

DUPLICATE

TREATY NEGOTIATIONS OFFICE

FEB 14 2005

CORPORATE SERVICES

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

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 Minister of Water, Land and Air
Protection ("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 the Ktunaxa Nation is engaged in tripartite treaty negotiations with British Columbia and Canada under the British Columbia Treaty Commission process and the parties in those negotiations believe that piloting a cooperative management process prior to concluding a treaty may help them to expedite the treaty negotiation process.

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 A (herein the "Traditional Territory").

Whereas the Provincial Parks listed in Appendix B are located wholly or partially within the Traditional Territory.

Whereas the Parties wish to describe how they will work together on matters pertaining to the planning, management and use of the Provincial Parks that are located within the Traditional Territory.

Whereas the Parties intend to work cooperatively on the development of Park Planning Documents and the implementation of strategies to achieve the management objectives for the Provincial Parks.

Therefore the mutual understandings of the Parties are as follows:

Definitions

1. In this MOU:

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

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

"Minister" means the Minister of Her Majesty the Queen 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;

"Park Planning Documents" means any of the following documents prepared by BC Parks:

- a) purpose statements,
- b) management direction statements,
- c) management plans, and
- d) 5-year plans;

"Provincial Parks" means the parks, protected areas and ecological reserves listed in Appendix B.

Purpose

2. This MOU describes how British Columbia and the Ktunaxa Nation will cooperate in carrying out management activities for the Provincial Parks that are located within the Traditional Territory and that are identified as priorities by the Parties each year.

Scope

3. This MOU applies to the Provincial Parks listed in Appendix B, and to any areas within the Traditional Territory that may be proposed to be added to or deleted from the Provincial Parks.

Objectives

4. The objective of this MOU is to establish an effective working relationship, based on mutual respect and understanding, that will enable the Parties to cooperatively:
 - 4.1. improve their respective processes for sharing information;
 - 4.2. discuss any plans to add areas to or delete areas from the Provincial Parks;
 - 4.3. review, amend and implement Park Planning Documents for the Provincial Parks in accordance with the management principles in sections 5, 6, and 7 below;
 - 4.4. plan and manage the Provincial Parks, in accordance with the Park Planning Documents, in a manner that:
 - 4.4.1. protects ecological attributes, natural resources, as well as cultural, recreational and historical values, including the written and oral history and cultural traditions of the Ktunaxa Nation;
 - 4.4.2. acknowledges the Ktunaxa Nation's use of the land and resources for food, social and ceremonial purposes in accordance with its asserted Aboriginal Rights;
 - 4.4.3. respects the authority of the Ktunaxa Nation on matters regarding the interpretation of Ktunaxa place names, cultural practices and history;
 - 4.4.4. integrates information provided by the Parties;
 - 4.4.5. provides opportunities for compatible recreation and tourism, and other compatible economic uses in accordance with the management principles set out in sections 5, 6, and 7 below; and
 - 4.4.6. provides for the continuation of existing permits.
 - 4.5. explore and develop economic and capacity building opportunities for the Ktunaxa Nation.

Management Principles

5. While recognizing any existing Aboriginal Rights and respecting the culture, traditions and history of the Ktunaxa Nation, the Parties agree to manage the Provincial Parks in accordance with this MOU, relevant Park Planning Documents and all statutory, constitutional and common law.
6. The Parties agree that the harvesting of resources by the Ktunaxa Nation from within the Provincial Parks will be for food, social and ceremonial use purposes only, unless other purposes have been approved in accordance with this MOU, the Park Planning Documents and all statutory, constitutional and common law, including any Orders in Council, in effect from time to time.
7. The Parties agree that any harvesting of resources in Provincial Parks by the Ktunaxa Nation in accordance with section 6 will be subject to measures necessary for conservation, public health or public safety.

Park Planning

8. The Parties agree that the primary purpose of park planning is to provide recommendations regarding appropriate strategies to protect, conserve and manage the Provincial Parks, while recognizing any existing Aboriginal Rights and respecting the culture, traditions and history of the Ktunaxa Nation.
9. Park Planning Documents may address, but will not be limited to, the following elements:
 - 9.1. a park description;
 - 9.2. a data or information inventory;
 - 9.3. a management vision;
 - 9.4. management strategies; and
 - 9.5. a Ktunaxa Nation food, social and ceremonial harvesting sub-plan.

