



Date March 30, 2009

EXCLUSIVE SHARED TERRITORY PROTOCOL

BETWEEN:

The Hupacasath First Nation
("Hupacasath")

AND:

The K'ómoks First Nation also known as
The Comox Indian Band
("K'ómoks")

(Collectively, the "First Nations")

Preamble:

Whereas the peoples of Hupacasath and K'ómoks, (the "First Nations") have used and occupied our traditional territories since time immemorial; and

Whereas the First Nations have shared resources with one another in a spirit of mutual respect and cooperation according to our traditional laws; and

Whereas it is recognized by the First Nations that our communities share deep family connections and traditional values and as such will uphold and respect the provisions of this agreement; and

Whereas the First Nations to this Protocol desire to resolve all issues concerning our rights and responsibilities within our Shared Area; and

Whereas the First Nations wish to cooperate and coordinate with each other in respect to the Crown's duty to consult and accommodate First Nations rights, title, and other interests;

THEREFORE THE FIRST NATIONS AGREE AS FOLLOWS:

Territories

1. A copy of the K'ómoks Territory Map including the area referred to as the K'ómoks Core Areas as well as the K'ómoks Marine Harvest Area is attached as Appendix "A" to this Protocol.
2. A copy of the Hupacasath Territory Map and the Hupacasath Resource Harvest Area, as well as a map highlighting land use designations is attached as Appendix "B" to this Protocol.
3. A copy of the map showing the Shared Area is attached as Appendix "C" to this Protocol (the "Shared Area"). Shown on map with cross-hatching.

Purpose

4. The Purpose of this Protocol is to collectively manage and control the Shared Area for the use and benefit of both First Nations including:
 - a) Confirming the area in which both K'ómoks and the Hupacasath exercise their aboriginal or treaty rights, including the harvesting of fish, wildlife, migratory birds and gathering plants and medicines.
 - b) Confirming the areas in which K'ómoks and Hupacasath may select Treaty Settlement Lands;
 - c) Clarifying responsibilities respecting consultation and accommodation obligations of the Crown;
 - d) Clarifying responsibilities with respect to Shared Decision Making, Land Use Planning, and Resource Management within Shared Area; and
 - e) Ensuring that other matters related to Shared Territories are addressed.

General

5. Nothing in this Agreement may be interpreted so as to abrogate or derogate the existing aboriginal rights and title of the Hupacasath First Nation or K'omoks First Nation, or potential future Treaty Rights.
6. For greater certainty, nothing in this Agreement may be interpreted so as to weaken the strength of claim of either Party in any current or future litigation or negotiation.
7. Subject to this Protocol, each of the First Nations acknowledges and supports each other's aboriginal rights and title and any treaty rights to our respective traditional territories, including within the Shared Area.
8. This Protocol only applies to the Shared Area outlined in appendix "C" and the K'omoks-Hupacasath relationship and is not intended to affect other First Nations.
9. This Protocol does not affect in any way the Crown's obligation to consult and accommodate both First Nations with respect to our aboriginal rights, title and other interests within the shared area.
10. Each of the First Nations to this Protocol supports each other's Treaty Negotiations provided that such negotiations are consistent with this Protocol.
11. For Greater Certainty, if there are any provisions within the proposed treaty that may impact on either First Nation, that Nation will provide documentation to the other Nation and ensure that there is opportunity for the other Nation to address any concerns or issues they may have to ensure that those provisions are consistent with this protocol.
12. Nothing in this Agreement is intended to prevent the First Nations from acquiring commercial tenures or licenses.
13. References in this Protocol to harvesting by Hupacasath or K'omoks includes their members who are duly registered in their respective First Nations.

Consultations by the Crown

14. The First Nations agree that, as between ourselves, in the Shared Area, Hupacasath First Nation shall have responsibility for all consultations, referrals and accommodations including:
 - a) all forestry and forestry-related referrals, consultations and accommodations; and
 - b) Small-scale resource and development-related referrals.
15. The following non-forestry projects and issues remain the responsibility of each First Nation throughout the Shared Area, including:
 - a) All Archaeological permit applications;
 - b) Those which are of a significant magnitude in monetary value;
 - c) Those which may have a significant effect on either First Nation's Aboriginal or Treaty rights or interests;
 - d) Those which may have a significant environmental impact;
 - e) Those which trigger environmental assessments under either federal or provincial legislation;
 - f) Those which relate to Parks, Protected Areas, Marine Protected Areas, or land or marine use planning; or
 - g) Any other matter the First Nations agree in writing should be dealt with jointly.
16. Within each First Nation's territory, outside of the Shared Area, the First Nation shall retain responsibility for all consultations, referrals and accommodations with the Crown.

Communications

17. The First Nations agree to maintain open communications with one another on matters related to the Shared Area.
18. If a First Nation undertakes any referrals within the shared area, a copy of response will be sent to the other First Nation.

19. In the event that a crown granted tenure (eg. recreational, mineral, forestry) is made available to either First Nation, within the shared area, the First Nations will work to establish a joint tenure and work collaboratively together. Alternatively, if the other First Nation declines to be involved in the tenure, the other First Nation will work with them to ensure that development is carried out in an environmentally sustainable way that meets the interests of that First Nation.

