

**MEMORANDUM OF UNDERSTANDING ('MOU'):**

**FIRST NATION HERITAGE SITE CONSERVATION  
IN HUL'QUMI'NUM TUMUHW**

This MEMORANDUM OF UNDERSTANDING dated for reference the 4<sup>th</sup> day of June, 2007

**BETWEEN**

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

AND Hul'qumi'num member First Nations, including:

**CHEMAINUS FIRST NATION  
COWICHAN TRIBES  
HALALT FIRST NATION  
LAKE COWICHAN FIRST NATION  
LYACKSON FIRST NATION  
PENELAKUT TRIBE**

AND **HUL'QUMI'NUM TREATY GROUP ('HTG')**

**WHEREAS**

- A. Section 35(1) of the *Constitution Act, 1982* (Canada) recognizes and affirms the existing aboriginal and treaty rights of aboriginal peoples of Canada.
- B. The Crown has a duty to consult and accommodate First Nations where a decision has the potential to infringe upon aboriginal title and rights.
- C. The Hul'qumi'num member First Nations have collectively asserted aboriginal title and rights to the geographic area of 'Hul'qumi'num tumuhw', as shown in *Schedule A*.
- D. The Parties acknowledge their shared interests in upholding the purpose of the provincial *Heritage Conservation Act, R.S.B.C. 1996, Chapter 187* and any amendments to encourage and facilitate the protection and conservation of heritage property in British Columbia.
- E. Hul'qumi'num Mustimuhw honours their ancestors' monuments, cemeteries, ancient human remains and heritage objects according to their *snuw'e'yulh*, teachings or customary laws.

- F. British Columbia values First Nation archaeological heritage sites for their historical, cultural, aesthetic, scientific and educational worth and usefulness, as set out in the *Heritage Conservation Act*.
- G. Under s.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 are committed to continue building government-to-government relations now while awaiting the outcome of treaty negotiations.

The Parties intend and desire to establish cooperative working relations that respect the asserted title, rights, and expressed cultural traditions, values, practices, and customary laws of the Hul'qumi'num Mustimuhw.

## Definitions

**1.0** In this Memorandum of Understanding:

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

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

**“ancient human remains”** means human remains of aboriginal ancestry discovered in Hul'qumi'num tumuhw that are protected under the *Act*;

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

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

**“Hul'qumi'num Mustimuhw”** means the current registered membership of the Hul'qumi'num member First Nations, including the Chemainus First Nation, Cowichan Tribes, Halalt First Nation, Lake Cowichan First Nation, Lyackson First Nation and Penelakut Tribe.

**“Hul'qumi'num tumuhw”** [‘territory’] means the geographic area described in the Hul'qumi'num Treaty Group's Statement-of-Intent Core Territory, **as shown in Schedule A**.

**“in writing”** includes emails and electronic documents.

**“local government”** includes 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*.

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

“**snuw’e’yulh**” means Hul’qumi’num teachings or customary laws.

### **PART 1 — NO DEROGATION OF ABORIGINAL RIGHTS**

- 1.0 This Memorandum of Understanding does not abrogate or derogate, acknowledge or deny the aboriginal rights of the Hul’qumi’num Mustimuhw or the aboriginal and treaty rights of any other First Nation.
- 1.1 This Memorandum of Understanding does not limit the positions of the Parties in treaty negotiations or any legal or administrative proceedings.
- 1.2 This Memorandum of Understanding does not abrogate or derogate, acknowledge or deny any Hul’qumi’num Mustimuhw assertion of jurisdiction and authority over the protection or management of first nation heritage in Hul’qumi’num tumuhw.
- 1.3 This agreement will not be interpreted or implemented in a manner that fetters the discretion of the statutory decision makers, nor will this agreement be interpreted or implemented by statutory decision makers in a manner that limits the Crown’s duty to consult and accommodate concerning any potential infringement of aboriginal rights.

### **PART 2 — PUBLIC EDUCATION**

- 2.0 The Parties will endeavour to create greater public education among the general public, private property owners, development applicants, law enforcement agencies and provincial and local government in Hul’qumi’num tumuhw. Public educational initiatives by the Parties may include organizing joint workshops, meetings or presentations, the development of information pamphlets, guides, posters, video or other media. The purpose of these educational initiatives is to promote public awareness and knowledge of:
  - a) importance of heritage and heritage conservation;
  - b) responsibilities and obligations under the Act.
  - c) remedies and penalties for contraventions of the Act.
  - c) procedures for heritage conservation in development application processes and resource extraction;
  - d) cultural-sensitivity of First Nations’ issues in land development and heritage conservation.
- 2.1 To identify and avoid any duplication or conflicts, the Parties will provide each other the opportunity to review and provide substantive comment on public educational initiatives concerning heritage conservation.

