5.1.2. The Parties are committed to continuous improvement in land use planning and resource stewardship.
 - 5.1.3. To be effective, processes must be fair, reasonable, pro-active and workable.
 - 5.1.4. The Parties agree that openness to, respect for, and recognition of each other's circumstances and values are central to fostering an effective and collaborative working relationship.
 - 5.1.5. Each Party needs an adequate understanding of the issues and capacity to fulfil its obligations under this MOU.
 - 5.1.6. Consultation with the Ktunaxa Nation will occur at the appropriate level according to advice from the K/KTC.
 - 5.1.7. Each Party will communicate any lack of clarity or misunderstandings, and will participate in rectifying it as quickly as possible.

6. WORKING RELATIONSHIP

- 6.1. To achieve an effective, collaborative relationship consistent with the Guiding Principles, and to ensure that government-to-government discussions are conducted at the appropriate levels, the Parties agree to establish a two-tiered working relationship that will be conducted as follows:
 - 6.1.1. at an intergovernmental level, in accordance with the terms of reference jointly agreed to for a Ktunaxa Land Use Planning Committee (herein the "Committee"); and
 - 6.1.2. at an operational level, in accordance with sub-agreements or other agreed upon mechanisms.
- 6.2. Within sixty (60) days following the signing of this MOU, the Parties will take steps to establish the Committee.
- 6.3. The Committee:
 - 6.3.1. will be the primary forum for the working relationship between K/KTC and MSRM established pursuant to this MOU;
 - 6.3.2. may make nonbinding recommendations to MSRM and K/KTC on matters pertaining to land use planning processes and specific Land Use Plans, including recommendations on priorities for scheduling and participating in land use planning processes;
 - 6.3.3. will oversee the implementation of the MOU;
 - 6.3.4. will annually review the activities undertaken by the Parties and develop measures to address any problems identified; and

- 6.3.5. may engage in other activities agreed to by the Parties.
- 6.4. Before finalizing MSRM's schedules for land use planning processes, MSRM will seek K/KTC input on scheduling and priorities and will provide to the Committee:
 - 6.4.1. notification of any Land Use Plans that are proposed to be prepared;
 - 6.4.2. details of land use planning processes that may be utilized to prepare the proposed Land Use Plans;
 - 6.4.3. anticipated impacts that the Land Use Plans may have on Ktunaxa Interests;
 - 6.4.4. anticipated timelines; and
 - 6.4.5. any other information that may be relevant.
- 6.5. Based on MSRM's scheduled land use planning processes, each year the Committee will be responsible for:
 - 6.5.1. determining its priorities for participating in scheduled land use planning processes;
 - 6.5.2. defining its goals and describing what it expects to achieve;
 - 6.5.3. determining requirements for effective K/KTC participation in each scheduled land use planning process, including scientific and/or cultural information needs; and
 - 6.5.4. undertaking any other activities, including establishing technical subcommittees, that will help to ensure that the Committee accomplishes its goals.

7. COMMITMENTS AND RESPONSIBILITIES

- 7.1. The Parties agree that they will each make reasonable efforts to dedicate the necessary time and effort to fulfil their respective obligations under this MOU.
- 7.2. Each Party will notify the other Party immediately regarding any circumstances that it believes may potentially affect the implementation of this MOU.
- 7.3. K/KTC is responsible for coordinating input into Land Use Plans on behalf of the Ktunaxa Nation.
- 7.4. K/KTC will not be responsible for coordinating input into Land Use Plans on behalf of individuals who are not members of the Ktunaxa Nation.
- 7.5. The Parties will negotiate and attempt to reach such other agreements, including workable accommodations, which may be reasonably required to give effect to this MOU and the commitments herein.
- 7.6. Each Party will fund its own participation in the processes set out in this MOU, recognizing that the extent of their participation may be limited by a lack of access to resources.
- 7.7. The Parties will work cooperatively to seek funds to support their participation in the processes set out in this MOU.

8. INFORMATION SHARING

- 8.1. MSRM will provide to the K/KTC access to any publicly available land and resources information for which MSRM is a custodian or steward for the Province, which may include data sets and/or monitoring information.
- 8.2. The K/KTC is a custodian of cultural information and therefore is duty bound to ensure that this information is managed and shared according to the owner's wishes.