Treaty Settlement Lands

20. K'ómoks will only select Treaty Settlement Lands within the K'ómoks Territory and outside of the Shared Harvesting Area. Any Treaty Settlement Lands selection by K'ómoks in the Shared Harvesting Area will require the written consent of Hupacasath Council.
21. Hupacasath will only select Treaty Settlement Lands within the Hupacasath Territory and outside of the Shared Harvesting Area. Any Treaty Settlement Lands selection by Hupacasath that is inside the Shared Harvesting Area will require the written consent of K'ómoks Council.

Future Acquisition

22. If K'ómoks intends to purchase private lands within the Shared Area, they will inform Hupacasath, and at the request of Hupacasath, consult Hupacasath within a reasonable time about the purchase.
23. If Hupacasath intends to purchase private lands within the Shared Area, they will inform K'ómoks, and at the request of K'ómoks, consult K'ómoks within a reasonable time about the purchase.

Harvesting

24. No consent is required by Hupacasath or K'ómoks from each other for exercising Harvesting Rights in the Shared Area.
25. Hupacasath requires the written consent of K'ómoks Council to Harvest within the K'ómoks Territory, outside of the Shared Area.
26. K'ómoks requires the written consent of Hupacasath Council to Harvest within the Hupacasath Territory, outside of the Shared Area.

Allocations

27. Where there are allocations of fish or wildlife, neither Hupacasath nor K'ómoks will harvest under the other First Nation's allocation without written consent from the First Nation that has the allocation.

Cultural Resources

28. The First Nations will work cooperatively and share information for the protection and management of burial sites, archeological sites, culture and heritage sites, and the establishment of place names within the Shared Area.
29. For Greater Certainty, nothing in this agreement shall prevent any members of either First Nation from carrying out traditional ceremonial and spiritual practices within the Shared Area.

Other Agreements

30. The First Nations may enter into more detailed Protocols or Agreements respecting the implementation of the provisions of this Protocol, including:
 - a) matters related to the exercise of Section 35 Harvesting Rights;
 - b) non-section 35 resource harvesting for commercial purposes;
 - c) the harmonization of harvest plans;
 - d) Protocols for sharing allocated species of fish, wildlife, migratory birds or plants; and
 - e) The application of the respective laws of K'ómoks and Hupacasath related to resource harvesting;
 - f) Culture and Heritage for identification, documentation and management purposes.

Amendments

31. From time to time the First Nations may amend this Protocol provided this is done in accordance with this section.
 - 1) If either First Nation wishes to amend this Protocol the First Nation will notify the other in writing identifying matter to be amended, a copy of proposed amendment may be included
 - 2) Within 60 days of receiving notice the other First Nation will respond in writing to proposal.
 - 3) The First Nations will convene a special meeting to include their respective leadership and other representatives as necessary.
 - 4) The First Nations will pass a joint resolution to amend the Agreement
 - 5) The Agreement will then be deemed amended and copies of the amendment will be signed and sent to those identified in clause 42.
 - 6) If agreement cannot be reached on the amendment proposal to this agreement, the First Nations will use the Dispute Resolution process set out in this agreement.

Land Use Planning

32. The First Nations will respect one another's Land Use Plans and Land Use Designations within the Shared Area;
33. In the absence of a K'omoks Land Use Plan, the Hupacasath Land Use Plan will be in affect;
34. All efforts will be made to harmonize the First Nations Land Use Plans within Shared Area.

Dispute Resolution

35. For the purpose of this Protocol, a Dispute means any controversy, dispute, disagreement or claim whatsoever arising out of or relating in any way to this Protocol, including any matter concerning the effect, content, interpretation or application of this Protocol, or rights and obligations of Hupacasath or K'ómoks.
36. Hupacasath and K'ómoks will do everything we can to resolve any Disputes in a respectful and cooperative manner in accordance with their cultures, traditions, and teachings and guidance from Elders wherever possible.

37. In the event of a Dispute that has not been resolved under Clause 36, Hupacasath or K'ómoks may provide notice to the other party describing the nature of the Dispute
38. In that event, the First Nations shall Immediately proceed to negotiate in good faith in order to resolve the matter to the mutual satisfaction of the First Nations; and
39. If a resolution satisfactory to the First Nations is not achieved within 30 days of the notice referred to herein being delivered to the other Party, the First Nations may agree to refer the Dispute to a third party mediator.
40. The mediator shall be jointly appointed and equally paid for by the First Nations to the dispute.

Warrants

41. Each Party represents and warrants that it has the authority to enter into this Protocol on behalf of their respective First Nation.

Distribution

42. The First Nations agree that either or both of them may share this Protocol with Canada, British Columbia and other First Nations and organizations.

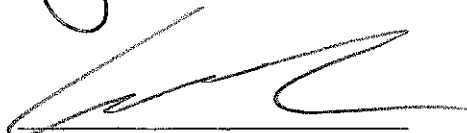
The First Nations have signed this Protocol this 30th day of March, 2009.

Hupacasath First Nation

K'ómoks First Nation

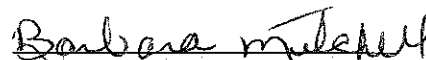

Chief Councillor Judith Sayers


Chief Councillor Ernie Hardy


Councillor Warren Lauder


Councillor Stewart Hardy


Councillor Tom Tatoosh


Councillor Barbara Mitchell