

CRD Sea to Sea Traditional Use Access Agreement

This Agreement dated for reference the day of

BETWEEN:

CAPITAL REGIONAL DISTRICT
P.O. Box 1000
625 Fisgard St.
Victoria, B.C. V8W 2S6

(the “CRD”)

AND:

T’SOU-KE FIRST NATION
P.O. Box 307
2154 Lazzar Rd.
Sooke, B.C. V9Z 1G1

(“TFN”)

WHEREAS:

TFN and the CRD entered into a Memorandum of Understanding on November 4, 2008, in which they agreed to work together to establish a government to government relationship and develop agreements in identified areas of interest, including CRD park lands, CRD water supply lands, heritage sites and cultural protection and traditional, and sustainable land uses;

And WHEREAS:

TFN has aboriginal and treaty rights that are protected by s. 35 of the *Constitution Act, 1982*;

And WHEREAS:

TFN has significant and longstanding concerns that its ability to exercise its aboriginal and treaty rights on its traditional lands and waters is being continually eroded by non-aboriginal encroachment into, and regulatory restrictions of, its traditional use areas;

And WHEREAS:

The Sea to Sea Regional Park (the “Park”) is within the traditional use area of TFN;

And WHEREAS:

Individual members of TFN may be accessing the Park for cultural use activities on a regular basis;

And WHEREAS:

The CRD is formalizing public access to previously landbanked park lands, which process has the potential to impact TFN's ongoing traditional uses within the Park;

And WHEREAS:

The CRD and TFN (collectively, the "Parties") recognize that regional parks exist for the benefit, education and enjoyment of all residents of the CRD and are to be made use of in ways that leave them unimpaired for future generations;

And WHEREAS:

The Parties wish to reach an agreement to ensure safe and sustainable use of the Park by TFN and all other residents of the CRD.

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Definitions and Interpretation

1. In this Agreement, the following words and expressions shall have the following meanings:
 - a. "Agreement" means this Sea to Sea Traditional Use Access Agreement;
 - b. "Camping" means an overnight stay of at least one (1) night's duration in a temporary shelter such as a tent, and may include the building of fires in areas designated by the Operations Committee;
 - c. "Ceremonies" means ritual observances and procedures conducted in accordance with T'Sou-ke traditional laws and customs;
 - d. "Commercial Purpose" includes the sale of goods or services, and any purpose that consists of or is in anticipation or furtherance of the making of a profit;
 - e. "CRD Parks" means the Regional Parks Department of the CRD;
 - f. "CRD Regional Parks Bylaw" means Capital Regional District Parks Regulation Bylaw No. 3682, including any amendments thereto, and any bylaw that may replace it;
 - g. "Cultural Resource" means a human work, an object, or a place including a landscape and its components that because of its aesthetic, historic, archaeological, cultural, social or spiritual importance and significance for past, present and future generations of the TFN, is of value to TFN.
 - h. "Emergency" means an unexpected situation that poses an immediate risk to health, life, property or the environment;
 - i. "Fishing" means the activity of catching fish by any means, but excludes fishing for any Commercial Purpose;
 - j. "Harvesting" means the gathering and/or collection of organic materials (plants, berries, mushrooms, bark) and inorganic materials (minerals, stone), but excludes harvesting for any Commercial Purpose;
 - k. "Hunting" means shooting at, attracting, searching for, chasing, pursuing, following after or on the trail of, stalking or lying in wait for wildlife, or attempting to do any of

- those things, whether or not the wildlife is then or subsequently wounded, killed or captured,
- i. with intention to capture the wildlife, or
 - ii. while in possession of a firearm or other weapon;
- but excludes hunting for any Commercial Purpose;
- l. “Park” means the Sea to Sea Regional Park as outlined in the map attached as Schedule 1 to this Agreement;
 - m. “Trapping” means the use of a snare, net or other device for the purpose of taking or capturing of fur bearing animals, but excludes trapping for any Commercial Purpose; and
 - n. “Safety Concern” means any situation, matter or thing that is hazardous or potentially hazardous for human health or life, that if left unaddressed will likely result in an emergency.

