

THIS AGREEMENT made and effective as of and from the 20th day of May, 2006 (the “Effective Date”),

INTERIM CONSULTATION AGREEMENT
CONCERNING THE COOPERATIVE PLANNING AND MANAGEMENT OF
GULF ISLANDS NATIONAL PARK RESERVE

BETWEEN Hul’qumi’num Treaty Group, a duly incorporated Society under the British Columbia *Society Act*, located at RR#1 12611B Trans Canada Highway, Ladysmith, BC V9G 1M5

(the “HTG”)

AND Chemainus First Nation, Cowichan Tribes, Halalt First Nation, Lake Cowichan First Nation, Lyackson First Nation, and Penelakut Tribe,

(the “First Nation(s)”)

AND the Minister of the Environment for the purposes of the Parks Canada Agency, represented for the purposes hereof by the Superintendent of Gulf Islands National Park Reserve.

(“Canada”)

[collectively referred to as the “Parties”]

PREAMBLE

WHEREAS:

- A. The First Nations assert that: Hul’qumi’num Aboriginal rights, title and other interests exist in Hul’qumi’num territory; that the lands, waters, and resources belonging to Hul’qumi’num people are subject to the collective and individual rights and jurisdictions of the First Nations; and Hul’qumi’num territory has never been ceded, sold, or surrendered.
- B. The HTG, on behalf of the First Nations, is negotiating with Canada and British Columbia, within the British Columbia Treaty Process, with the intention of reaching a Final Agreement;

- C. The Parties have had some success in communicating on issues related to Gulf Islands National Park Reserve (GINPR) through a committee that gave advice to Canada that operated under the *Interim Agreement on an Advisory Role Concerning the Planning and Management of Gulf Islands National Park Reserve* dated 20 January 2004;
- D. The Parties recognize that this is an interim Agreement which preserves the First Nations' interests pending claims resolution in relation to GINPR and fosters a relationship between the parties that makes possible negotiations, which is the preferred process for achieving ultimate reconciliation.
- E. Canada and the Hul'qumi'num Treaty Group desire to mutually agree on a cooperative and consultative relationship in the spirit of the Chapter of the "Parks and Protected Areas – Federal Parks" chapter of the draft Agreement in Principle, dated September 17, 2003, without prejudice to treaty negotiations, and desire to implement that process prior to the completion of the Side Agreement;
- F. The Supreme Court of Canada has since provided guidance through the decisions *Haida Nation v. British Columbia (Minister of Forests)*¹ and *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*² on a general framework for government and First Nations related to the duty to consult and accommodate before Aboriginal rights or title have been established;
- G. The Parties wish to develop a meaningful process of consultation that has flexibility so that the level of consultation will be appropriate to the circumstances and will be a guide for both Parties to meet any legal duties that flow from the principles set out by the Supreme Court of Canada; and
- H. The Parties recognize that developing such a process is breaking new ground and will need to be evaluated and adapted as necessary.

THEREFORE, CANADA, THE FIRST NATIONS AND HTG AGREE AS FOLLOWS:

DEFINITIONS

"Chiefs and Councils" means the Chiefs and Councils that represent the First Nations of the Hul'qumi'num Treaty Group, consisting of Chemainus First Nation, Cowichan Tribes, Halalt First Nation, Lake Cowichan First Nation, Lyackson First Nation, and Penelakut Tribe.

¹ 2004 SCC 73 [*Haida Nation*]

² 2004 SCC 74 [*Taku River*]

“Direction(s)” means formal submissions to the Superintendent made by the First Nations representatives of the Committee on the content and scope of consultation, or on the substance of a topic under consultation, pursuant to clause 27 of this Agreement.

“Content and Scope” includes defining the issue to be consulted on and how to carry out consultation on that issue so that consultation is meaningful and appropriate to the circumstances.

“Gulf Islands National Park Reserve” means the lands and waters set out in the *Memorandum of Agreement respecting the Establishment of a National Park Reserve of Canada in the Gulf Islands of British Columbia* that will be named and described as Gulf Islands National Park Reserve in the schedules to the *Canada National Parks Act*, including any changes or additions to the lands and waters, subject to the finalization of treaties or land claims with the Hul’qumi’num Treaty Group member First Nations and other First Nations.