Ktunaxa-British Columbia Provincial Parks Management Committee

10. Within sixty (60) days of signing this MOU the Parties will take steps to establish the Ktunaxa-British Columbia Provincial Parks Management Committee (the "Committee").
11. The Parties will each appoint two representatives to the Committee.

12. The Committee may establish rules and procedures for its internal operations.
13. The Committee may:
 - 13.1. invite other governments and other government agencies to participate in the cooperative processes established under this MOU; and
 - 13.2. for the purpose of obtaining a variety of perspectives and access to diverse sources of information, invite non-governmental stakeholders to participate in the Committee in an advisory capacity.
14. The Committee will be responsible for attempting to resolve issues that arise regarding the funding of the operations of the Committee.
15. Each Party will be responsible for their own costs to participate.
16. The Committee will work cooperatively to acquire funds for projects.
17. A primary function of the Committee will be to provide mechanisms to facilitate the Ktunaxa Nation's participation in:
 - 17.1. the planning for and management of the Provincial Parks;
 - 17.2. identification and development of potential economic opportunities associated with the management of these parks; and
 - 17.3. decisions regarding adding areas to or deleting areas from Provincial Parks.
18. The Committee's tasks will include, but will not be limited to:
 - 18.1. ranking the Provincial Parks in the order of priority for Ktunaxa Nation participation in park planning and management activities, prior to the start of each new fiscal year;
 - 18.2. developing the consultation and review processes that the Parties agree are appropriate to implement prior to undertaking different types of activities (relevant activities may include creation of new parks, preparation, review, implementation and amendment of Park Planning Documents, reviewing new land use occupancy permit applications, reviewing research proposals and results);
 - 18.3. identifying priorities for conducting any inventories of cultural values in the Provincial Parks; and
 - 18.4. addressing matters related to the conduct of cultural activities by the Ktunaxa Nation within the Provincial Parks.
19. Either Party may submit to the Committee for consideration any topic that is within the Committee's general mandate. The

Committee will provide a written summary of its considerations and/or recommendations to both Parties.

20. When the Committee forwards a recommendation to one of the Parties, the Party receiving the recommendation will provide in writing within thirty (30) days an explanation of any action the Party intends to take in response to the recommendation.

Nature of this MOU

21. This MOU describes:

- 21.1. the framework for a cooperative working relationship between the Parties, and

- 21.2. 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.

22. This MOU is not intended to:

- 22.1. be a legally binding contract;

- 22.2. be a treaty or a land claims agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982;

- 22.3. create, amend, define, affirm, recognize, abrogate or derogate from, any Aboriginal Rights;

- 22.4. be interpreted or implemented in a manner that fetters the discretion of statutory decision-makers;

- 22.5. limit the positions either Party may take in any legal or administrative proceedings; or

- 22.6. constitute any admission of fact or liability.

23. 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 Provincial Parks.

Dispute Resolution

24. 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.

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

Amendment

26. 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.
27. Any amendments to this MOU will require the written consent of both Parties and will take effect upon signing.

Notice

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

K/KTC 7468 Mission Road Cranbrook, BC V1C 7E5 Fax: (250) 489-2438 Attn: Manager, Lands and Resources	Water, Land and Air Protection 205 Industrial Road G Cranbrook, BC V1C 7G5 Fax: (250) 489-8506 Attn: Regional Manager, Environmental Stewardship, Kootenay Region
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Termination

29. 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.

Signed on the 8th day of February, 2005.

