



Snuneymuxw First Nation



Islands Trust

## PROTOCOL AGREEMENT

THIS PROTOCOL AGREEMENT ('Agreement') dated for reference the 4<sup>th</sup> day of December, 2008

BETWEEN:

**THE ISLANDS TRUST COUNCIL** (the Trust Council) established under the *Islands Trust Act* RSBC 1979, acting on its own behalf and on behalf of the Gabriola Island Local Trust Committee (the Committee)

(the Islands Trust)

AND:

**SNUNEYMUXW FIRST NATION** (Snuneymuxw) a "Band" as that term is defined in the *Indian Act* (Canada), as represented by the Snuneymuxw Band Council

(Snuneymuxw)

RECITALS

- A. Snuneymuxw and the Islands Trust have mutual respect for each party's mandates, policies, rights and responsibilities, and areas of jurisdiction.
- B. Snuneymuxw has legal and cultural interests, including Douglas Treaty rights and asserted aboriginal rights, relating to lands and resources in Snuneymuxw territory including Snuneymuxw reserves and territory on Gabriola Island.
- C. The Committee has power and authority in relation to planning, land use management and heritage conservation under the *Islands Trust Act* with respect to areas within Snuneymuxw's traditional territory.
- D. Snuneymuxw and the Islands Trust have common interests in planning, land use management and heritage conservation in the areas within the authority of the Committee.

- E. Snuneymuxw and the Islands Trust wish to establish a government-to-government relationship of mutual respect and cooperation with respect to planning, land use management and heritage conservation in the areas within the authority of the Committee.

#### ENTRY INTO AGREEMENT

1. The Islands Trust, the Committee, and Snuneymuxw are approaching this Agreement:
  - a. In furtherance of their government-to-government relationship;
  - b. With a view to building that relationship based on the principles of trust and goodwill toward each other, rather than obligations to meet minimum legal requirements toward each other;
  - c. With a view also to guiding principles of mutual recognition and respect for each other, for Snuneymuxw connections to land , and for matters of environmental, cultural and historic importance to each other; and a desire for and in recognition of the need for reconciliation, which may be achieved in many different ways;
  - d. In particular with respect for each other's rights, obligations, responsibilities, mandates, policies, and areas of jurisdiction ;
  - e. Without limitation to their respective rights and responsibilities and relationship with respect to any other area within the jurisdiction of the Islands Trust;
  - f. In a spirit of cooperation and compromise where necessary and beneficial; and
  - g. With the common vision of environmental integrity, community stability and well-being for all residents of the area within the authority of the Committee as a result of their relationship.

#### PURPOSE OF AGREEMENT

2. The purpose of this Agreement is to set out policies, procedures, and processes for the way in which the Islands Trust and the Snuneymuxw will interact from time to time, to establish specific measures for protecting Snuneymuxw heritage sites and to identify areas in which the parties wish to develop further agreements.
3. Without limitation to the obligations of the Islands Trust under this Agreement, the Committee will be responsible for the day-to-day implementation of this Agreement.

#### NATURE OF PROTOCOL AGREEMENT

4. It is intended by the Islands Trust, the Committee and Snuneymuxw that this agreement will form the basis for a continuing relationship between them. As such, it is intended that the parties will act upon and implement its provisions on an ongoing

basis until such time as those provisions are reviewed, amended, or terminated under clause 28, or the parties enter into a more detailed agreement replacing any specific provision of this Protocol Agreement.