“Hul’qumi’num Treaty Group or HTG” is a treaty group participating in the British Columbia Treaty Process, representing Chemainus First Nation, Cowichan Tribes, Halalt First Nation, Lake Cowichan First Nation, Lyackson First Nation, and Penelakut Tribe.

“Hul’qumi’num Mustimuhw” means the collective First Nations people who are members of the Chemainus First Nation, Halalt First Nation, Lake Cowichan First Nation, Lyackson First Nation, Cowichan Tribes and Penelakut Tribe.

“Minister” means the federal Minister, or designate, whose authority for Gulf Islands National Park Reserve arises under the *Canada National Parks Act*.

“Side Agreement” means an agreement between Canada and the HTG negotiated pursuant to clause 12 to 20 inclusive of the draft “Parks and Protected Areas – Federal Parks” chapter of the Agreement in Principle, dated September 17, 2003.

“Substance of the Topic” includes the substantive dialogue regarding the issue under consultation.

“Superintendent” means Superintendent of Gulf Islands National Park Reserve.

“The Committee” means the group created pursuant to this Agreement.

PURPOSE

This Agreement sets out the interim terms by which the Parties will continue to develop and clarify the role for the First Nations in the cooperative planning and management of Gulf Islands National Park Reserve and establish a process for consultation where the conduct contemplated by Canada in planning and management could adversely affect or infringe a potential aboriginal right or title of the First Nations.

PRINCIPLES

The following principles are intended to provide guidance to the Parties for implementation of this Agreement. The last three principles provide a framework to the Parties of some of the common law principles which guide this Agreement. The principles under this heading are not intended to be contractual covenants.

The Parties share a belief that management of Gulf Islands National Park Reserve will be more successful if they have mechanisms to interact with each other, to learn from each other, and to share information and knowledge.

The Parties share a belief that Hul'qumi'num people are valuable sources of knowledge and experience, and that any consultative process needs to include mechanisms for interaction with these individuals.

Consultation must be in good faith, and with the intention of substantially addressing the concerns of the Aboriginal peoples whose potential aboriginal rights and title are at issue. Good faith is required on both sides at all stages.

The Parties acknowledge that the scope and content of consultation will vary with circumstances. Consultation may include a process to involve the Chiefs and Council and the communities of the HTG Member First Nations. This could also include the contracting of technical experts to assist the Committee members, conducting impact and benefit studies, providing additional funding, doing issue specific research, and disseminating findings in a timely manner to allow for the provision of feedback from the First Nations.

The Supreme Court of Canada confirmed that where there is a duty to consult there may be a requirement to accommodate. Accommodation was defined by the Courts as "seeking compromise in an attempt to harmonize conflicting interests and move further down the path of reconciliation". The court clarified that it may require "taking steps to avoid irreparable harm or minimize the effects of infringement."

COORDINATOR & COMMITTEE

1. The Parties agree to provide available information to each other, subject to federal law and confidentiality restrictions of HTG and the First Nations, to facilitate the processes under this Agreement.
2. The Parties agree that in order to assist with the processes under this Agreement, one person will be appointed by the HTG, in addition to their representatives, to coordinate participation of the HTG representatives. (the “Coordinator”)
3. The HTG will determine who will fill the Coordinator position. This determination will occur following discussion with Canada.
4. Duties of the coordinator will be included in this Agreement as Appendix 3.
5. A committee will be formed, (the “Committee”), consisting of the following representatives:
 - a) One representative from each of the member First Nations of the HTG, for a total of six;
 - b) One Elder, appointed by the HTG Chiefs to represent cultural expertise at the Committee;
 - c) The HTG Coordinator;
 - d) One representative of Canada, as determined by the Superintendent, and during any scheduled business of the committee either the Superintendent or his designate, or both, will be present;
 - e) Other participants as agreed by the Committee; and
 - f) One senior staff representative from HTG.

Representative

6. Each Party will determine their own representatives for the Committee. Each Party acknowledges the benefits of having consistent representation, and will endeavor to have representatives prepared in advance for meetings.