### **PART 3 — ARCHAEOLOGICAL POTENTIAL MODEL**

- 3.0 The Parties will endeavour to co-operate on the development and implementation of an archaeological potential model of Hul’qumi’num tumuhw. A central purpose of the modelling is the creation of archaeological potential mapping identifying areas of the landscape with the potential to contain archaeological sites protected under the *Heritage Conservation Act*.

Potential mapping combined with known site locations will be made available for use by land and resource managers and planners as an archaeological management tool to identify recorded and unrecorded archaeological heritage site locations that may be in conflict with development, in accordance with the Archaeology Branch's policy on access to information.

The archaeological potential model will be completed to provincial standards under the auspices of a Steering Committee. The steering committee will consist of provincial and Hul'qumi'num representatives and other partners, as agreed to by both parties.

Duties of the steering committee would consist of:

- Developing project terms of reference
- Choosing a suitable contractor (acknowledging that funding sources may have specific procurement processes)
- Developing a contract including a work plan identifying key tasks and completion dates.
- Reviewing project progress at completion of each key task
- Ensuring the project meets the terms and conditions of the contract
- Signing off on the final project deliverables

The Archaeology Branch will make the archaeological potential mapping developed through this process available through the Remote Access to Archaeological Data ('RAAD') application maintained.

#### **PART 4 — PROVINCIAL MINISTRIES AND LOCAL GOVERNMENT**

- 4.0 The Archaeology Branch will continue to encourage and support local governments 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 Hul'qumi'num tumuhw.
- 4.1 The Archaeology Branch will copy all received Archaeological Overview Assessments ('AOA') and Preliminary Field Reconnaissance ('PFR') reports to the Hul'qumi'num Treaty Group and Hul'qumi'num member First Nations.
- 4.2 To identify and avoid any unworkable overlaps or conflicts, the Hul'qumi'num Treaty Group will provide the Archaeology Branch the opportunity to review and provide substantive comment on the draft "*Political Accord on the Protection of First Nation Heritage Sites*" and draft "*Memorandum of Understanding*" with local governments concerning heritage conservation.

#### **PART 5 — ENFORCEMENT OF THE ACT**

- 5.0 Each Party upon receipt of information that a recorded or unrecorded First Nation archaeological heritage site, ancient human remains or heritage object in Hul'qumi'num tumuhw has been altered:
  - a) without a permit; or
  - b) outside the scope of an issued permit.

will forthwith notify in writing all other Parties.

- 5.1 The Hul'qumi'num Treaty Group or Hul'qumi'num member First Nations will notify the Archaeology Branch if concerns arise that a development application may conflict with a recorded archaeological heritage site, unrecorded archaeological heritage site or potential archaeological heritage site location.
- 5.2 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.
- 5.3 The Minister, or the delegated decision maker, will consider the views of the Hul'qumi'num Treaty Group and Hul'qumi'num member 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 Hul'qumi'num tumuhw, on a case-by-case basis.
- 5.4 The Archaeology Branch will communicate the outcome of the above described processes to the Hul'qumi'num Treaty Group and Hul'qumi'num member First Nations.

#### **PART 6 – HERITAGE PERMIT APPLICATIONS**

- 6.0 The Archaeology Branch will continue to deliver all permit applications for proposed archaeological work in Hul'qumi'num tumuhw to the Hul'qumi'num Treaty Group and all the Hul'qumi'num member First Nations.
- 6.1 The Hul'qumi'num Treaty Group may request that the Archaeology Branch advise and encourage the permit applicant or developer to consult First Nations to provide additional information and ensure a full understanding of the significance or impacts of activities authorized under a permit. Such additional information may include requests that the permit applicant or developer conduct presentations, arrange field visits, or prepare additional studies.
- 6.2 The Hul'qumi'num Treaty Group, in collaboration with its member 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.
- 6.3 Each of the Hul'qumi'num member First Nations reserve the right to independently comment on any received permit application from the Archaeology Branch.
- 6.4 In making a decision to issue or refuse to issue a permit, the Archaeology Branch, in furtherance of the objects of the *Act*, will address the views of the Hul'qumi'num Treaty Group or Hul'qumi'num member First Nations' on whether the expressed cultural traditions, values, practices, and customary laws have been taken into account.
- 6.5 For greater certainty, in making a decision to issue or refuse to issue a permit, the Archaeology Branch, in furtherance of the objects of the *Act*, will take into consideration the views of the Hul'qumi'num Treaty Group or Hul'qumi'num member First Nations' that site alteration permits in Hul'qumi'num tumuhw should contribute to knowledge of the archaeological record, on a case-by-case basis.