#### PROTOCOL AGREEMENT WORKING GROUP

5. Immediately after the signing of this agreement a permanent protocol agreement working group will be formed, comprising:
  - a. The Chief of Snuneymuxw and two Snuneymuxw Band Councillors nominated by the Chief of Snuneymuxw;
  - b. The members of the Committee;
  - c. One staff member from each of Snuneymuxw and the Islands Trust; and
  - d. Such other staff members as required by either party to support the work of the protocol agreement working group.
6. Alternate members may be appointed to the protocol agreement working group as necessary to ensure that the work of the group continues during temporary absences of any member.
7. The working group will meet to carry out its commitments under this Agreement, to review progress on the development of related agreements, and any other requisite matters falling under its responsibilities.
8. The working group will:
  - a. Develop procedures governing frequency, timing, location, and record-keeping of matters arising out of its meetings;
  - b. Meet as soon as is reasonably practicable after the signing of this agreement to discuss the process for implementation of matters included in this agreement; and
  - c. Establish a process to discuss reviews of, amendments to, or termination of this Agreement under clause 28 below.
9. The working group will also use all reasonable efforts to meet at least [two] times each calendar year, and more frequently as it may consider necessary to carry out its responsibilities under this agreement.
10. Except as agreed from time to time to accommodate unforeseen events or staff absences, the staff members supporting the working group will use reasonable efforts to meet in person at least once a month and will communicate at least twice a month in person or by telephone.
11. The parties acknowledge that the successful implementation of this Agreement depends upon adequate human and financial resources and agree to seek funding and resources that can be devoted to implementation.

## PRIORITIES FOR DISCUSSION OF WORKING GROUP

12. Without limiting the matters that may be identified under clause 2 of this Agreement for the development of further agreements, the parties have identified the matters set out in clause 14 for discussion and are committed to developing detailed memoranda of understanding setting out the processes, policies, and agreements between them as to the way in which they will interact from time to time with respect to these matters within the Committee's area of authority.
13. Without limiting the commitment set out in clause 12, the Islands Trust agrees that it will as applicable notify Snuneymuxw in writing of, and work in cooperation with Snuneymuxw to endeavour to address its interests with respect to, the matters set out in clause 14.
14. The matters referred to in clauses 12 and 13 include:
  - a. Reviews of official community plans and land use bylaws;
  - b. A coordinated land use planning and development agreement;
  - c. Consideration of registered and potential First Nation archaeological and heritage sites in reviewing heritage alteration permit applications;
  - d. The creation of subdivision regulations to protect registered or potential First Nation archaeological and heritage sites;
  - e. Establishing regulations regarding use, density and the siting and location of buildings and uses on land to protect registered or potential First Nation archaeological and heritage sites;
  - f. Review of and amendments to the objectives and policies within the Islands Trust Policy Statement, and specific inclusion of objectives and policies regarding the protection of registered and potential First Nations archaeological and heritage sites;
  - g. Implementation of other options to protect registered or potential First Nation archaeological and heritage sites, including but not limited to designation of heritage conservation areas, dedication of parkland during subdivision, and designation of protected heritage sites;
  - h. Establishment of bylaws and other mechanisms to protect registered or potential First Nation archaeological and heritage sites in development application processes, including applications for amendments to official community plans and land use bylaws, applications for permits such as heritage alteration permits, temporary commercial or industrial use permits, or development variance permits, and decisions about parkland dedication that are made in response to applications referred to the Islands Trust as part of the subdivision approval process;
  - i. Notification to applicants for proposed developments of appropriate information regarding registered or potential First Nation archaeological and heritage sites;
  - j. Consultation and information exchange on the development of community plans, zoning and land use by-laws, planning processes, statutory processes governing either party's approach to land use planning, public information and consultation processes, and related matters; and

- k. Increasing public education and awareness, including through the creation of brochures, web content, and signage.

## REGIONAL DISTRICTS

15. The parties will encourage Regional Districts sharing jurisdiction with the Islands Trust to develop complementary mechanisms to support the education of the public and the protection of registered and potential First Nations archaeological and heritage sites as part of their role in development and parkland management, including in the review of building permit applications and management of parkland, and in any other matters of common interest to the parties.

