

HERITAGE CONSERVATION

MEMORANDUM OF UNDERSTANDING ('MOU'):

BETWEEN

**HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA** as represented by the **MINISTER OF TOURISM,
CULTURE AND THE ARTS**

(hereinafter "British Columbia" or "Party")

AND

**DOIG RIVER FIRST NATION, as represented by its Chief
PROPHET RIVER FIRST NATION, as represented by its Chief
and WEST MOBERLY FIRST NATIONS, as represented by its Chief**

(collectively "the Treaty 8 First Nations" and
individually "a Treaty 8 First Nation")

WHEREAS:

- A. The *Constitution Act, 1982*, section 35(1) states, "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed";
- B. The Treaty 8 First Nations are signatories to Treaty No. 8 and have rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*;
- C. The Crown has a duty to consult and seek to accommodate where a provincial decision has the potential to adversely impact Treaty 8 First Nations' rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*, per *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* 2005 SCC 69, paragraphs 55 and 56;
- D. The Parties acknowledge their shared interests in upholding the purpose of the provincial *Heritage Conservation Act, R.S.B.C. 1996, Chapter 187* as amended from time to time, to encourage and facilitate the protection and conservation of heritage property in British Columbia;
- E. The Treaty 8 First Nations honour their ancestors' monuments, cemeteries, sacred sites, ancient human remains and heritage objects according to their teachings and customary laws;
- F. British Columbia values First Nation heritage sites for their historical, cultural, aesthetic, scientific and educational worth or usefulness, as set out in the *Heritage Conservation Act*;

- G. Under section 20 (1) (b) of the *Heritage Conservation Act*, the Minister may enter into an agreement to further the objects of the *Act*;
- H. The Parties acknowledge that this Memorandum of Understanding reflects the nature of an emerging new relationship between British Columbia and Treaty 8 First Nations; and
- I. The Parties intend and desire to establish cooperative working relationships that reflect their growing understanding of and respect for treaty rights and expressed cultural traditions, values, practices, and customary laws of the Treaty 8 First Nations.

THEREFORE the Parties agree as follows:

1.0 Definitions

1.1 In this Memorandum of Understanding, including the preamble, the following definitions are used:

“Act” means the *Heritage Conservation Act*, R.S.B.C.1996, Chapter 187, and all amendments thereto;

“Amended EBA, 2009” and **“AEBA, 2009”** means the Amended Economic Benefits Agreement, 2009 between British Columbia and the Treaty 8 First Nations, effective December 8, 2009;

“ancient human remains” means human remains that are likely of aboriginal ancestry discovered in the MOU Zones that are protected under the *Act*;

“anthropological information” means information that is of traditional social, spiritual or other cultural importance to a living community;

“archaeological heritage site” means land, including land covered by water, containing physical evidence of past human activity that is protected under the *Act*;

“Archaeology Branch” means the provincial branch of government in British Columbia responsible for the administration of the *Act*;

“Completed Agreement” has the meaning set out in the AEBA, 2009;

“in writing” includes emails and electronic documents;

“local government” means the council of a municipality, the board of a regional district established under the *Local Government Act*, R.S.B.C.1996, Chapter 323, and the Trust Council and a local trust committee established under the *Islands Trust Act*, 1996;

“Minister” means the Minister responsible for the *Act*;

“MOU Zones”, “MOU Zone A” and “MOU Zone B” mean the geographic areas, together or individually, identified for the purposes of the MOU as MOU Zone A and MOU Zone B on the map attached as Appendix A;

“permit” means a permit issued under either s.12 or s.14 of the *Act*;

“sacred site” means a specific site or location of major cultural, historic, spiritual or ceremonial significance to a Treaty 8 First Nation, whether or not the site or location includes artefacts or ancestral remains;

“Treaty 8 First Nations” means the Doig River First Nation, Prophet River First Nation and West Moberly First Nations; and

“Treaty Right” means Treaty 8 First Nations’ rights recognized and affirmed by section 35 (1) of the *Constitution Act, 1982*.

2.0 PURPOSE

2.1 The purposes of the MOU are to:

- (a) provide a Completed Agreement in furtherance of sections 3.2 and 3.3 of the Amended EBA 2009;
- (b) highlight the importance of heritage protection and conservation during development projects and resource extraction; and
- (c) establish effective processes that will facilitate sharing of information between the Parties and enable the participation of Treaty 8 First Nations in heritage conservation.