On behalf of the Ktunaxa Nation

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



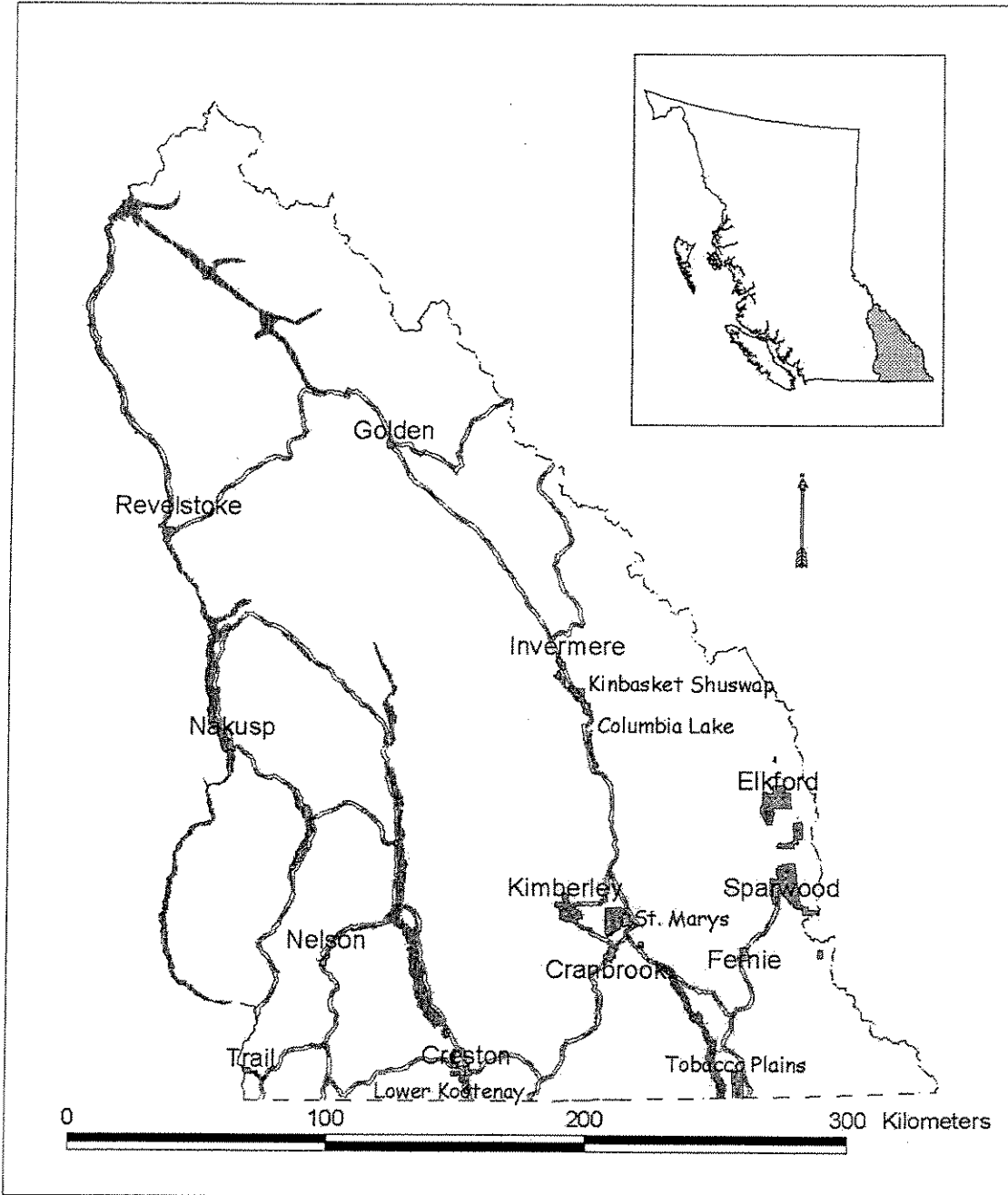
Kathryn Teneese
Administrator, Ktunaxa/Kinbasket
Tribal Council



Honourable Bill Barisoff
Minister of Water, Land and Air
Protection

APPENDIX A

Traditional Territory of the Ktunaxa Nation



APPENDIX B

Provincial Parks within the Traditional Territory

PARK NAME	PARK LOCATION	TOTAL AREA (HA)
Akamina-Kishinena	B.C./Alta./Montana Borders	10921.00
Arrow Lakes - A Multi Site	Multi Site	
Arrow Lakes – Burton	Burton	18.00
Arrow Lakes – Eagle	Edgewood	38.00
Arrow Lakes – Fauquier	Fauquier	16.00
Arrow Lakes – Shelter Bay	At Shelter Bay	21.00
Beaver Creek - A Multi-Class	<i>Multi Designation Pa</i>	
a) Beaver Creek PA	13 Km E Of Trail	4.00
b) Beaver Creek Park	13 Km E Of Trail	67.00
Blanket Creek	25km S Of Revelstoke	318.00
Bugaboo	40km W Of Brisco	13646.60
Burges And James Gadsden	11km N Of Golden	401.00
Canal Flats	3km N Of Canal Flats	6.00
Champion Lakes	18km Nw Of Fruitvale	1426.00
Cody Caves	13km Nw Of Ainsworth	63.00
Columbia Lake ER	E Side Of Columbia Lake	32.00
Columbia Lake	S Of Fairmont Hotsprings	260.00
Crowsnest	51km E Of Fernie	46.00
Cummins - A Multi-Class	<i>Head Of The Cummins River</i>	
a) Cummins Lakes Park	Head Of Cummins River	21812.00
b) Cummins River PA		260.00
Drewry Point	32km S Of Balfour By Boat	26.00
Dry Gulch	8km S Of Radium Junction	29.00
Elk Lakes	137km N Of Fernie	17245.00
Elk Valley	18km N Of Fernie	81.00
Elko	32km S Of Fernie At Elko	22.00
Erie Creek	5km W Of Salmo	15.00
Evans Lake ER	Head Of Evans Lake	185.00
Gilnockie Creek	Vicinity Of Moyie & Elko Lakes	2842.20
Gilnockie Creek ER	East Kootenay District	58.00
Goat Range	Nw Of Kootenay Lake	78947.00
Goosegrass Creek ER	West Side Of Kinbasket Lake	2185.00

