

Protocol Agreement for Communication and Cooperation

1. THE PARTIES

The parties of this Protocol Agreement are:

- P'egp'ig'lha Council
- Squamish-Lillooet Regional District (SLRD)
- District of Lillooet (DoL)

2. PURPOSE

The purpose of this Protocol Agreement is to establish a framework for respectful communication, that will enable the Parties to share information and continue learning about one another, and in so doing, build trust and greater understanding, while improving communication and fostering opportunities to work more collaboratively on matters of mutual interest and concern.

3. DEFINITIONS

The Crown - In Canada, the Crown is generally used to refer to both the Federal and Provincial levels of government, including departments, ministries and Crown agencies.

Consultation – In contexts involving Aboriginal peoples, the term “consultation” typically refers to the Crown’s legal duty to consult on activities that may impact existing or asserted Aboriginal Title and rights. Local governments do not have a constitutional obligation to consult on the potential impacts to Aboriginal Title and rights arising from local government decisions; however, in some cases, local government have a statutory obligation to consider whether consultation with First Nations is required.¹ In practice, it is common for third parties (including local governments) to take on what are known as the “procedural” aspects of the duty to consult, which broadly include both engagement and information sharing.²

Engagement – A process for bringing people (and viewpoints) together to build relationships, collaborate on shared challenges, and address issues of common interest. In contexts involving Aboriginal peoples, best practices include engaging early, engaging often, and engaging on an ongoing basis. Local governments and First Nations can engage with one another through a range of formal and informal activities. Examples include participation in negotiated processes such as this Protocol Agreement, joint planning, community visits, and social events.

Full and informed consent - Information is provided that covers potential consequences of a range of options and aspects, including the nature, size, pace, reversibility and scope of any proposed project or

¹ Ministry of Community, Sport and Culture, Local Government Division. (2014). *Guide to First Nations Engagement on Local Government Statutory Approvals (Interim)*. Retrieved from http://www.cscd.gov.bc.ca/lgd/gov_structure/library/First_Nations_Engagement_Guide.pdf

² Province of British Columbia. (2014). *Guide to Involving Proponents When Consulting First Nations*. Retrieved from https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations/involving_proponents_guide_when_consulting_with_first_nations.pdf

activity; the purpose, spirit and intent of the project, policy or agreement as well as its duration; locality and areas affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; and procedures the project may entail. This process may include the option of withholding consent. Consultation and participation are crucial components of a consent process.³

Referrals – A process for requesting and gathering input on a particular application, project or policy. Under the *Local Government Act*, local governments are legally required to send referrals out to other levels of government in certain circumstances (e.g., Official Community Plan review); however, they often also do so voluntarily to support positive working relationships with neighbouring local governments, Indigenous governments and other interested parties (e.g., community groups). The referral context is quite different for First Nations, as the Crown sends referral letters to First Nations any time a Crown decision may impact Aboriginal Title and rights (e.g., a pending decision, sale, lease, permit or development on Crown land within a First Nation's traditional territory).⁴ As a result, First Nations receive hundreds of referrals a year, and often face capacity challenges with respect to managing them due to the high volume and lack of funds to operate the referral system. Crown referral processes are also often quite contentious, as referral letters frequently include a strength of claim assessment that may or may not be viewed as legitimate by the affected First Nation.

Resources - The cultural, spiritual, environmental, economic and human assets of a community.

Sovereignty - A self-governing state, nation or community with inherent rights to self-determination; the right, power and authority to operate a political, legal and social systems, including language and culture.

Squamish-Lillooet Regional District (SLRD) - A local government federation consisting of four member municipalities (District of Lillooet, Village of Pemberton, Resort Municipality of Whistler, District of Squamish) and four unincorporated rural Electoral Areas (A, B, C, D). Regional Districts are a governance structure unique to BC, established to provide local government services to the unincorporated (rural) areas, as well as to serve as an inter-jurisdictional body to deliver sub-regional and regional services, and to provide a forum for regional decision-making.

St'át'imc - The St'át'imc is composed of eleven distinct and self-governing communities including: Lil'wat, N'Quátqua, Samáhquam, Sekw'el'wás, Skatín, T'ít'q'et, Tsal'álh, Ts'kw'áylaxw, Xáxli'p, Xá'xtsa, and Xwísten.

