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REPORT TO CAPITAL REGIONAL DISTRICT BOARD MEETING OF WEDNESDAY, DECEMBER 13, 2017

SUBJECT CRD Sea to Sea Regional Park Traditional Use Access Agreement

ISSUE

To provide access to Sea to Sea Regional Park lands to members of the T'Sou-ke Nation for purposes of traditional use.

BACKGROUND

The T'Sou-ke Nation has aboriginal and treaty rights that are protected by section 35 of the *Constitution Act, 1982*. As signatories to the Douglas Treaty, the T'Sou-ke Nation has rights to hunt and farm over unoccupied lands, and to carry on fisheries as formerly. The lands that make up Sea to Sea Regional Park are within the traditional territory of the T'Sou-ke Nation. Current understanding of case law suggests that Capital Regional District (CRD) lands would be considered "occupied" and, therefore, not subject to Douglas Treaty rights. However, this is not definitive, as recent court decisions are influencing our collective understanding of what Aboriginal rights and title mean. Notwithstanding, the CRD Board has indicated relationship building with First Nations as a Board priority.

The 2010 Board-approved management plan for Sea to Sea Regional Park commits that "CRD Regional Parks will work with the T'Sou-ke Nation to address issues of mutual interest such as access and harvesting rights, identification and management of sacred sites and features, and involvement in park interpretive programming" (p. 50). In that same year, the T'Sou-ke Nation expressed serious concern about the park's potential infringement on T'Sou-ke's Aboriginal rights, citing increased use of the area by park visitors, resulting in reduced opportunity for T'Sou-ke Nation members to exercise their treaty rights. In its communications with the CRD, the T'Sou-ke has made clear the park's ongoing cultural significance to the Nation.

In 2015, the CRD Board identified opening the Sea to Sea as a priority. Staff received Board approval to open all the lands in the Sea to Sea in three phases (2017-2019). Phase one of the plan included opening Mount Manuel Quimper for outdoor recreation. Phase two confirms trails to the lakes in the north part of the park, as well as the development of a backcountry camping area. Phase three builds and connects east-west trails to Sooke Hills Wilderness Regional Park.

The attached CRD Sea to Sea Traditional Use Access Agreement with the T'Sou-ke Nation (Attachment 1), concludes a commitment made in the 2010 management plan and respectfully addresses the priority the T'Sou-ke Nation has placed on traditional access to the lands and their cultural importance. The Agreement advances relationships between the CRD and the T'Sou-ke Nation while ensuring Regional Park priorities related to conservation, public safety and outdoor recreation opportunities are realized. Importantly, the Agreement is a strong statement toward reconciliation with the First Nation by a regional government.

The Agreement has been reviewed by the CRD's solicitors, staff involved with risk assessment and Corporate Occupational Health and Safety and reflects advice provided through their review.

ALTERNATIVES

Alternative 1

That the Capital Regional District Board approve the CRD Sea to Sea Traditional Use Access Agreement.

Alternative 2

That the CRD Sea to Sea Traditional Use Access Agreement be referred back to staff for further review.

SOCIAL IMPLICATIONS

The Agreement is the first of its type within the CRD's Regional Park System. It contains content that reflects modern-day treaty language and other legal arrangements with First Nations in Canada. The Agreement sets out a new relationship with the T'Sou-ke Nation and the CRD's regional parks system.

Park visitors will benefit from increased information about the cultural significance of the park's lands and how traditional ecological knowledge and western sciences, both natural and social, are working together to protect the lands and waters that make up the park.

Outdoor recreation activities will continue as before, with additional planning associated with possible temporary restrictions to areas of the park in order to respect the T'Sou-ke's Aboriginal and treaty rights. In particular, temporary area closures associated with hunting and ceremonial purposes are expected.

ENVIRONMENTAL IMPLICATIONS

The Agreement recognizes the importance of the wilderness character of Sea to Sea Regional Park, and the park's significance to protecting the natural environment for the plants and animals that rely on the park for their continued existence. Further, the Agreement acknowledges the long-term commitment by the CRD to leave the park unimpaired for future generations.

Decisions about how best to manage the environmental effects of access to the lands for traditional uses and outdoor recreation are addressed through the establishment of a joint Parks Operations Management Committee. Through this committee, decisions will be made that meet the parties' interests for conservation and use. Guiding such decisions will be the application of two systems of knowledge: traditional ecological knowledge and western sciences. Traditional ecological knowledge is a combination of knowledge and experience within a cultural context. Western sciences are mainly based on systematic studies.