2.2 This MOU does not and is not intended to:

- (a) create, amend, define, abrogate or derogate from, acknowledge or deny the Treaty 8 First Nations’ rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*;
- (b) create, amend, define, abrogate or derogate from, acknowledge or deny any other First Nations’ rights recognized and affirmed under section 35(1) of the *Constitution Act, 1982*;
- (c) abrogate or derogate from, acknowledge or deny any Treaty 8 First Nations’ assertion of jurisdiction and authority over the protection or management of Treaty 8 First Nations’ heritage and cultural sites and objects;
- (d) confirm or alter current Treaty 8 First Nations’ practices in relation to the preparation of archaeological overview assessments or any other archaeological processes in the MOU Zones including arrangements for the hiring of Treaty 8 First Nations’ members as field staff; or
- (e) relate to site alteration permits issued by the Commissioner of the Oil and Gas Commission.

3.0 PUBLIC EDUCATION

3.1 The Parties will endeavour to better educate the general public, including private property owners, development applicants, law enforcement agency personnel and provincial and

local government officials who operate in the MOU Zones. Public educational initiatives by the Parties may include joint workshops, meetings or presentations, the development of information pamphlets, guides, posters, web material, video or other media.

- 3.2 The purpose of these educational initiatives is to promote public awareness and knowledge of:
- (a) the importance of heritage and heritage conservation;
 - (b) existing responsibilities and obligations under the Act;
 - (c) remedies and penalties for contraventions of the Act;
 - (d) procedures for heritage conservation in development application processes and resource extraction; and
 - (e) the cultural-sensitivity of First Nations' issues in land use and heritage conservation.
- 3.3 The Parties will make reasonable efforts to provide each other the opportunity to review and comment on public educational initiatives concerning heritage conservation in the MOU Zones.

4.0 INFORMATION SHARING

- 4.1 The Parties will endeavour to co-operate in identifying areas of the MOU Zones that contain archaeological heritage sites.
- 4.2 In accordance with the Archaeology Branch's policy on Access to Information, mapping and known site locations will be made available to people or agencies involved in land or resource management planning and development for use as a management tool to identify recorded and the potential for unrecorded archaeological heritage site locations that may be in conflict with development.
- 4.3 The Archaeology Branch will make all known archaeological site locations and records in the MOU Zones available through the Remote Access to Archaeological Data ('RAAD') application.
- 4.4 The Parties acknowledge that anthropological information provided by Treaty 8 First Nations may be confidential in nature and, if so identified in writing, British Columbia will restrict access to this information in accordance with section 3(3) of the *Act*.
- 4.5 If requested by one or more Treaty 8 First Nations, the Archaeology Branch will provide information and statistics for the MOU Zones on the number of:
- (a) applications for site alteration permits, other than those related to oil and gas activity;
 - (b) the number of requests for investigations of possible violations of the Act;
 - (c) the number of permits granted versus denied; and
 - (d) the number of requests for charges to be laid supported versus not supported by the Archaeology Branch.
- 4.6 If requested by Treaty 8 First Nations, the Archaeology Branch will provide any information it has available with respect to identified Treaty 8 First Nation sacred sites and will support the process seeking approval for the designation of such sites in accordance with sections 9 and 10 of the *Act*.

5.0 PROVINCIAL MINISTRIES AND LOCAL GOVERNMENT

- 5.1 The Archaeology Branch will continue to encourage and support local governments, the federal government and other provincial ministries to utilize the RAAD system for identifying potential conflicts between development applications and recorded archaeological heritage sites and potential archaeological heritage site locations in the MOU Zones.
- 5.2 All Archaeological Overview Assessments ('AOA') and Preliminary Field Reconnaissance ('PFR') reports relevant to the MOU Zones received by the Archaeology Branch will be copied to the Treaty 8 First Nations.
- 5.3 The Archaeology Branch will, if requested by Treaty 8 First Nations and to the extent possible given resource constraints, work with Treaty 8 First Nations and the Oil and Gas Commission to address gaps or coordination issues identified by Treaty 8 First Nations.