Chief & Council Opportunity for Submission

7. For greater certainty, if any of the Chiefs and Councils do not support the Direction(s), in whole or in part, made pursuant to clause 27 by the First Nation representative they appointed, the Chief and Council may put this in writing to the Superintendent prior to the decision being made. When the Superintendent makes a final decision pursuant to clause 30, the Superintendent will also consider the submission of the Chief and Council of the First Nation. For greater certainty, this submission will be considered

by the Superintendent as adding to, or where there is a conflict with the Direction provided, take the place of, the substantive contribution of that First Nations representative to the Direction.

Committee Conduct

8. The Parties agree that either Party may bring other persons to meetings of the Committee as they choose for purposes of enhancing that Party's participation.
9. Canada will maintain records of all business conducted, including minutes and material presented at meetings. The Coordinator, on behalf of the First Nations, will be responsible for keeping copies of all material presented and copies of meeting minutes.
10. Accessibility by other than Committee members to the records of the Committee will be as described in Appendix 1, the Information Sharing Protocol.
11. The Committee will attempt to meet monthly or as often as is necessary.
12. The Committee will develop as required its own set of operating procedures. These procedures will be agreed to on a consensus basis, and will be made available to the general public, including the First Nations as provided in Appendix 4.

TOPICS FOR ADVICE AND CONSIDERATION OF ADVICE

13. The Committee will be the interim venue through which the Committee, based on a consensus approach, will provide advice to the Superintendent on the following planning and management matters (Level I topics) as they may apply within Gulf Islands National Park Reserve, including:
 - a) signage;
 - b) identification, development, interpretation and presentation of materials relating to cultural and natural heritage;
 - c) acceptance process on interim management guidelines and management plans;
 - d) information, interpretation, and presentation of Hul'qumi'num heritage including Hul'qumi'num Mustimuhw language use;
 - e) development and use of Hul'qumi'num Mustimuhw language materials that are intended to be made available to the public as part of GINPR interpretive material;
 - f) research, including field investigations;

- g) training and employment opportunities;
 - h) collaborative arrangement with other First Nations;
 - i) annual business cycle planning; and
 - j) other matters as agreed.
14. Where any Party, including any individual First Nation representative of the Committee, considers that a Level I topic requires consultation the topic will be deemed to be a Level II topic.
15. The Parties agree that a quorum for a meeting of the Committee for Level I topics will consist of at least one representative from Canada, and at least three First Nations representatives as well as the Coordinator.

TOPICS AND PROCESS FOR CONSULTATION AND CONSIDERATION OF DIRECTIONS

Topics for Consultation

16. The Chiefs and Council by Band Resolutions have designated the representatives and their alternatives on the Committee from the First Nations to have the authority to represent their First Nation for the purposes of consultation on the following matters (Level II topics):
- a) Management of resource harvesting, including harvesting plans;
 - b) Management of archaeological, cultural, spiritual or historic sites of significance to the Hul'qumi'num Mustimuhw;
 - c) Management of discovered ancient human remains;
 - d) Deletions from GINPR;
 - e) Additions to GINPR, including criteria for strategic direction on the nature and location of lands for additions;
 - f) Interim Management Guidelines and Park Management Plans; and
 - g) Environmental Assessments which have the potential to consider acknowledged First Nations interests.
17. The Committee is not a forum for resolving Aboriginal title questions, nor is it a forum for treaty negotiations. If the Committee identifies that a Level II Topic may have implications for matters related to Aboriginal title or matters under treaty negotiation, the First Nation representatives of the Committee will confer with the Chiefs and Councils and the HTG Chief Negotiator as to what aspects of the matters the Committee should or should not deal with.

Engagement of Communities and Chiefs and Councils

18. The Committee will endeavor to perform adequate engagement of the Hul'qumi'num Mustimuhw, and gather or generate appropriate information into the potential impacts and benefits during any consultation by Canada.
19. The Committee will develop a process to inform the Chiefs and Councils and the communities of the First Nations of the outcomes of consultation on Level II topics. This may include such things as an annual public meeting or mail outs or a website. Canada recognizes that this communication is an important part of the Consultation process and as such will be considered in the funding arrangements provided for in Appendix 2.