Purpose of the Agreement

- 2. Both parties will work together to:
 - a. Learn from each other in a good way, that honours the knowledge, traditions and wisdom of both parties;
 - b. Share with each other knowledge and understanding that arises from ways of knowing about the land and water, plants and animals;
 - c. Recognize the validity of oral history, its significance and importance as a form of knowledge for understanding the historical significance of cultural sites and landscapes directly related to the TFN people in regional parks within the TFN traditional territory;
 - d. Create opportunities in the Park for youth and elders of all cultures to learn from and with each other while in traditional use areas of TFN;
 - e. Recognize and respect the history and culture of TFN in the planning, management, administration and operation of the Park;
 - f. Recognize and respect the traditional and current use of the Park’s lands and waters by members of TFN;
 - g. Ensure reasonable opportunities for Fishing, Harvesting, Hunting and Trapping by TFN and its members;
 - h. Encourage public understanding, appreciation and enjoyment of the lands and waters in the Park and provide opportunities for visitors to the Park to learn about the history and culture of TFN;
 - i. Recognize the interest of the TFN people in the use of traditional aboriginal place names in the Park;
 - j. Apply and use TFN traditional place names in the Park;
 - k. Protect TFN heritage and cultural resources in the Park;
 - l. Include both traditional and scientific knowledge in the management of the natural and cultural resources of the Park;
 - m. Whenever reasonably possible provide direct economic benefits to TFN in the development, operation, management and maintenance of the Park.

Governance

3. The intent of the CRD is to maximize the degree to which power and decision-making is shared between the Parties. The default is to share as much power and decision-making as reasonably and lawfully possible. To that end, a joint Regional Parks Operations Management Committee comprised of representatives of TFN and the CRD, as more fully defined under section 18 of this Agreement, will be formed by the Parties to implement joint decision-making. The desired end point for the relationship is co-management of the Park. Until co-management is achievable in CRD governance and policy, a cooperative management approach will be employed.

Cooperative Management

4. For the purposes of the management of the Park, cooperative management includes the ability for senior managers within the Parties' organizations to make decisions jointly where authorities for decision-making rest with the respective senior managers. What it does not do is amalgamate accountability systems (e.g. human resources, finance, policy) of each Party's authority. In this way, the divisions of powers of the Parties remain discreet to Chief and Council and the CRD Board of Directors and CAO respectively. The Regional Parks Operations Management Committee is the body through which joint decision-making will take place.

Access for Traditional Use

- 5.1 The CRD recognizes that the Park lands are within the traditional territory of TFN and are accessible to TFN members for the purposes of carrying out traditional use activities year round, subject to applicable laws. For purposes of this Agreement, traditional use activities include the following:

- a. travelling by non-motorized means on roads and waterways;
- b. Hunting;
- c. Fishing;
- d. Trapping;
- e. Camping;
- f. construction of small shelters and other temporary structures such as food drying racks;
- g. food processing;
- h. wood cutting for traditional use and ceremonial purposes;
- i. plant harvesting and bark stripping;
- j. teaching activities and cultural gatherings;
- k. Ceremonies; and
- l. walking and hiking;

but for certainty traditional use activities do not include activities undertaken for any Commercial Purpose.

- 5.2 TFN recognizes that the Park consists of designated wilderness lands, on which, subject to section 5.3 below, motorized vehicle access is not permitted, and will work with the CRD to respect this restriction.
- 5.3 TFN vehicles which have been registered with CRD Parks may travel on Harbourview Road as identified in the map attached as Schedule 1. If TFN requires the use of more than the available registered TFN vehicles for a special event, it may apply to CRD Parks for a special permit.
- 5.4 TFN members shall, at all times during their access to the Park, carry an identity or treaty card indicating they are members of TFN. The identity or treaty card is only required if the TFN member is conducting traditional use activities referred to in section 5.1 of this Agreement, but is not required if the TFN member accesses the Park only for purposes permitted to the general public.
- 5.5 If a TFN member is participating in traditional use activities referred to in section 5.1 of this Agreement within the Park, CRD staff may require the TFN member to present the member's identity or treaty card. Any person unable to present an identity or treaty card will not be in compliance with this Agreement and the CRD may require the person to stop the activity until such time as an identity or treaty card can be presented.

Harvesting Restrictions for Purposes of Conservation and Public Safety

- 6.1 TFN and the CRD recognize that from time to time, for public safety and conservation purposes, areas of the lands and waters that make up the Park may need to be temporally and/or spatially restricted from certain activities by TFN members.
- 6.2 The CRD will notify TFN of any proposed restrictions on TFN activities through the Regional Parks Operations Management Committee. The Committee members will make best efforts to reach consensus on the proposal with the goal of minimizing the restriction to the extent possible required to address Safety Concerns. If the Parties are unable to reach consensus, either Party may invoke the dispute resolution provisions set out in section 23.
- 6.3 Traditional use activities within the Park will not be undertaken during working hours by those TFN members employed directly by CRD Parks or indirectly through a service contract or other form of contractual relationship.