St'át'imc rights - A right to conduct activities, including the practices, traditions and customs distinguishing the unique culture of the St'át'imc. The St'át'imc have the right to occupy the lands and economically benefit from the lands. These are rights due to St'át'imc because of their sovereignty prior

³ United Nation Human Rights Office of the High Commissioner (2013). *Free, prior and informed consent of Indigenous Peoples*. Retrieved from

<http://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>

⁴ Morellato, Maria. (2008). *The Crown's Constitutional Duty to Consult and Accommodate Aboriginal and Treaty Rights*. Research paper for the National Centre for First Nations Governance. Retrieved from http://fngovernance.org/resources_docs/Crown_Duty_to_Consult_Accommodate.pdf

to the assertion of sovereignty by Britain, France, or Canada.⁵ These rights include: the right to decide how the land will be used; the right of enjoyment and occupancy of the land; the right to possess the land; the right to the economic benefits of the land; and the right to pro-actively use and manage the land.⁶ Aboriginal Rights are protected under s.35 of the *Constitution Act, 1982*.⁷

St'át'imc Title – Aboriginal Title flows from the sufficient, continuous and exclusive occupation and use of land at the time of assertion of European sovereignty and confers ownership rights similar to those associated with fee simple. While the St'át'imc Nation has not yet proven a Title claim in a court of law, they have never ceded or surrendered their Title to St'át'imc Territory.⁸

Timely notice - Notice is given at the beginning of the process, sufficiently in advance of any authorization or commencement of activities, and respect is shown to the time requirements of indigenous consultation / consensus processes⁹ and the time requirements of local governments. Sufficient time is given for meaningful involvement in a process or activity, including time to understand issues and aspects fully, and to participate in an informed manner.

4. WHEREAS

WHEREAS the Parties to this Protocol Agreement each have distinct governance authorities and responsibilities towards their constituents;

WHEREAS the Parties acknowledge that the interests of all persons living in the areas under their governance are best served by each Party working together in the spirit of cooperation and improved communication;

WHEREAS the Parties acknowledge that establishing and maintaining mutually respectful and effective relationships is a shared responsibility that requires political will, joint leadership, mutual trust, accountability, transparency and an investment of resources;

WHEREAS all St'át'imc are linked together through time to the Territory, and to one another, through St'át'imc language, way of life, laws, family ties, and interconnectedness with all living things;

WHEREAS the St'át'imc continue to make important contributions to the region and to community life, including but not limited to; economic, social, cultural as well as through their stewardship and knowledge;

WHEREAS the Parties acknowledge that the St'át'imc has existing and distinctive Title and rights, that flow from ongoing and organized occupation of the Territory, and is recognized and affirmed in Section

⁵ Kotaska, J. G. (2013). *Reconciliation 'at the end of the day': Decolonizing territorial governance in British Columbia after Delgamuukw* (Doctoral dissertation). Retrieved from <https://open.library.ubc.ca/cIRcle/collections/ubctheses/24/items/1.0074235>

⁶ *Tsilhqot'in Nation v. British Columbia*. 2014 SCC 44. (2014). Retrieved from <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14246/index.do>

⁷ Indigenous and Northern Affairs Canada. (2010). *Aboriginal Rights*. Retrieved from <https://www.aadnc-aandc.gc.ca/eng/1100100028605/1100100028606>

⁸ *1911 Declaration of the Lillooet Tribe*. (2011). Retrieved from <http://uslces.org/declaration.html>

⁹ United Nation Human Rights Office of the High Commissioner (2013). *Free, prior and informed consent of Indigenous Peoples*. Retrieved from <http://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>

35 of the *Constitution Act* (1982). The Constitution Act gives rise to corresponding constitutional obligations on the Crown, including upholding the honour of the Crown through reconciliation, consultation, and accommodation;

WHEREAS the Parties recognize and acknowledge that the St'át'imc continue to exercise their Title and rights pertaining to all lands within St'át'imc Territory;

WHEREAS the Parties acknowledge that for the purpose of this Protocol Agreement, the Crown is defined as either the provincial Government of British Columbia or the federal Government of Canada, and that while the legal obligations pertaining to reconciliation, consultation and accommodation remain with the Crown, the Parties will do their best to engage with one another in a timely, open and transparent manner in the spirit of building respectful and effective relationships;

WHEREAS this protocol acknowledges the adoption by the United Nations General Assembly of the *Declaration on the Rights of Indigenous Peoples* on September 7, 2007, and endorsed by the Government of Canada without qualification in May of 2016 and the Province of British Columbia in September of 2017, which recognizes Indigenous Peoples' rights to their lands, and rights to self-determination, to maintain and strengthen their political, legal, economic, social and cultural institutions, to participate in decisions that could affect their rights, to maintain and strengthen their distinct spiritual relationships with their territories, to revitalize, use, develop and transmit to future generations their histories and language, and to designate and retain their own names for communities, places and persons, and uphold their responsibilities to future generations and to conservation and protection of their territories;

WHEREAS the District of Lillooet and Squamish-Lillooet Regional District are local governments exercising jurisdiction and authority delegated by the Province pursuant to the *Community Charter* and *Local Government Act*;

WHEREAS the Parties recognize the intrinsic value of the land, and acknowledge their responsibility to steward the land for the mutual prosperity and well-being of current and future generations;

WHEREAS the Parties accept that non-St'át'imc people are also of this land now, by birth and by adoption, with strong ties of loyalty; and

WHEREAS the Parties acknowledge their cultural differences, while recognizing that they have overlapping and mutual interests, that their decisions impact one another, and that the parties are stronger when working together.