Process for Consultation and Consideration of Directions

20. The Parties agree that a quorum for a meeting of the Committee for Level II Topics will consist of at least one representative from Canada, and at least four of the First Nation representatives as well as the Coordinator.
21. If one of the representatives is not present at a meeting, he or she may make their opinion on a matter under consultation known at a future meeting of the Committee.
22. The Parties expect the Committee members to strive to reach consensus on:
 - (i) what Content and Scope of consultation is required when considering a Level II topic. Content and Scope includes defining the issue to be consulted on and how to carry out consultation on that issue so that consultation is meaningful and appropriate to the circumstances. (the "Content and Scope"); and
 - (ii) the Substance of the Topic that is under consultation. The Substance of the Topic includes the substantive dialogue regarding the issue under consultation. (the "Substance of the Topic").
23. Where the Committee cannot reach consensus on the Content and Scope of consultation that is required, or on the Substance of the Topic under consultation, the Committee may engage a facilitator to assist the Committee to reach consensus.
24. If consensus on the Content and Scope of consultation, or on the Substance of the Topic of consultation still can not be reached, the Committee will report this to the Parties and suggest possible avenues for resolution such as

getting guidance from the Superintendent and the Chiefs and Councils or carrying out a broader consultation process in the community.

25. If the Parties agree on an avenue for resolution, they will take any additional steps that they agree are necessary so that there has been a meaningful process of consultation.
26. For greater certainty, any representative of Canada does not have to be included in a Direction to be sent to the Superintendent from the First Nation representatives on the Committee, and the First Nation representatives on the Committee need not have consensus on a Direction provided.
27. After taking any steps pursuant to clauses 23 to 26, the First Nation representatives on the Committee may make their formal submissions known to the Superintendent through providing Direction. Direction may be given verbally or in written form. Prior to undertaking a consultation the Committee will explicitly determine whether the Direction will be provided to the Superintendent in written or verbal form.
28. Prior to making her or his decision on a Direction from the First Nation representatives on the Committee, she or he will provide written reasons to the Committee, the Chiefs and Councils and the HTG.
29. After receiving the Superintendent's written reasons, the Committee may request that the Superintendent meet with the Committee, and a facilitator if appropriate, to attempt to reconcile outstanding interests. The Superintendent will make all reasonable efforts to meet with the Committee if requested by the Committee.
30. After such a meeting, if any, occurs, and after the full and fair consideration of the interests being expressed by the First Nations and any implications of a decision on the exercise or practice of asserted Aboriginal rights, the Parties recognize that the Superintendent may make his or her final decision.
31. The Parties acknowledge that the Chiefs and Councils, the First Nations or individual First Nation community members may choose to raise an issue with Canada where they feel that scope and content consultation has not been adequate, or that the Superintendent has not adequately accommodated their interests.

Review of Consultation Process

32. The Committee can make a recommendation to the Parties and HTG, at any time, on how the processes for consultation under this Agreement can be improved.
33. Annually, the Parties will identify and implement an appropriate mechanism to evaluate the effectiveness of the consultation processes under this Agreement.

GENERAL

34. The Parties acknowledge that there may be rare occasions such as emergencies relating to conservation, public health, or public safety that may require the Superintendent to take immediate actions without following the processes for consultation or advice set out in this Agreement. If such an action is taken, the Superintendent will inform the Committee as soon as possible.
35. This Agreement is not intended to be a treaty or land claims agreement, and is not intended to recognize and affirm Aboriginal or treaty rights, within the meaning of section 25 or 35 of the *Constitution Act, 1982*. This Agreement does not abrogate or derogate, acknowledge or deny any Aboriginal right of the First Nations. This Agreement does not affect any rights of any other First Nation.
36. Nothing in this Agreement shall limit in any manner the rights, jurisdiction, authority, obligations or responsibilities of either Party or their representatives. It is not intended to alter or affect the existing authorities of Canada or the First Nations.
37. This Agreement and the negotiations leading to its creation and its implementation are without prejudice to any Party in any future negotiations.
38. This Agreement, and any consultation undertaken pursuant to it, is not a recognition or acknowledgement of the likelihood of the existence of any Aboriginal right or title, nor an acknowledgement or admission by HTG or the First Nations that Canada has fulfilled any legal duties to consult or accommodate.
39. The Parties acknowledge that implementation of this Agreement may or may not fulfill any legal duties to consult or accommodate.

