Making a difference...together

Report #EES 08-62

REPORT TO CORE AREA LIQUID WASTE MANAGEMENT COMMITTEE
MEETING OF WEDNESDAY, 25 JUNE 2008

SUBJECT **CORE AREA WASTEWATER MANAGEMENT PROGRAM – APPROVAL OF CONSULTATION AGREEMENTS WITH BRITISH COLUMBIA AND THE SONGHEES AND BEECHER BAY NATIONS**

PURPOSE

To develop an effective consultation process on the wastewater treatment project with the Songhees and Beecher Bay Nations.

BACKGROUND

- The minister of environment responded to the Capital Regional District's (CRD) proposed amendment to the Core Area Liquid Waste Management Plan, and to the supporting *The Path Forward* report, in a letter dated 14 December 2007. In that letter, he advised the CRD to develop a consultation process with First Nations with regard to the wastewater treatment project.

- The courts have emphasized that the federal and provincial governments must consult with First Nations when making decisions that may affect aboriginal and treaty rights and accommodate those rights where appropriate. Provincial decisions will be required to approve the wastewater treatment project.

- The CRD cannot assume responsibility for the legal obligations to consult now imposed on the senior governments. It can, however, be delegated procedural steps, such as gathering information on First Nations interests.

- The CRD and the province have entered into a staff-level agreement, which sets out that the province is responsible for the consultation process and that it is delegating certain aspects of that process to the CRD.

- The CRD is eager to work with its First Nations neighbours in a meaningful way on the wastewater treatment project to seek their input, to apply their input to avoid problems and to seek opportunities to work together.

ALTERNATIVES

1. That formal agreements be entered into with the province and the Songhees and Beecher Bay Nations to guide the consultation process on the wastewater treatment project.

2. That an informal approach to working with First Nations be maintained to satisfy consultation obligations on the wastewater treatment project.

FINANCIAL IMPLICATIONS

First Nations will likely require capacity funding to provide feedback on an endeavor as complicated and large as the wastewater treatment project. In the proposed formal agreements, which are attached, the province is clearly responsible for responding to and providing any capacity funding. Where such agreements do not exist, First Nations may turn to the CRD, as the proponent for the project, for capacity funding.

OTHER IMPLICATIONS

The formal agreements are an important step in bringing First Nations into the wastewater treatment project because they clearly set out the consultation process, the roles and responsibilities for the province, CRD and First Nations within that process, and First Nations buy into that process.

Important to the CRD is that the province clearly retains responsibility for the consultation process, including accommodating any rights that may be affected by the final project design. The CRD's role will be to provide useful information to the First Nations, provide meaningful opportunities for feedback and then work with First Nations to use that feedback, where appropriate, in the design of the project. The First Nations' role is to ensure they are available to receive information, do their best to provide good feedback in an efficient manner and work toward solutions.

The agreements also include a commitment to push Canada to work with the parties to achieve win-win solutions if federal Crown land is needed for sewage treatment, at the same time as First Nations are also asking for land to settle treaty or outstanding specific claims. As well, the parties agree to work together to ensure that the federal government is aware of and meets its consultation obligations if federal decisions are required to complete the project. The agreements can also be amended to include Canada if so desired.

Finally, the agreements include a dispute resolution process to reflect the parties' commitment to building strong working relationships and working issues through in a collaborative manner.

SUMMARY

As part of his response to *The Path Forward* report, the minister of environment requires that the CRD report on how First Nations will be consulted on the wastewater treatment project. The best approach to achieving an efficient and effective consultation process is to set out that process in a formal agreement, which includes the roles and responsibilities of each of the parties within that process. The proposed formal agreements do that. They clearly set out that the province is responsible for the consultation process, including the accommodation of any affected aboriginal rights and the provision of capacity funding required by First Nations; they capture the CRD's commitment to provide good information to First Nations, seek their input into the design of the project and use that input where appropriate; and they clearly state the intention of the two First Nations to provide feedback on their interests and rights in a timely manner and work to solutions in the design of the wastewater system. The agreements also commit the parties to work together if federal Crown land is needed for sewage treatment or federal decisions are required to approve the project. Such agreements are also important steps in capturing the commitment of the CRD and the Songhees and Beecher Bay Nations to build strong working relationships.