- 6.4 No permanent structures will be built within the Park related to the carrying out of traditional use activities unless such building is approved by the Park Operations Management Committee and in accordance with this Agreement.
- 6.5 Any temporary structure built, erected or placed within the Park by a TFN member will be removed immediately following the termination of the traditional use activity for which it was established, unless otherwise approved by the Park Operations Management Committee.

No Harvesting Zones and Times

- 7 For purposes of clarity, there are no “No Harvesting Zones” within portions of the Park that are within the traditional territory of TFN, and all areas of the Park are open to use for traditional use activities by TFN members, subject to any restrictions set out in this Agreement, and subject to any restrictions to access determined to be necessary for purposes of conservation, environmental protection and public safety in accordance with the process set out in section 18 of this Agreement.

Restrictions generally or during Emergency or Extraordinary Circumstances

- 8.1 Access to sections of the Park for certain traditional use activities may be restricted or reduced by the CRD where necessary in the following circumstances:
- a. where a known Safety Concern exists;
 - b. during an Emergency event or response to an Emergency event; and
 - c. where forecasted extreme weather events may cause a safety or environmental danger.
- 8.2 Under the circumstances referred to in section 8.1, the Parks Operations Management Committee will be contacted to ensure that TFN is informed of the restrictions.

Cultural Resources

- 9 The use of Cultural Resources within the Park for interpretation, education and outreach activities, and for purposes restricted to TFN, will be at the sole discretion of TFN.

Traditional Knowledge

- 10 TFN knowledge about the lands and waters of the Park, their interrelationships, and the collection and transmission of such knowledge, rests solely with TFN. Sharing, collection and transmission of such knowledge will be directed by TFN through the Parks Operations Management Committee or as otherwise agreed to by the Parties.

Western Science

- 11.1 CRD knowledge about the lands and waters of the Park, their interrelationships, and the collection and transmission of such knowledge, will be open and available to TFN, unless otherwise restricted for contractual reasons or pursuant to any applicable law.
- 11.2 Whenever reasonably possible, opportunities for TFN involvement in research project design and collection related to the Park will be considered so that sharing of knowledge can take place with TFN.
- 11.3 Without limiting section 11.2, whenever reasonably possible, TFN youth and elders will be invited to participate in the CRD's research initiatives related to the Park.

Education Outreach and Interpretation

- 12.1 Information considered for use in education, outreach and interpretation programs that addresses TFN culture, heritage and way of life, may be produced collaboratively by the Parties, but shall be subject to approval at the sole discretion of the TFN, and shall serve the intention of sharing knowledge to achieve understanding and reconciliation.
- 12.2 Whenever reasonably possible, opportunities for TFN youth and elders to be included in programs referred to in section 12.1 will be pursued.

Management Planning

- 13 TFN members will be invited to participate in any amendments to the existing CRD management plan for the Park, and will be invited to participate in any future management planning for the Park.

Direct Economic Opportunities

- 14.1 The CRD, through CRD Parks, will make all reasonable efforts to secure opportunities to provide direct economic benefit to TFN members associated with the Park. The procurement of goods and services from TFN businesses, in accordance with CRD procurement policies and applicable laws, will be undertaken where reasonably possible.
- 14.2 TFN will make all reasonable efforts to make the CRD aware of the skill sets, businesses and capacity of TFN and its members to provide goods and services to CRD Parks.

Direct Employment Opportunities

- 15.1 The CRD will make TFN aware of employment opportunities with CRD Parks, through direct communication of opportunities.

- 15.2 Upon invitation by TFN, the CRD may provide workshops associated with resume and application preparation.

Deceased Eagles or Other Wildlife

- 16 The CRD will notify TFN when it becomes aware of naturally deceased or euthanized wildlife in the Park, including eagles.