40. The Committee will not act as the consultative body for any issues dealing with any new protected areas that are administered under Parks Canada jurisdiction.
41. This Agreement will be renewed annually in accordance with clause 42 or until such time as the Side Agreement is completed. Upon completion, the Side Agreement will set out the process for a role for the First Nations in the planning and management of Gulf Islands National Park Reserve.
42. To renew this Agreement annually the First Nation representative will initial the Agreement, unless additional steps are otherwise required by their Chief and Council. Should any Chief and Council require additional steps for the renewal, such as the passing of a new Band Council Resolution, these steps will be respected. If such additional steps are required the Agreement will continue to be in effect until such additional steps have taken place.
43. Any Party may cancel this Agreement at any time with written notice.
44. This Agreement may be signed in one or more counterparts and by facsimile. Each facsimile will be deemed to be an original for all purposes, and all counterparts taken together will be deemed to constitute one document.
45. The headings and subheading appearing within the body of this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit, or enlarge the scope or meaning of this Agreement or any provision hereof.
46. This Agreement constitutes the entire Agreement between the Parties, and can be modified or amended by an instrument in writing of equal formality to this Agreement, duly executed by the Parties.

IN WITNESS WHEREOF the Parties hereby execute this Interim Consultation Agreement;

For the First Nations:



Chief Terry Sampson, Chemainus First Nation

May 20/06
Date



Chief Harvey Alphonse, Cowichan Tribes

May 20/06
Date



Chief James Thomas, Halalt First Nation

May 20/06
Date




Chief Cyril Livingstone, Lake Cowichan First Nation

May 20, 2006
Date



Chief Richard Thomas, Lyackson First Nation

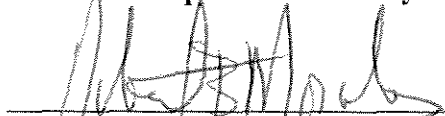
May 20, 06
Date



Chief Lisa Shaver, Penelakut Tribe

May 20, 06
Date

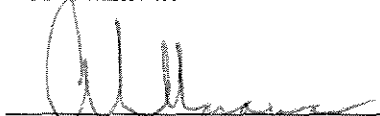
For the Hul'qumi'num Treaty Group:



Robert Morales, Chief Negotiator, Hul'qumi'num Treaty Group

May 20, 2006
Date

For Canada:



On behalf of the Honourable Rona Ambrose, Minister of the Environment and Minister Responsible for the Parks Canada Agency, Mr. Mark Warawa, Parliamentary Secretary to the Minister of the Environment

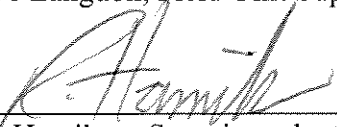
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Date

Witnesses



Steve Langdon, Field Unit Superintendent, Coastal BC

May 20/06
Date



Ron Hamilton, Superintendent, Gulf Islands National Park Reserve

May 20/06
Date

Appendix 1. Information Sharing Protocol.

1. The Parties agree that as general principles, openness, inclusiveness, and the sharing of information are desirable in the implementation of this Agreement.
2. Subject to conditions described below, all Committee procedures, minutes of public meetings, record of decisions and meeting reports will be available to the general public
3. Where communication occurs relating to any matter that either party deems to be of a sensitive nature, or that relates to issues which either party deems to be inappropriate to release to the general public, the Parties will agree to retain, subject to Federal Legislation, that information for the exclusive use of the Committee or as otherwise determined.
4. Any Hul'qumi'num material to be retained will be marked "Sensitive Information for the Exclusive use of the Committee".
5. The Parties agree that there are some types of information that the Committee will use while conducting their business that are of such a sensitive nature that they may be provided, by either party, without a written record. The Parties respect this need for confidentiality.
6. The Parties recognize the importance of informing the Hul'qumi'num Treaty Group member First Nations about the issues being discussed by the Committee, and decisions being made by the Superintendent. To this end, the parties will work towards developing a communication strategy so that the Hul'qumi'num Treaty Group member First Nations will stay informed.

Appendix 2. Financial and Funding Statement.