RECOMMENDATION

That the Core Area Liquid Waste Management committee recommend to the Board that the attached wastewater treatment project consultation agreements with British Columbia and the Songhees and Beecher Bay Nations, dated 04 June 2008, be approved for signature by the Capital Regional District Board Chair.

John Balogh
Special Advisor, Aboriginal Relations

Dwayne Kalynchuk, PEng
General Manager, Environmental Services
Concurrence

Kelly Daniels
CAO Concurrence

COMMENTS

JB:cl
Attachments: 2

Wastewater Treatment Project Consultation Agreement

This Agreement is dated for reference June 4, 2008.

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA
(as represented by the Minister of the Environment)
hereinafter "British Columbia"

and

SONGHEES NATION
(as represented by the Chief of the Songhees Nation)
hereinafter "Songhees"

and

THE CAPITAL REGIONAL DISTRICT
(as represented by the Chair of the Capital Regional District)
hereinafter "CRD"

(collectively referred to as "the Parties")

WHEREAS

A. Section 35 (1) of the *Constitution Act, 1982* states: "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."

B. Songhees has been engaged in the British Columbia Treaty Process ("Treaty Process") since 1993. A key objective for Songhees in the Treaty Process is to secure more land for its growing community and to facilitate the Nation's economic development.

C. Songhees has filed a Statement of Intent claim in the Treaty Process, as shown on the map attached to this Agreement as **Schedule "A"**. Songhees claims Aboriginal title to this area.

D. In July 2007, the CRD was directed to develop a secondary Wastewater Treatment System, pursuant to the British Columbia *Environmental Management Act* ("Project").

E. The Project may consist of facilities on various parcels of land within the Capital Regional District.

F. The options under consideration by the CRD for the location of Project facilities include land within the Songhees Statement of Intent Area, and some of this land is land currently owned by the Government of Canada.

G. The Crown has an obligation to consult with First Nations when contemplating decisions that may affect their rights under s. 35 of the *Constitution Act, 1982* ("Section 35 Rights") and, where appropriate, the Crown must also seek to achieve a reasonable accommodation of any Section 35 Rights that stand to be infringed by a Crown decision.

H. Songhees considers the CRD to share in the Crown's duty to consult with First Nations, whereas the CRD considers that local governments do not have a duty to consult.

I. Notwithstanding the differing views on whether the CRD itself has a legal duty to consult with Songhees about the Project, the CRD is willing to participate in a consultation process with Songhees on the Project on the basis that it is performing certain delegated functions of British Columbia's consultation obligations towards Songhees, and it enters into this Agreement on that basis.

J. The CRD also wishes to engage its First Nation neighbours in a meaningful way by seeking their input about the Project and, where feasible, incorporating that input into the design of the Project so as to avoid or minimize any potential adverse effects on Section 35 Rights and other interests, reduce the likelihood for disputes, and to seek enhanced opportunities for collaboration between the CRD and neighbouring First Nations.

K. British Columbia recognizes its duty to consult with Songhees about the Project and wishes to fulfill that obligation.

L. The CRD and British Columbia intend to collaborate in an efficient and effective manner to address the Section 35 Rights and interests of the Songhees that may be affected by the Project, as set out in their Letter of Understanding, which is attached to this Agreement as **Schedule "B"**.

IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT THE PARTIES AGREE AS FOLLOWS:

Purposes

1. The purposes of this Agreement are as follows:

    a. to establish a meaningful consultation process for the Parties for the Project ("Consultation Process");

    b. to establish the respective roles of the CRD and British Columbia in the Consultation Process, in accordance with their Letter of Understanding;

    c. to foster a positive and productive working relationship among the Parties in respect of the Project;

    d. to foster collaboration between the Parties in the task of encouraging the federal government to work openly with both the CRD and Songhees to discuss, and where possible, address the CRD's need for land to build Project facilities and Songhees' need to hold more land within its Statement of Intent Area.

CRD Commitments

2. The CRD will provide to Songhees, in a timely fashion, relevant information about the Project, and no less information than the CRD provides in any of its other engagement processes for this Project.

3. The CRD will provide Songhees with the opportunity to present its concerns and any information relating to the Project or its potential impact on all of the Section 35 Rights and other interests asserted by Songhees.

4. The CRD will seriously consider the information and concerns that Songhees presents in relation to the Project and the CRD will seek, to the extent reasonably possible, to address those concerns.

5. Where the CRD decides not to address a concern raised by Songhees or decides not to address it in the manner proposed by Songhees, the CRD will provide Songhees and British Columbia with written reasons for that decision.

6. The CRD will advise British Columbia of any position that it takes vis-à-vis concerns raised by Songhees in the Consultation Process.

7. The CRD will provide Songhees with a copy of any report which it makes to British Columbia on the status of the Consultation Process and the exchanges between Songhees and the CRD in the Consultation Process.

British Columbia Commitments

8. British Columbia will maintain ultimate responsibility for the Consultation Process.

9. Where Songhees identifies relevant information about the Project that is not being provided to Songhees by the CRD, British Columbia will provide that relevant information to Songhees, in a timely manner, provided that information is in British Columbia's control.

10. British Columbia will provide Songhees with the opportunity to present all of its concerns and any information relating to the Project or its potential impact on all of the Section 35 Rights and other interests asserted by Songhees.

11. British Columbia will seriously consider the information and concerns that Songhees presents and seek, to the extent reasonably possible, to address those concerns.

12. Where British Columbia decides not to address a concern raised by Songhees or decides not to address the concern in the manner proposed by Songhees, British Columbia will provide Songhees and the CRD with written reasons for that decision.

13. British Columbia will advise the CRD of any position that it takes vis-à-vis concerns raised by Songhees in the Consultation Process.

14. British Columbia will consider a request by Songhees for capacity funding to participate in the Consultation Process.

Songhees Commitments

15. Songhees will provide to the CRD and British Columbia, in a timely manner, relevant information about Songhees' Section 35 Rights and other interests asserted by Songhees relating to the Project, including information on how those Section 35 Rights and other interests may be impacted by the Project.

16. Songhees will make itself available to meet with the CRD and British Columbia to discuss the Project and present responses to the information it receives from the CRD and British Columbia.

Tripartite Commitments

17. The Parties will participate in the Consultation Process in good faith at all times.

18. The Parties will endeavor to maintain a common information base wherever practical and keep a common record of major discussion points, action items, and decisions.

19. The Parties will look for efficiencies in the sharing of information, including joint meetings with other potentially affected First Nations where appropriate.

20. As long as there remains a possibility of the CRD acquiring federal lands within the Songhees Statement of Intent Area to build the Project, the parties will collaborate to encourage the Government of Canada to consult with Songhees about the potential impact of the use of the federal lands on Songhees' asserted Section 35 Rights and other interests. This collaboration may include:

    a) providing information or updates in writing to the Government of Canada relating to the Consultation Process and, in particular, outstanding issues;

    b) exploring strategies, such as letter writing and inter-governmental meetings, for encouraging Canada to make land available to both the CRD and Songhees; and

    c) amending this Agreement to include the Government of Canada as a party.

Confidentiality

21. If Songhees, British Columbia, or the CRD confirms that any information that they provide in the Consultation Process is confidential, the Parties undertake not to disclose that information to the public, subject to any disclosure requirements under British Columbia's *Freedom of Information and Protection of Privacy Act* or as otherwise required by law.