Cultural Awareness

- 17.1 In cooperation with TFN, cultural awareness training for CRD Parks staff will be developed and implemented. Through such opportunities for shared learning, CRD Parks staff will be informed about the intention and contents of this Agreement and what are considered respectful and non-respectful ways of interacting with TFN members.
- 17.2 CRD Parks will, upon the coming into effect of this Agreement, arrange with TFN opportunities to meet with CRD Parks staff to develop the content of the cultural awareness training program.
- 17.3 Efforts to make CRD Parks staff and TFN members aware of the content and intent of this Agreement will assist in ensuring TFN members feel comfortable using the Park for traditional uses in accordance with the terms of this Agreement without interference or harassment or the perception of interference or harassment. Similarly, such efforts will assist in ensuring CRD Parks staff feel comfortable in the performance of their duties given these new understandings.

Regional Parks Operations Management Committee

- 18.1 The Regional Parks Operations Management Committee (the “Committee”) is a committee made up of TFN members and CRD Parks members, assigned the responsibility of implementing this Agreement. It is anticipated that the Committee will meet at least six (6) times per year or as often as necessary to ensure shared understanding of roles and responsibilities and achieve cooperative management of the lands and waters of the Park.
- 18.2 The following composition is proposed for the Committee:

TFN:

Environmental Resources Worker or other appointed staff member
Band Council representative

CRD Parks:

Senior Manager Regional Parks
Operations Manager Regional Parks

- 18.3 The Committee, by way of this Agreement, has the authority to act on decisions made that are within the authority of the Senior Manager Regional Parks.
- 18.4 Actions or decisions beyond the authority of the Senior Manager Regional Parks will be put forward to the CRD's General Manager, Parks and Environmental Services (the "General Manager") for determination, who will be provided with the recommendations of the members of the Committee. If the Committee is unable to reach consensus on the recommendations, the General Manager will be provided with the differing views of the Committee members. If the General Manager makes a decision that does not follow the recommendations of the Committee, or if the members of the Committee presented the General Manager with differing views, the General Manager will provide written reasons to the Committee in respect of the decision. When a decision of the General Manager does not accord with the recommendations of one or more members of the Committee, either Party may invoke the dispute resolution provisions set out in section 23 of this Agreement.
- 18.5 The Parties acknowledge that some decisions that may impact the implementation of this Agreement are beyond the decision-making authority of the Committee or the General Manager, and will be made by the CRD Board on recommendation by the Regional Parks Committee. When the CRD Board is considering a decision that will impact the rights of the Parties under this Agreement, the CRD will notify TFN of the matter through the Committee, and TFN will have the opportunity to present its views to the Regional Parks Committee and the CRD Board prior to the decision being made.
- 18.6 For the purposes of this Agreement, the following matters are operational issues and decisions within the authority of the Committee:
- routes, methods and ways of access for Harvesting, Hunting and Trapping;
 - campsite locations;
 - campfire locations;
 - Harvesting, Hunting and Trapping restrictions under section 6.1, if necessary;
 - locations and times for Harvesting, Hunting and Trapping;
 - the management of Cultural Resources;
 - the management of natural resources, including the adjustment of TFN activities to mitigate any potential adverse environmental effects;
 - recommending revisions and/or amendments to an existing management plan;
 - means to integrate traditional and scientific knowledge in the management of the natural and cultural resources of the Park;
 - times and locations for cultural camps;
 - recommendations for approval for the type and timing of special events, including public events; and
 - vehicle access for Harbourview Road.

18.7 The following are examples of issues potentially identified by TFN and the Committee that will be referred to the General Manager:

- amendments to existing CRD bylaws and regulations ;
- procurement methods and procedures, including sole sourcing.

18.8 The following are examples of items that could be referred to the CRD Regional Parks Committee and CRD Board:

- boundary adjustments;
- additions and deletions of park lands;
- amendments to existing CRD bylaws and regulations;
- identification of proposed new bylaws and regulations;
- regional park management plans or amendments.

18.9 Should disputes occur in relation to the matters referred to in sections 18.5 to 18.8, the dispute resolution process described in section 23 will be followed.

General Clauses

19.1 This Agreement is not a treaty or a land claims agreement within the meaning of s. 35 of the *Constitution Act, 1982*.

19.2 This Agreement does not recognize, create, modify, extinguish, suspend, abrogate from or derogate from any of TFN's s. 35 rights, nor does the CRD have jurisdiction to do any of those things.

19.3 This Agreement is without prejudice to the position of either party in respect of the existence, scope, extent or effect of any s. 35 right held by TFN.