WHEREAS this document is not to be considered a form of consultation in and of itself; rather, it is a starting point from which to establish a framework and process for engagement moving forward.

5. LEGAL OBLIGATIONS

WHEREAS this Protocol Agreement does not prejudice or affect any inherent Aboriginal Title, right, or interest of the St'át'imc Nation, recognizing that the legal context within which St'át'imc Title, rights and interests exist continues to evolve and change, thus impacting the ways in which Title, rights and interests are exercised;

WHEREAS this Protocol Agreement does not prejudice or affect the District of Lillooet's or Squamish-Lillooet Regional District's powers, duties, responsibilities or obligations in the exercise of their functions pursuant to the *Local Government Act* and the *Community Charter* as amended from time to time; and

WHEREAS this Protocol Agreement does not create a legal obligation between the Parties, but does create expectations for all Parties to do their best.

6. PRINCIPLES OF COMMUNICATION AND COOPERATION

Therefore, the Parties agree to:

- .1 Approach communication with a spirit of flexibility and understanding, to do their best to accommodate each other's priorities, schedules, commitments, and communication styles;
- .2 Use a variety of communication mediums and practices to accommodate individual and community needs;
- .3 Pursue opportunities for collaborative decision making and action planning on areas of common interest and concern;
- .4 Listen with respect, patience and a willingness to learn and understand one another's perspectives;
- .5 Recognize the need to give space for thought and reflection in discussion, decision-making and cooperative processes;
- .6 Respect and acknowledge each other's jurisdictions, recognizing that in some cases it is acceptable to agree to disagree;
- .7 Ensure that communications are timely, open, honest, respectful and considerate of the interests of all Parties; and
- .8 Hold safe sensitive information, and also recognize that some information is confidential and cannot be shared.

7. COMMITMENTS/ ACTIONS

The Parties will do their best to achieve the following commitments, recognizing the funding and resource limitations each Party may have:

7.1 Awareness and capacity building

- .1 Explore opportunities to implement cross cultural training at a staff and leadership level on relevant topics and skills, for example, the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, intercultural competency, conflict resolution, human rights, and anti-racism;¹⁰
- .2 Encourage learning opportunities between and among the Parties and their respective communities regarding each other's roles, rights, responsibilities, governance, laws, culture and history;

¹⁰ Truth and Reconciliation Commission of Canada. (2015). *Truth and Reconciliation Commission of Canada: Calls to Action; Call to Action #57*. Retrieved from http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf

- .3 Encourage opportunities (e.g. workshops) to promote mutual understanding and clarification regarding consultation;¹¹ and
- .4 Educate staff and community members regarding the Protocol Agreement for Communication and Cooperation, its meaning and purpose.

7.2 Communication, engagement and cooperation

- .1 Leadership and administrators will meet annually to build understanding, exchange information, discuss common social, economic, and environmental objectives, identify issues of common concern, and coordinate efforts to address those issues including establishing communication and cooperation goals, objectives, annual work plans, and processes for monitoring and evaluating success;
- .2 Parties will engage with one other in a timely manner, and with sufficient information, on matters that may impact the interests and / or jurisdiction of one or more other parties (e.g., long range/strategic plans; land use, zoning and bylaw changes; referrals), so that the Parties have the opportunity to participate meaningfully, allowing time to fully understand the issues and present interests in an informed manner;
- .3 Staff will meet as required, and at a minimum quarterly, to report on relevant work, interactions, and matters of mutual interest and / or concern to follow the directions and meet the objectives set by the Parties' leadership; and
- .4 The Intergovernmental Relations Working Group, made up of the appropriate representatives from each Party, will continue to meet as required, and as resources allow, to support the implementation of the Protocol Agreement, including organization of meetings and development, implementation and monitoring of work plans.