APPENDIX B cont'd

Provincial Parks within the Traditional Territory

Grohman Narrows	5km W Of Nelson	10.00
Height Of The Rockies	Adjacent To Banff Nat. Park	54208.20
Inonoaklin	Edgewood	12.00
James Chabot	N End Windermere Lake	14.00
Jimsmith Lake	2km S Of Cranbrook	13.70
Kianuko	40 Km N Of Creston	11637.90
Kikomun Creek	64km E Of Cranbrook	682.00
King George VI	10km S Of Rossland	162.00
Kokanee Creek	19km E Of Nelson	260.00
Kokanee Glacier	34km Ne Of Nelson	32035.40
Kootenay Lake - A Multi Site	Multi Site	
a) Kootenay Lake - Campbell Bay	Across Lake From Kaslo	25.00
b) Kootenay Lake - Coffee Creek	N Of Balfour	52.00
c) Kootenay Lake - Davis Creek	8km S Of Lardeau	5.00
d) Kootenay Lake - Lost Ledge	8km S Of Lardeau	38.00
e) Kootenay Lake - Midge Creek	16km N Of Sand Lake	223.00
Lew Creek ER	Sw Side Of Trout Lake	815.00
Lockhart Beach	19km S Of Crawford Bay	3.00
Lockhart Creek	E Of Nelson	3750.60
Marl Creek	24km N Of Golden	167.00
Martha Creek	20 Km N Of Revelstoke	71.00
Mcdonald Creek	10km Of Nakusp	468.00
Morrissey	16km Se Of Fernie	5.00
Mount Assiniboine	48km Sw Of Banff	39050.00
Mount Fernie	3km W Of Fernie	259.00
Moyie Lake	19km S Of Cranbrook	90.50
Nancy Greene	35km E Of Rossland	203.00
Norbury Lake	13km E Of Cranbrook	97.00
Pilot Bay	8km E Of Balfour By Boat	347.00
Premier Lake	40km Ne Of Kimberley	662.00
Purcell Wild Cons Corridor	E Side Of Purcell Wc Park	1990.00
Purcell Wild. Con. PA (East)	E Of Kootenay Lake	106290.60
Purcell Wild. Con. PA (West)	Ne End Of Kootenay Lake	91825.00
Ram Creek ER	20 Km Se Of Canal Flats	121.00
Rosebery	6km Se Of Rosebery	32.00
Ryan	10km N Of Yahk	58.00
St. Mary's Alpine	42km Nw Of	9146.00

APPENDIX B cont'd

Provincial Parks within the Traditional Territory

	Kimberley	
Stagleap	34km W Of Creston	1133.00
Summit Lake	18km Se Of Nakusp	6.00
Syringa	19km W Of Castlegar	4416.90
Thunder Hill	69km N Of Kimberley	44.00
Top Of The World	64km E Of Kimberley	8790.00
Valhalla	W Shore Of Slocan Lake	49893.00
Wardner	Wardner	4.00
Wasa Lake	21km N Of Fort Steele	144.00
West Arm	Sw Of Nelson	25318.60
Whiteswan Lake	10km E Of Canal Flats	1994.00
Windermere Lake	16km S Of Invermere	220.00
Yahk	Yahk	9.00

Notes: PA= Protected Area (Established under Environment and Land Use Act)

ER= Ecological Reserve (Established under Ecological Reserves Act)