6.0 ENFORCEMENT OF THE ACT WITHIN THE MOU ZONES

- 6.1 Each Party upon receipt of verified information that a recorded or unrecorded First Nation archaeological heritage site, ancient human remains or heritage object in the MOU Zones has been altered:
 - (a) without a permit, or
 - (b) outside the scope of an issued permit,will immediately notify in writing all other Parties.
- 6.2 Treaty 8 First Nations will notify the Archaeology Branch if concerns arise that a development application may conflict with a recorded archaeological heritage site or an unrecorded archaeological heritage site for all land use activities except oil and gas.
- 6.3 The Archaeology Branch, pursuant to the *Act*, will contact the property owner or developer to verify reports of non-permitted site alteration and, if necessary, ensure that the property owner or developer is aware of the provisions of the *Act* and the heritage resource measures that must be completed prior to any further land altering activity.
- 6.4 The Minister, or the delegated decision maker, will consider the views of the Treaty 8 First Nations on the significance of any non-compliance with the legislation and the different enforcement options within the *Act* to encourage and facilitate the protection and conservation of archaeological heritage sites, ancient human remains and heritage objects in the MOU Zones, on a case-by-case basis.
- 6.5 The Archaeology Branch will communicate the outcome of the above described processes to the Treaty 8 First Nations in writing.
- 6.6 Where the Minister or delegated decision-maker decides to support an investigation to see if charges under the *Act* would be appropriate they will:
 - (a) notify the Treaty 8 First Nations;

- (b) request input from the Treaty 8 First Nations;
- (c) endeavour to work with the Treaty 8 First Nations to provide joint information to the RCMP; and
- (d) jointly request of the Crown prosecutor that any fines imposed by the courts for infractions committed in the MOU Zones be directed toward the protection and enhancement of Treaty 8 First Nation heritage, cultural and sacred sites.

7.0 HERITAGE PERMIT APPLICATIONS

- 7.1 The Archaeology Branch will deliver all permit applications for proposed archaeological work in the MOU Zones to the Treaty 8 First Nations, save and except for alteration permits with regard to oil and gas activities.
- 7.2 The Treaty First Nations may request that the Archaeology Branch advise and encourage the permit applicant or developer to engage First Nations to provide additional information and ensure a full understanding of the significance or impacts of activities authorized under a permit referenced in section 7.1. Such additional information may include requests that the permit applicant or developer conduct presentations, arrange field visits, or prepare additional studies.
- 7.3 The Treaty 8 First Nations will endeavour to review and provide comments to the Archaeology Branch on received permit applications within a 30 day period unless a shorter time frame is agreed upon.
- 7.4 Each of the Treaty 8 First Nations reserve the right to independently comment on any permit application received from the Archaeology Branch.
- 7.5 In making a decision to issue or refuse to issue a permit, the delegated decision maker, in furtherance of the objects of the *Act*, will address the views of the Treaty 8 First Nations on whether the expressed cultural traditions, values, practices, and customary laws have been taken into account.
- 7.6 Where the Treaty 8 First Nations identify a potential adverse impact on a Treaty Right as a result of proposed activities in a permit application in the MOU Zones, the Archaeology Branch will either further engage in a consultation and accommodation process or will identify and advise the appropriate Crown agency responsible for this process. This undertaking does not apply to section 12 permit applications with respect to oil and gas activities.
- 7.7 The Archaeology Branch, in furtherance of the objects of the *Act*, will, where there is insufficient information to consider a section 12 alteration permit application, ensure that heritage inspections and heritage investigation are conducted to provide this information before the section 12 alteration permit application is adjudicated.
- 7.8 The Treaty 8 First Nations may request an extension to the time to submit comments on the permit application and the Archaeology Branch will not unreasonably withhold its consent to a reasonable request. The Parties acknowledge that in some instances the underlying

project behind the archaeological work may be on a critical timeline and this will impact the Branch's ability to provide an extension of this period.

- 7.9 The Parties will endeavour to expedite the issuance of permits where emergency impact management measures may be necessary, such as the discovery of ancient human remains in the MOU Zones.

8.0 COMMENT ON INTERIM PERMIT REPORTS – THOSE NOT RELATED TO OIL & GAS ACTIVITIES

- 8.1 The Archaeology Branch will endeavour to provide the Treaty 8 First Nations a 15 day period to make written comments on interim permit report scope, methodology, results and recommendations for consideration by the Archaeology Branch, unless a shorter time frame is agreed upon. The process to be followed will be:
- (a) the permit holder is required to send a copy of the interim report directly to the Treaty 8 First Nations. These copies will be provided by email only;
 - (b) any Archaeology Branch revision requests to the permit holder will be copied to the Treaty 8 First Nations to ensure they are aware of the request; and
 - (c) the Archaeology Branch will also instruct the permit holder to copy the Treaty 8 First Nations with any amended pages created as a result of this request.
- 8.2 The Treaty 8 First Nations will endeavour in their written comments to provide a statement of the cultural significance of archaeological heritage sites, assess potential impacts to aboriginal rights or interests, and provide recommendations on how to avoid or mitigate any potential adverse impact on rights or interests.
- 8.3 The Parties acknowledge that the most appropriate time for including the information outlined in section 8.2 is before the interim report is submitted to the Archaeology Branch with the material being provided directly to the permit holder but, failing that opportunity, the process set out in section 8.1 will be followed.
- 8.4 The Treaty 8 First Nations will endeavour to develop a Treaty 8 heritage policy to guide its members' decisions concerning archaeological work conducted in the MOU Zones.
- 8.5 In making a decision to accept the report or provide resource management direction, the Archaeology Branch staff will address the expressed views of the Treaty 8 First Nations.
- 8.6 For greater certainty, in making a decision to provide resource management direction to permit holders or developers, the Archaeology Branch staff, in furtherance of the objects of the *Act*, will, where appropriate, continue to direct proponents to practice site avoidance, redesign developments to minimize alterations, or implement other sustainable heritage conservation measures.
- 8.7 The Treaty 8 First Nations may request an extension to the time to submit comments on the permit report and the Archaeology Branch will not unreasonably withhold its consent to a reasonable request. The Parties acknowledge that in some instances the underlying project