- 8.3. The K/KTC may provide information to MSRM to assist with the preparation of Land Use Plans and to facilitate early identification of Ktunaxa Interests and matters requiring consultation in accordance with this MOU, on the condition that:
 - 8.3.1. MSRM submits a written information request to the K/KTC outlining the area that the information is required for, what the information is required for and who will have access to the information;
 - 8.3.2. K/KTC has been authorized to share the information in accordance with the Ktunaxa Nation's protocols or confidentiality policies that may change from time to time;
 - 8.3.3. MSRM has established and implemented measures that the Parties agree will ensure that information provided is not shared with, or distributed to, anyone other than MSRM staff that directly require the information for their land use planning purposes, and that the information will be returned to the Ktunaxa Nation unless otherwise agreed;
 - 8.3.4. MSRM ensures that the K/KTC is involved in the use and interpretation of the information; and
 - 8.3.5. The provisions of the Province's *Freedom of Information and Protection of Privacy Act* and the *Heritage Conservation Act* will apply.
- 8.4. K/KTC will advise MSRM on the sensitivity of any information that it provides and the terms on which it may be shared in whole or in part with other parties.
- 8.5. Some information may not be provided to MSRM due to its sensitivity; however, the K/KTC will attempt to establish methods to identify sensitive areas in cooperation with MSRM.
- 8.6. The Parties will work with each other to ensure that the information they provide is explained to the other Party.
- 8.7. MSRM will assist the K/KTC in educating the Ktunaxa Nation staff about land use planning processes.
- 8.8. MSRM will advise the K/KTC of any internal MSRM training related to land use planning processes and will make it available to individuals and staff from the Ktunaxa Nation, subject to available space and on the same terms as it is offered to MSRM staff.
- 8.9. The K/KTC will assist in educating MSRM about the relevant aspects of the Ktunaxa Nation as required to support land use planning processes (e.g., culture, governance, organizational structure, values and ethics).

9. DUTY TO SEEK WORKABLE ACCOMMODATIONS

- 9.1. MSRM acknowledges that the Crown has a duty to consult on Ktunaxa Interests related to asserted Aboriginal Rights and to endeavour to seek workable accommodations as appropriate.
- 9.2. MSRM may rely on any offer of economic development, employment or other opportunities offered in accordance with this MOU, sub-agreements under this MOU, or other agreements or mechanisms developed by the Parties, to achieve workable accommodations.
- 9.3. If the Parties agree to work together to seek workable accommodation, then implementation of one or more of the following measures may be considered:
 - 9.3.1 mitigation measures;
 - 9.3.2 employment, training and education;
 - 9.3.3 economic benefits;
 - 9.3.4 Ktunaxa Community development;

- 9.3.5 business partnerships; or
- 9.3.6 such other measures as agreed to by the Parties.

10. NOTICE

- 10.1. 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 any of the following methods:
 - 10.1.1. delivery to the address of the Party set out below, on the date of delivery;
 - 10.1.2. pre-paid registered mail to the address of the Party, mentioned in this MOU, on the date the registered mail is delivered;
 - 10.1.3. facsimile, to the facsimile number of the party, mentioned in this MOU, on the date the facsimile is sent; or
 - 10.1.4. electronic methods of communication, once these are developed and implemented with the agreement of the Parties.

<p>K/KTC 7468 Mission Road Cranbrook, BC V1C 7E5</p> <p>Fax: (250) 489-2438 Attn: Manager, Lands and Resources</p>	<p>MSRM #401-333 Victoria St., Nelson, BC V1L 4K3</p> <p>Fax: (250) 354-6367 Attn: Regional Manager, Resource Management Division</p>
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11. DISPUTE RESOLUTION

- 11.1. 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.
- 11.2. With the written agreement of the Parties, other dispute resolution procedures may be used to assist Committee members to achieve consensus.

12. AMENDMENT

- 12.1. The Parties will review this MOU and its effectiveness from time to time at the request of either Party but not more frequently than annually.
- 12.2. Any amendments to this MOU will require the written consent of both Parties and will take effect upon signing.

13. TERMINATION

- 13.1. Either 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.
- 13.2. If this MOU terminates, the Parties will meet following the termination to discuss the development of a replacement mechanism to fulfil their respective statutory, constitutional and common law obligations.

14. SIGNATORIES

- 14.1. The K/KTC represents that it is authorized to enter into this MOU and to carry out its provisions by the Chiefs and Councils of any member Bands of the K/KTC.
- 14.2. MSRM represents that it is authorized to enter into this MOU and carry out its provision on behalf of the Province.
- 14.3. The undersigned agree to the provisions, as well as the spirit and intent of this MOU, however, this MOU is not a legally binding contract. Instead, this MOU represents a structured and respectful relationship that each Party agrees that they will mutually work toward.

THIS MOU has been signed by the duly authorized representatives of MSRM and the K/KTC as of the date set out below.

Kathryn Teneese
Administrator
Ktunaxa/Kinbasket Tribal Council

Date

Honourable George Abbott
Minister, Sustainable Resource Management

Date

APPENDIX 1

TRADITIONAL TERRITORY OF THE KTUNAXA NATION