Dispute Resolution

22. For the purposes of this Article, a "Dispute" is defined as any disagreement arising out of the interpretation of this Agreement of which written notice is provided by a Party in the manner required by this Agreement.

23. A Party that raises a Dispute must give written notice of the Dispute to the other Parties by setting out a summary of the particulars of the Dispute.

24. The Parties will make best efforts to meet within two weeks of the written notice being given of the Dispute and will attempt to resolve the Dispute through collaborative negotiations.

25. If the meeting referred to in section 24 fails to resolve the Dispute, the Parties may jointly agree to refer the Dispute to mediation, and will confirm that agreement in writing.

26. The mediator will be jointly appointed by the Parties. If the Parties cannot agree on the appointment of a mediator within thirty days of agreeing to engage in mediation, the Parties will request the appointment to be made from a roster made up of mediators from the British Columbia International Commercial Arbitration Centre. Each Party will bear its own costs in the mediation and the Parties will share the others costs of the mediation equally.

27. Unless the Parties agree otherwise, the mediation process will serve to provide non-binding recommendations to the Parties.

28. The fact that a Dispute resolution process is taking place or has taken place (including the date, location and participants) will be part of the public record. Factual information, specific conversations, canvassing of options and other creative exchanges will be without prejudice to positions the Parties may subsequently take in any litigation associated with the Dispute, and will not be admitted into evidence in any litigation related to the Agreement or be deemed to constitute an admission of liability.

General Provisions

29. Nothing in this Agreement obliges a statutory decision-maker to act in a manner inconsistent with provincial or Canadian law, and nothing in this Agreement fetters or is to be interpreted as fettering the discretion of a statutory decision-maker.

30. This Agreement does not recognize, modify, suspend, limit, amend, deny, abrogate, extinguish or replace any Section 35 Rights.

31. This Agreement does not constitute a treaty or a land claim agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982.*

32. The Parties acknowledge that they may have differing positions regarding the nature and scope of Songhees' Section 35 Rights.

33. Nothing in this Agreement is intended to limit the participation by Songhees in any public processes established by British Columbia or the CRD to assess the Project.

34. This Agreement does not limit the positions that any Party may take in any other ongoing or future negotiations, settlements, court actions or proceedings between the Parties concerning Songhees' Section 35 Rights or any other rights or interests.

35. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of any particular Party.

36. This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed by the Parties.

37. Songhees represents that this Agreement is binding on Songhees and that all necessary actions have been taken to authorize the execution of this Agreement by Songhees.

38. British Columbia represents that this Agreement is binding upon it and that all necessary actions have been taken to authorize the execution of this Agreement.

39. The CRD represents that this Agreement is binding upon it and that all necessary actions have been taken to authorize the execution of this Agreement.

Ratification

40. The CRD ratifies this Agreement when the Chair or the CRD, or his/her authorized representative, has signed the Agreement and has delivered the execution page to the First Nation in accordance with the notice provisions set out in this Agreement.

41. British Columbia ratifies this Agreement when the Minister of Environment or his/her authorized representative, has signed the Agreement and has delivered the execution page to the First Nation in accordance with the notice provisions set out in this Agreement.

42. Songhees ratifies this Agreement when the Chief of Songhees has signed the Agreement pursuant to a duly passed Band Council Resolution and has delivered the execution page to British Columbia in accordance with the notice provisions set out in this Agreement.

Term

43. This Agreement takes effect on the date it is signed by all of the Parties and, subject to termination in accordance with the terms in this Agreement, it expires on the date of completion of the Project unless the Parties agree to extend the term of the Agreement.

Termination

44. Any Party may terminate this Agreement by giving the other Parties 60 days' advance written notice.

Amendments

45. The Parties may make amendments to this Agreement. Any such amendments shall be in writing and ratified by the appropriate signatories.