Breach of Agreement

20 If any term of this Agreement is breached, the CRD or TFN, as the case may be, will give written notice to the other party of the breach and request a resolution within fourteen (14) days. If the matter is not addressed within fourteen (14) days and resolved within thirty (30) days of the notice of breach, or other such time as agreed to by the Parties, either Party may terminate this Agreement in writing without further notice. Where appropriate, the Parties may agree to use the dispute resolution processes set out in section 23 of this Agreement.

Indemnity and Releases

21 TFN releases and will indemnify and save harmless the CRD, its elected and appointed officials, employees, agents and contractors (collectively, the "CRD Parties") from and

against any and all liability, claims, damages, costs (including legal costs on a solicitor and own client basis) and expenses whatsoever (collectively, “Liability”) that the CRD Parties or any of them or any other person may suffer or incur as a result of the exercise by TFN or any of its members or any other person permitted by TFN (collectively, the “TFN Parties”) of TFN’s rights and privileges under this Agreement, or the negligence, willful misconduct, or breach of this Agreement by the TFN Parties or any of them, including without limitation any Liability resulting from wildfire or environmental damage and the suppression or remediation of the same.

Insurance

- 22 T’Sou-ke First Nation must, at its sole expense, obtain and maintain for so long as this Agreement remains in effect, with an insurer licensed to carry on business in British Columbia, a commercial general liability policy covering losses to a third party for bodily injury or death, property damage and firefighting expenses. The insurance shall be in an amount not less than THREE MILLION (\$3,000,000) on an occurrence basis. Such policy must specify coverage for the Park, and must name the CRD as an additional insured. TFN shall be solely responsible for maintaining such further and other insurance as it may deem necessary or desirable to protect the interests of the TFN Parties and to satisfy the obligations of the TFN under this Agreement.

Dispute Resolution Process

- 23 If a disagreement arises between the Parties relating to the interpretation or implementation of this Agreement (a “Dispute”), the Parties agree to work together to address the Dispute in accordance with the following process:
- a. If the Parties are unable to resolve the Dispute within the Committee, the Senior Administrative Officer of TFN will meet with the General Manager within 15 days of either party giving notice of a Dispute, and will make every reasonable attempt to meet and to find a solution which respects the letter and spirit of this Agreement.
 - b. If the issue remains unresolved following the meeting referred to in paragraph (a) above, the Chief of TFN and the Chief Administrative Officer of the CRD will meet within 15 days of notice from either of the Parties’ senior administrators setting out in sufficient detail the nature and history of the issue. At this meeting, the Parties’ representatives will attempt in good faith to understand and explore the nature of the issue, develop options for possible solutions and reach a resolution of the issue.
 - c. In the absence of an agreed resolution within 30 days of the date of the meeting described in paragraph (b) above, the Parties agree first to try in good faith to settle the dispute by mediation administered by the British Columbia Arbitration and Mediation Institute under its mediation rules. CRD will pay for the fees and expenses of the Mediator, but each Party will be responsible for their own legal costs or other mediation costs as between each other.

Review of Agreement

- 24 This Agreement shall be reviewed annually by the Parties and may be amended only by the written agreement of both Parties.

Notice to terminate

- 25 Either party may terminate this Agreement by giving 30 days' prior notice in writing to the other Party.

Other Considerations

- 26 Nothing in this Agreement shall be construed as permitting or authorizing any activity or use of the Park by any person that is contrary to any applicable law, including without limitation the CRD Regional Parks Bylaw. For greater clarity, to the extent this Agreement authorizes any activity that requires a permit under the CRD Regional Parks Bylaw, this Agreement operates as such a permit in accordance with its terms and conditions.

Coming into effect

- 27 This Agreement comes into effect upon its execution by both Parties.

Notice

- 28 Notices under this Agreement shall be delivered to:

T'Sou-ke First Nation:
Band Administrator
2154 Lazzar Rd Sooke IR, BC Canada
Tel: (250) 642-3957
Email: administrator@tsoukenation.com

CRD:
Chief Administrative Officer
Capital Regional District
625 Fisgard Street, Victoria, BC V8W 2S6
Tel: (250) 360-3124
Email: rlapham@crd.bc.ca

Signed on behalf of:
T'Sou-ke First Nation

Date: _____

Chief Gordon Planes

Councillor Allan Planes

Witness

Councillor Rose Dumont

Signed on behalf of:
Capital Regional District

Date: _____

Barb Desjardins, CRD Board Chair

Witness