1. The Parties acknowledge that there are many costs associated with the conduct of business of the Committee, and they commit to sharing these costs.
2. The Parties agree that a goal of this cooperative process is to manage the discrete costs of the Committee at a reasonable level, and to explore opportunities to cover some associated costs in ways other than through direct funding.
3. Canada will provide a reasonable level of funding to cover the costs of any public information component of Committee business, including providing information to communities and community members.
4. Canada will provide a reasonable level of funding for Committee training in group processes and group consensus building.
5. HTG will provide a reasonable level of funding to contribute to the costs associated with their internal consultations and information management within their member First Nations for Level I topics.
6. Each party is responsible for administration costs incurred by their participation, including office support, community interaction, and travel costs.
7. Funding for any additional expert or technical support for the Committee to provide Level I advice, will be negotiated on a case-by-case basis.
8. Funding for Level II consultations will be negotiated on case-by-case basis. This funding may include measures to assist the Committee to ensure adequate engagement of the Hul'qumi'num Mustimuhw, and may include reasonable funding to contribute to HTG internal consultations, community involvement, and distribution and management of community information.
9. Support funding will be provided by Canada to HTG in the following manner:
 - a) up to \$100 per day per First Nation representative under clause 5 (a) and (b) and HTG representative under clause 5 (f) for participation in Committee meetings;
 - b) up to \$100 per day per First Nation representative under clause 5 (a) and (b) for participation in internal HTG meetings related to Committee meetings, or for representatives to meet with their respective Chiefs and Councils in relation to the business of the Committee. This funding is provided to a maximum of one day per month per representative, and is only provided during months when a Committee meeting is held; and
 - c) up to \$125 per day, maximum 72 days per fiscal year, for HTG Coordinator clause 2.

HTG to invoice Canada following meetings, with a listing of meeting attendance, hours of work of Coordinator, and duties completed by Coordinator.

10. Funding requirements for board training, research and community work etc. will be discussed by the Committee.

Appendix 3. Duties of Hul'qumi'num Coordinator.

Roles & Responsibilities for Hul'qumi'num Treaty Group Coordinator

Requirements

1. The Coordinator will be knowledgeable about the Hul'qumi'num communities, culture, language, traditions and environment and in particular the terrestrial and marine environments of the Gulf Islands.

Responsibilities

2. The Coordinator will assist, in facilitating the operations of the Committee.
Specific duties will include:
 - calling and organizing meetings of the Committee
 - preparing advance agendas and packages, in collaboration with Canada and HTG staff for the Committee to discuss
 - participating as member of the Committee in forming advice to the parties.
3. The Coordinator will be responsible for assisting to provide a communications link between Canada and the Hul'qumi'num Treaty Group on matters related to operational management issues in the park. In this capacity, the Coordinator will be responsible for:
 - reviewing operational management proposals from Canada
 - raising operational management suggestions, concerns and issues from the perspective of the Hul'qumi'num Mustimuhw
 - arranging Hul'qumi'num language and cultural insights on heritage, cultural and environmental inventories and interpretive projects conducted by Canada
 - bringing any operational management concerns that have significant weight or complexity to the Committee for discussion and review.
4. The Coordinator will assist with HTG participation in Level II consultations as directed by the Committee, including:
 - ensuring information flow between the Committee, Canada, and Chiefs and Councils, including arranging meetings, drafting correspondence and providing information on the work of the Committee when requested;
 - ensuring appropriate internal HTG policy and protocols are observed during consultation processes
 - other duties as agreed on a case by case basis.

Appendix 4. Procedures for Conduct of Committee Meetings and Business.

1. In order to reduce travel and meeting room costs, meetings will be held at the HTG offices in Ladysmith unless otherwise agreed to.
2. Each Party will endeavour to provide agenda items to the HTG Coordinator at least two weeks in advance of the next scheduled meeting.
3. The Chair for each meeting will be determined by the Committee.
4. A written record of the minutes of the meetings will be produced for each meeting of the Committee, and will be shared. Canada will assume responsibility for this task.
5. There will be no video or tape recordings of meetings, unless all Parties agree otherwise.
6. The Committee will conduct its business as agreed to by consensus of the Committee. Each member will be encouraged to participate in discussions.
7. Each Party will endeavour to provide all relevant information concerning agenda items to the HTG Coordinator at least two weeks in advance of the next scheduled meeting, in order to allow adequate time for distribution and review prior to the meeting.