- 6.6 Where the Hul'qumi'num Treaty Group or Hul'qumi'num member First Nations identify a potential infringement of an aboriginal right as a result of proposed activities in a section 12 or section 14 permit application in Hul'qumi'num tumuhw, 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.
- 6.7 The Archaeology Branch, in furtherance of the objects of the *Act*, will, where appropriate, continue to ensure that, heritage inspections and heritage investigations are conducted prior to considering the application for the section 12 alteration permit in order to conserve archaeological heritage sites threatened by development.
- 6.8 The Hul'qumi'num Treaty Group 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.
- 6.9 The Parties will endeavour to facilitate the issuance of permits where emergency impact management measures may be necessary, such as the discovery of ancient human remains in Hul'qumi'num tumuhw.

#### **PART 7 – COMMENT ON FINAL PERMIT REPORTS**

- 7.0 The Archaeology Branch will endeavour to provide the Hul'qumi'num Treaty Group and Hul'qumi'num member First Nations an opportunity to make written comment on the project scope, methodology, results and recommendations of the final permit reports for consideration in the Archaeology Branch's decision within a 30 day period 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 final report directly to the Hul'qumi'num Treaty Group and Hul'qumi'num member First Nations. These copies will be provided by email only.
  - b) Should the Archaeology Branch at the time of its review require any revisions it will forward a copy of the request for these changes of the permit holder Hul'qumi'num Treaty Group and Hul'qumi'num member First Nations to ensure it is aware of the request; and
  - c) The Archaeology Branch will also instruct the permit holder to copy the Hul'qumi'num Treaty Group and Hul'qumi'num member First Nations with any amended pages created as a result of this request.
- 7.1 The Hul'qumi'num Treaty Group and Hul'qumi'num member 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 infringement of rights or interests.

- 7.2 The Parties acknowledge that the most appropriate time for including the information outlined in section 7.1 is before the final 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 7.0 will be followed.
- 7.3 The Hul'qumi'num Treaty Group will endeavour to develop a Hul'qumi'num heritage policy to guide its members decisions concerning archaeological work conducted in Hul'qumi'num tumuhw.
- 7.4 The Parties may request a meeting to address concerns or to resolve issues.
- 7.5 In making a decision to accept the final report or provide resource management direction, the Archaeology Branch will address the expressed views of the Hul'qumi'num Treaty Group or Hul'qumi'num member First Nations.
- 7.6 For greater certainty, in making a decision to provide resource management direction to permit holders or developers, the Archaeology Branch, 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.
- 7.7 Hul'qumi'num Treaty Group may request an extension to the time to submit comments on the final 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.
- 7.8 The Archaeology Branch will continue to suggest to the permit holders that they provide he Hul'qumi'num member First Nations with electronic copies (email or CD) of the accepted version of the final report, and provide the Hul'qumi'num Treaty Group with one hard copy and one electronic version of the accepted version of the final report and site inventory forms for the related archaeological work in Hul'qumi'num tumuhw

## **PART 8 – PROVINCIAL LETTERS OF DECISION**

- 8.0 The Archaeology Branch will continue to copy all letters containing resource management direction to permit holders or developers for all archaeological work in Hul'qumi'num tumuhw to the Hul'qumi'num Treaty Group and Hul'qumi'num member First Nations.

## **PART 9 – DISPUTE RESOLUTION**

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

**PART 10 – AMENDMENT**

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

**PART 11 – TERMINATION AND SUSPENSION**

- 11.0 Any Party may terminate the Memorandum of Understanding by giving the other Parties thirty (30) days advance written notice of the intent to terminate the Memorandum of Understanding and the reasons for terminating the Memorandum of Understanding.
- 11.1 The Parties further acknowledge that the successful implementation of the Memorandum of Understanding depends upon dedicating adequate human and financial resources to undertake the activities described in a timely fashion.

Should a Party identify that it does not have the resources to undertake the activities in this agreement, that party may suspend, in writing its participation until the resourcing issue is resolved. It is agreed that before the decision to suspend is made notice will be given to the other Parties.



Signed on the 4th day of June, 2007

On behalf of the Hul'qumi'num member First Nations

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Chief Peter Seymour, Chemainus First Nation

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Chief Harvey Alphonse, Cowichan Tribes

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Chief Robert Thomas, Halalt First Nation

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Chief Livingston, Lake Cowichan First Nation

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Chief Richard Thomas, Lyackson First Nation

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Chief Lisa Shaver, Penelakut Tribe

On behalf of the Hul'qumi'num Treaty Group

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Robert Morales, Chief Negotiator

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

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Honourable Stan Hagen, Minister of Tourism, Sport and the Arts

'SCHEDULE A'