## COMMUNICATIONS AND CONFIDENTIALITY

16. As soon as practical and within 30 days after the signing of this Protocol Agreement, the parties will meet to discuss and establish procedures addressing:
  - a. Confidentiality issues from time to time on matters being dealt with under this Agreement and related agreements;
  - b. Joint and separate public communications on such matters;
  - c. Processes for inter-party communication at various levels between the Chief of Snuneymuxw and the Chair of the Islands Trust, between elected officials, and between staff, with the goal of improving and increasing the efficiency of day-to-day operational and political communications between the parties;
  - d. Timely notification to each other of matters of potential concern or impact to the other party, including initiatives undertaken by third parties that have come to the attention of either the Islands Trust or the Snuneymuxw;
  - e. Regular and emergency information exchange processes, including information on institutional and operational process of both parties and staff or officials in each organization authorized to deal with specific issues;
  - f. Regular updates to each other on organizational authorities and personnel information; and
  - g. Such other matters relating to communications and confidentiality as the protocol agreement working group considers will support the objectives of this Agreement.

## DISPUTE AVOIDANCE AND RESOLUTION

17. The Islands Trust and Snuneymuxw are committed to open, honest, and respectful interaction with each other in order to communicate effectively and to avoid disputes.
18. In that spirit, the parties will seek to avoid disputes relating to this agreement and all other contexts by actively listening to each other's concerns, seeking clarification of issues and statements to avoid misunderstandings, understanding differing cultural

approaches to communication, and adopting such other mechanisms and processes that will assist in achieving the avoidance of disputes.

19. Where a dispute arises between the Islands Trust and Snuneymuxw regarding the interpretation or implementation of this Agreement, the parties will engage in communications conducted in good faith and in an informal and non-adversarial manner in an attempt to resolve specific issues.
20. Where a dispute between the Islands Trust and Snuneymuxw has not been resolved by informal communications, any party may, upon reasonable notice, request a special meeting of the parties to discuss the issues of concern.
21. Where the parties are unable to resolve a dispute by special meeting, any party may request other dispute resolution procedures to assist in achieving consensus.
22. The parties may agree in writing to adopt more formal dispute resolution processes with respect to a particular issue, and to share the costs of the agreed process.
23. The parties agree to pursue alternate methods of dispute resolution before initiating legal proceedings directed at another party to this Agreement.

#### GENERAL

24. The parties are committed to the following guiding principles regarding the timelines for negotiating the agreements referred to in this Agreement:
  - a. Discussion and negotiation will take place in a prompt and timely manner without undue or unreasonable delays on the part of either the Islands Trust or Snuneymuxw;
  - b. The parties acknowledge that the work required to discuss and complete further agreements will require not only commitment and cooperation, but the investment of considerable time and effort on the part of each of them and their respective representatives;
  - c. The parties will therefore ensure that they discuss and attempt to establish mutually satisfactory priorities for the order of development of any further agreements referred to in this Agreement;
  - d. The parties also recognize and respect each other's commitments and obligations to other matters within their respective jurisdiction and will therefore approach timeliness with flexibility and in a spirit of understanding and reasonable compromise where necessary or desirable to accommodate each other's schedules and other commitments.
25. Each party will bear their own costs for the preparation and implementation of this and all other agreements referred to in or resulting from this Agreement. The parties may also work together to apply for funding from external sources to support this

agreement and projects being developed under this agreement, and may agree to share the costs of certain projects from time to time.

26. This Agreement is without prejudice the legal rights and responsibilities of the Parties, and in particular does not abrogate, limit or derogate from Snuneymuxw aboriginal rights and title and Douglas Treaty rights, including Snuneymuxw's right to Crown consultation and accommodation.

#### TERM OF THE AGREEMENT

27. The parties agree this Agreement will take effect upon the adoption by resolution of Snuneymuxw Chief and Council, and the Islands Trust Council and upon approval by the Minister responsible for the *Islands Trust Act* pursuant to s. 9(2) of the *Islands Trust Act*.
28. This Agreement is a living document and may be revised from time to time by agreement in writing and as authorized by each party.
29. This Agreement may be terminated by either party providing to the other sixty (60) days notice in writing.