behind the archaeological work may be on a critical timeline and this will impact the Branch's ability to provide an extension of this period.

- 8.8 The Archaeology Branch will suggest to the permit holders that they provide the Treaty 8 First Nations with electronic copies (email or CD) of the accepted version of the report together with copies of the site inventory forms for the related archaeological work in the MOU Zones.

9.0 PROVINCIAL LETTERS OF DECISION

- 9.1 The Archaeology Branch will copy all letters containing resource management direction to permit holders or developers for all archaeological work, other than that related to oil and gas activities, in the MOU Zones to the Treaty 8 First Nations.

10.0 DISPUTE RESOLUTION

- 10.1 When a dispute arises between the Parties during the term of this MOU regarding the interpretation or implementation of this MOU, the Parties' duly appointed representatives will meet as soon as practicable to attempt to resolve the dispute.
- 10.2 If the dispute remains following the meeting held pursuant to section 10.1, with the written agreement of all the Parties, the Parties may employ voluntary dispute resolution measures, that may include mediation conducted in good faith and in an informal and non-adversarial manner.
- 10.3 With the written agreement of all of the Parties, other dispute resolution procedures may also be used to assist the Parties to achieve a consensus decision.

11.0 AMENDMENT

- 11.1 The Parties will review this MOU and its effectiveness from time to time at the request of any Party but not more frequently than annually.
- 11.2 Any amendments to this MOU will require the written consent of all of the Parties and will take effect upon signing by all of the Parties.
- 11.3 Despite section 11.1, at the request of the Treaty 8 First Nations, British Columbia and the Treaty 8 First Nations will negotiate and attempt to reach agreement on an amendment to respond to any other provincial initiative with any other First Nation or First Nation organization providing for an agreement under section 4 of the *Act* or providing for some form of joint permitting.
- 11.4 This MOU is between British Columbia and the Treaty 8 First Nations. Subject to Part 13, any other government may be added to this Memorandum of Understanding with the agreement of British Columbia, the Treaty 8 First Nations and that other government.

12.0 TERM AND TERMINATION

- 12.1 This MOU will terminate on March 31, 2022 unless terminated earlier in accordance with section 12.2 and the Amended EBA 2009.
- 12.2 The Treaty 8 First Nations or British Columbia may terminate this MOU by giving the other Parties thirty (30) days advance written notice of the intent to terminate the MOU and the reasons for terminating the MOU.
- 12.3 A Treaty 8 First Nation may withdraw from this MOU by giving each remaining Treaty 8 First Nation and British Columbia 30 days written notice of the intent to withdraw from the MOU and reasons for so withdrawing.
- 12.4 The withdrawal of a Treaty 8 First Nation from this MOU does not terminate this MOU as between the remaining Treaty 8 First Nations and British Columbia.

13.0 REPRESENTATIONS AND WARRANTIES

- 13.1 Each Treaty 8 First Nation represents and warrants that:
- (a) its Chief or duly assigned Councillor, has authority to sign this MOU, as evidenced by resolutions of the Band Council; and
 - (b) the Treaty 8 First Nation has the authority and legal capacity to enter into this MOU and to carry out its provisions on behalf of the Treaty 8 First Nation and any individual members or groups of members of the respective Treaty 8 First Nation.
- 13.2 The Minister of Tourism, Culture and the Arts is authorized to sign this MOU on behalf of British Columbia.

14.0 NOTICE

- 14.1 Where in this MOU any notice or other communication is required to be given by British Columbia or the Treaty 8 First Nations, it will be effectively given:
- (a) by physical delivery to the respective address set out below, on the date of delivery; or
 - (b) by pre-paid registered mail to the respective address set out below, on the date the registered mail is delivered; or
 - (c) by facsimile to the respective facsimile number set out below, on the date the facsimile is sent; or
 - (d) by email to the individual identified by each Party to receive email notices under this MOU; and
 - (e) the address and facsimile of British Columbia and the Treaty 8 First Nations are set out below.