7.3 Information sharing

- .1 Parties will familiarize themselves with one another's plans and processes, with the goal of being able to provide informed feedback; and
- .2 Parties will work together to determine a process to identify what types of information should be shared, when and with whom, as tied to the priorities and objectives set at the annual Leadership Meeting. This process may include the following types of information:

Operational Information

- Meeting schedules
- Key organizational contacts

Long Range/Strategic Plans

- Official Community Plans (OCP)
- Regional Growth Strategies (RGS)
- Community Plans
- Sustainability plans

¹¹ Consider using as a resource: Ministry of Community, Sport and Culture, Local Government Division. (2014). *Guide to First Nations Engagement on Local Government Statutory Approvals (Interim)*. Retrieved from http://www.cscd.gov.bc.ca/lgd/gov_structure/library/First_Nations_Engagement_Guide.pdf

Governance

- Mandates and governance structures
- Organizational policies
- St'át'imc laws
- Heritage codes / policies
- Organization structure

Land Use, Zoning and Local Government Referrals

- Zoning bylaws
- Bylaw changes and updates

Opportunities

- Contracting opportunities
- Economic opportunities

- .3 The Parties acknowledge that communications / information shared may be subject to the *Freedom of Information and Protection of Privacy Act*.

7.4 Working together, strategically collaborating on key interest areas, advocacy, and presenting as a united group on areas of shared interest

- .1 The Parties will notify each other, early and often, regarding decisions and matters of potential concern, impact, or interest to the signed Parties;
- .2 The Parties will work together to identify shared interests, a shared vision and to collaborate on future initiatives; and
- .3 The Parties will consider joint advocacy to the provincial and federal governments as well as to other Parties, on issues of mutual concern or interest.

8. CONFLICT OF INTEREST

The Parties agree to:

- .1 Declare any conflict of interest, provided as a written statement to all other signed Parties.

9. DISPUTE RESOLUTION

The Parties agree to:

- .1 Open, honest and respectful interaction with each other in order to communicate effectively and to avoid disputes; and
- .2 Seek to avoid disputes relating to this Protocol Agreement and all other contexts by actively listening to each other's concerns, seeking clarification of issues and statements to avoid misunderstandings, and adopting mechanisms and processes as needed to assist in avoiding disputes.

Where a dispute arises between two or more of the Parties on a matter within the scope of this Agreement (including its interpretation and implementation), the Parties will:

- .3 Engage in informal communications in an attempt to resolve the dispute;
- .4 Where a dispute between one or more of the Parties has not been resolved by informal communications, either Party to the dispute may, upon providing timely notice, call a special meeting of the Parties to discuss the issues of concern and attempt to resolve the dispute;
- .5 The concerned Party(ies) will provide the other Party(ies) with a written summary of the dispute;
- .6 For the purpose of resolving the dispute as noted in 9.3, the Board and / or Council of the Parties to the dispute may participate in the special meeting either as a whole Board or Council, or by way of at least three delegated representatives of the Board or Council, and will do their best to resolve the dispute in accordance with the principles of cooperation set out in this Agreement;
- .7 If the Parties are not able to resolve the dispute during the special meeting, the Parties may agree to explore alternate methods of dispute resolution including facilitated discussions, followed by mediation if necessary; and
- .8 If an alternate method of dispute resolution is chosen, the Parties are responsible for their own costs as well as an equitable portion of the shared costs related to the dispute resolution process.

10. MONITORING

The Parties agree that:

- .1 The Intergovernmental Relations Working Group will monitor the goals, objectives and implementation of the actions laid out in this Protocol Agreement and related work plans annually; and
- .2 Every two years, the Parties will review the Protocol Agreement and its impacts to measure the extent to which the implementation of the Protocol Agreement meets the expectations of the Parties.

11. RESOURCES

The Parties will:

- .1 Do their best to ensure staff resources are available to support the implementation of this Protocol Agreement and continued relationship building;
- .2 Be responsible for funding its participation in the development and implementation of the Protocol Agreement;
- .3 Assist one another, as required and as possible, in securing the resources necessary to support the implementation of this Protocol Agreement and continued relationship building; and
- .4 Do their best to secure resources from other levels of government, agencies, foundations, non-government organizations and the private sector to support the implementation of this Protocol Agreement and continued relationship building.

12. TERMS OF AGREEMENT

The Parties agree that:

- .1 This Protocol Agreement is a living document and may be amended upon mutual consent;

- .2 This Protocol Agreement will remain in effect unless terminated by mutual agreement of all Parties;
- .3 Each Party may terminate its participation in the Protocol Agreement by providing 60 days' written notice to the other Parties;
- .4 Other parties may be added to this Protocol Agreement, subject to the review and approval of the signatories;
- .5 Revisions must be agreed to in writing and by adoption, by formal resolution, of each respective Nation, Council and / or Board; and
- .6 This Protocol Agreement shall take effect immediately upon the adoption by resolution by each participating Nation, Council and / or Board.

Signed this 24th day of May, 2018.



Chief Shelley Leech
P'egp'ig'lha Council



Vice-Chair Tony Rainbow
Squamish-Lillooet Regional District



Mayor Marg Lampman
District of Lillooet