Underpinning decision-making is an ecosystem-based management approach that recognizes that all things are connected and that conservation and public safety are preeminent in operational decision-making.

ECONOMIC IMPLICATIONS

Through the Parks Operations Management Committee, there will be opportunity to identify areas for cost-sharing associated with initiatives in any given year.

Staff work plans will be adjusted to reflect tasks agreed to through the Parks Operations Management Committee. Some costs associated with the agreed-to tasks will be accounted for through Regional Parks' existing operating budget. For example, the development and placement of interpretive signs and information, bilingual place names and kiosk information. Other costs are expected to be paid for by the First Nation through direct support or grants and other funding sources. The relationship is expected to realistically manage respective workloads through mutual understanding of the limits facing each organization.

The Agreement places the CRD in an advantageous circumstance with potential granting bodies, when formal agreements with First Nation partners are considered in the review process.

As other First Nations engage with the CRD about cooperative management arrangements and access to Regional Park lands for traditional use, the need for additional resources will be evaluated and brought forward to the Board for consideration through the service planning process.

INTERGOVERNMENTAL IMPLICATIONS

The Agreement will be of interest to provincial, federal and other regional governments because of its content and approach. Parks across Canada at all levels of government are at various stages of relationship building with Canada's Indigenous peoples. This Agreement sets out important definitions and approaches to building and strengthening relationships with a neighbouring First Nation.

The federal and provincial governments may also have a particular interest due to Canada's commitment to meet the Convention on Biological Diversity's Aichi Targets, wherein 17% of Canada's terrestrial and 10% of Canada's marine environments are protected by 2020. Discussions at the federal, provincial and territorial levels presently include consideration of other protected areas in Canada, such as Regional Parks, as potential contributors to the targets. Additionally, agreements with Indigenous peoples associated with protected areas in Canada are of importance as Canada strives to meet its international commitments to biodiversity protection.

FIRST NATIONS IMPLICATIONS

The Agreement makes substantial the CRD's Board commitment to relationship building with First Nations and addressing the Truth and Reconciliation Commission's (TRC) "Calls to Action" associated with local and regional governments. Additionally, and called for by the TRC, the Agreement sets out initiatives to address economic development and employment opportunities with the T'Sou-ke Nation.

The Agreement provides examples of topics that are within the decision-making authority of the Committee, such as vehicle access, locations and times for hunting, and type and timing of special

events. The agreement also lists topics that would be referred to the General Manager such as amendments to CRD bylaws and regulations and procurement methods, including sole sourcing. Boundary adjustments, and approval of CRD bylaw amendments and management plans would be referred to the CRD Regional Parks Committee and the CRD Board.

The Agreement is a significant step in relationship building with the T'Sou-ke Nation. It demonstrates the CRD's willingness to learn and understand First Nations' issues and priorities and aligns decision-making authority with decision makers. This alignment advances timely decision-making and the CRD's ability to affect change on the ground.

Should other First Nations wish to engage in similar arrangements, the Agreement is scalable and replicable at other Regional Parks in the CRD.

CONCLUSION

The CRD Sea to Sea Traditional Use and Access Agreement concludes the commitment made in the 2010 management plan, meets CRD Board priorities related to First Nations and respectfully addresses the priority the T'Sou-ke Nation has placed on access to the Sea to Sea Regional Park lands. The Agreement also responds to priorities in the Truth and Reconciliation Commission's "Calls to Action" related to municipal and regional governments. Ultimately, the Agreement advances relationships between the CRD and the T'Sou-ke Nation, while ensuring Regional Park priorities related to conservation, public safety and outdoor recreation opportunities are realized.

The T'Sou-ke Nation, through Band Council Resolution, supports the Agreement and encourages the CRD's ratification (Attachment 2).

RECOMMENDATION

That the Capital Regional District Board approve the CRD Sea to Sea Traditional Use Access Agreement.

Submitted by:	Mike Walton, PhD, Senior Manager, Regional Parks
Concurrence:	Larisa Hutcheson, P.Eng., General Manager, Parks & Environmental Services
Concurrence:	Robert Lapham, MCIP, RPP, Chief Administrative Officer

MW:am

Attachment: Attachment 1 – CRD Sea to Sea Traditional Use Access Agreement
Attachment 2 – Band Council Resolution