British Columbia
Deputy Minister
Ministry of Tourism, Culture and the Arts
PO Box 9339 Stn Prov Govt

Victoria, BC V8V 9M1
Facsimile: 250-387-6003

Treaty 8 First Nations
Treaty 8 Tribal Association
10233 0 100th Avenue
Fort St. John, BC V1J 1Y8
Facsimile: 250-785-2021

15.0 GENERAL PROVISIONS

- 15.1 This MOU is not a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*, and is not an agreement fixing the western boundary of Treaty No. 8 under section 15.8 below.
- 15.2 Nothing in this MOU is intended, nor will it be deemed, to fetter or derogate from any statutory, regulatory or delegated authority under provincial legislation.
- 15.3 Nothing in this MOU is to be construed as an acknowledgement or acceptance by British Columbia of Treaty 8 First Nations' assertions of Aboriginal rights or title or an admission of fact or liability, including, without limitation, claims for compensation of any kind arising in relation to such assertions.
- 15.4 This MOU does not limit the position that a Party may take in future negotiations or court actions or constitute any admission of fact or liability.
- 15.5 This MOU does not oblige Treaty 8 First Nations or British Columbia to act in a manner inconsistent with their lawful obligations.
- 15.6 British Columbia and the Treaty 8 First Nations acknowledge that they have differing positions regarding the location of the western boundary of the geographic area of Treaty No. 8 and that nothing in this MOU, and in particular Appendix A, is an admission of fact or liability by British Columbia or the Treaty 8 Nations, or an admission of the position of the other.
- 15.7 British Columbia and the Treaty 8 First Nations acknowledge that they have differing positions regarding the interpretation of Treaty No. 8 and the interpretation of section 35(1) of the *Constitution Act, 1982*, and that nothing in this MOU, and in particular Appendix A, is an admission of fact or liability by British Columbia or the Treaty 8 Nations, or an admission of the position of the other.
- 15.8 If the location of the western boundary of the geographic area of Treaty No. 8 within British Columbia is eventually agreed upon amongst British Columbia and the Treaty 8 First Nations or is fully and finally determined by a court of competent jurisdiction, in a judgment binding on British Columbia and one or more of the

Treaty 8 First Nations then this MOU will be amended in a manner consistent with the boundary so determined.

- 15.9 This MOU is not intended to in any way prejudice, limit, or detract from the ability or right of the Treaty 8 First Nations to litigate or otherwise advocate any claims of the Treaty 8 First Nations' rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 15.10 The Parties acknowledge that this MOU will not affect any ownership or proprietary rights the Treaty 8 First Nations may have in the information provided by the Treaty 8 First Nations in the course of the consultation processes under this MOU.
- 15.11 All headings in this MOU are inserted as a matter of convenience only and do not define, limit, enlarge, modify or explain the scope or meaning of this MOU or any of its provisions.
- 15.12 In this MOU, words in the singular include the plural and words in the plural include the singular unless the context or any specific definition otherwise requires.
- 15.13 This MOU will be governed by the applicable laws of British Columbia, Canada and the constitutionally confirmed Treaty 8 First Nations' rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 15.14 For clarity, nothing in this MOU affects British Columbia's or a Treaty 8 First Nation's ability to respond to any exceptional or emergency circumstance.
- 15.15 Appendix A to this MOU is for illustrative purposes only and does not form part of this MOU.

15.16 This MOU is a Completed Agreement.

SIGNED this 20 day of May, 2010
in the presence of:




Witness

DOIG RIVER FIRST NATION,
as represented by the Chief




Chief Norman Davis

SIGNED this 20 day of May, 2010
in the presence of:



Witness

PROPHET RIVER FIRST NATION,
as represented by the Chief




Chief Lynette Tsakoza

SIGNED this 20 day of May, 2010
in the presence of:




Witness

WEST MOBERLY FIRST NATIONS,
as represented by the Chief



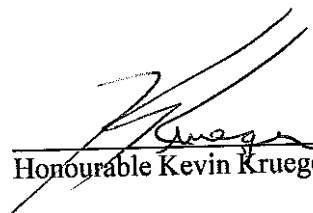
Chief Roland Willson

SIGNED this 20 day of May, 2010
in the presence of:



Witness

**HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH
COLUMBIA,** as represented by the Minister
of Tourism, Culture and the Arts.



Honourable Kevin Krueger

APPENDIX A