Notice

46. Any notice or other communication required or permitted to be given under this Agreement must be given in writing and will be deemed to have been well and sufficiently given if:
    a. sent by courier or personally delivered to the Party's representative at the address set out below or to such other representative or address as the Party may from time to time direct in writing; or

    b. sent by facsimile to the number set out below or to such other number as the Party may from time to time direct in writing.

47. A person(s) may be designated from time to time by any of the Parties to act as the representative of that Party for the purposes of this Agreement. Until the Parties to this Agreement are otherwise advised, the designated persons who represent each of the Parties are:

Chief Robert Sam Songhees Nation	1500D Admirals Rd. Victoria, B.C. V9A 2R1 Fax: (250) 386-4161
Ken Howes Manager, Aboriginal Relations Ministry of the Environment	PO Box 9334 Stn Prov Govt Victoria, B.C. V8W 9M1 Fax: (250) 356-5496

John Balogh
Special Advisor
Aboriginal Relations
CRD

625 Fisgard St.
PO Box 1000
Victoria, B.C.
V8W 2S6
Fax: (250) 360-3270

IN WITNESS WHEREOF the Parties have signed this Agreement:

Signed on behalf of Her Majesty the Queen in Right of the Province of British Columbia, as represented by Minister of the Environment, in the presence of:

Signature: _____

Name of Witness: _____

_____
Minister Barry Penner

_____
Date

Signed on behalf of the Capital Regional District, as represented by the Chair of the Capital Regional District, in the presence of:

Signature: _____

Name of Witness: _____

_____
CRD Chair Denise Blackwell

_____
Date

Signed on behalf of the Songhees Nation, as represented by the Chief of Songhees, in the presence of:

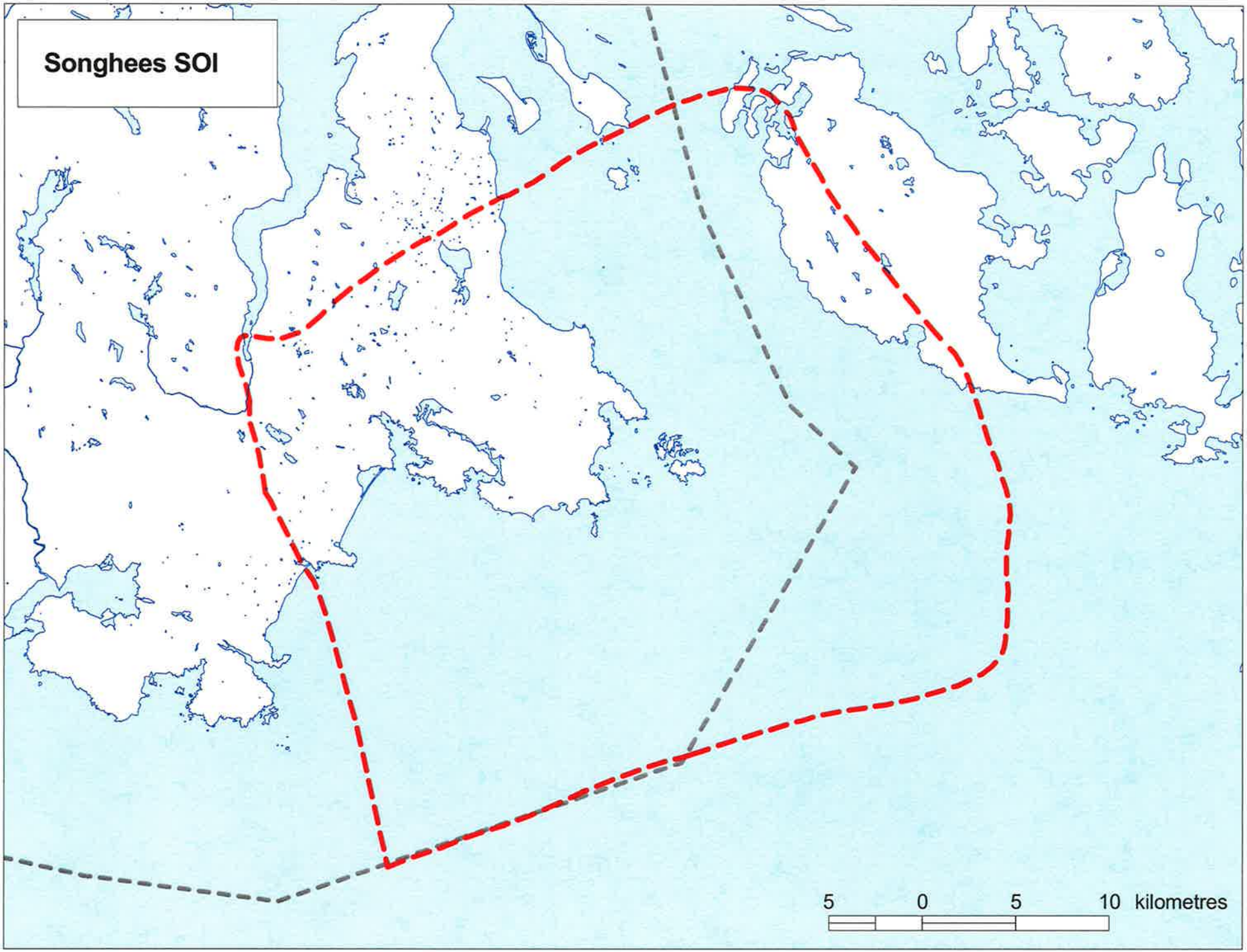
Signature: _____

Name of Witness: _____

_____
Chief Robert Sam

_____
Date

Schedule A
Songhees Nation Statement of Intent Area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Schedule B

Capital Regional District/Province of British Columbia
Letter of Understanding

Consultation and Engagement with Potentially Affected First Nations
Re: CRD Wastewater Treatment

Whereas:

- The Parties – the Capital Regional District (CRD) and the Province of BC – are mutually committed to the implementation of the direction to the CRD from the Minister of Environment (MOE) that was issued in July 2007 pursuant to the *Environmental Management Act* pertaining to Wastewater Treatment (the "Project").
- The existing Aboriginal and treaty rights of First Nations are protected under the *Constitution Act, 1982.*
- The federal and provincial governments ("the Crown") have an obligation to consult with First Nations when making decisions that may affect First Nations' existing Aboriginal and treaty rights ("Aboriginal Interests") and, where appropriate, to accommodate such Aboriginal Interests.
- The Crown may delegate procedural aspects of such consultation to third parties such as the CRD; these steps include exchanging and gathering information pertinent to assessing the potential for impacts upon Aboriginal Interests as a result of proposed activities relating to the Project.
- The CRD is anxious to engage its First Nations neighbours in a meaningful way -- to seek their input, to apply their input to avoid and mitigate any potential adverse effects to their Aboriginal Interests, to reduce the likelihood for disputes, and to seek opportunities to work together.
- The CRD and MOE intend to collaborate in an efficient and effective manner to address the Aboriginal Interests of First Nations that may be impacted by the Project.

The Parties therefore agree as follows:

- The Parties will work together to ensure there is a clear understanding of their respective roles in the discharge of their respective responsibilities as regards the First Nations potentially affected by the Project.

- The CRD will partner with the Province to facilitate the discharge of the Crown's legal duty to consult with First Nations, and likewise to meet the CRD's commitment to engage in a meaningful way with those First Nations affected by the Project. To this end the CRD's efforts will include the following:
    - generating appropriate processes for engaging with potentially affected First Nations;
    - ensuring that First Nations have adequate and timely information concerning the Project, including the potential impacts of sewage treatment and related facilities upon their current and traditional activities;
    - providing First Nations with opportunities for effective input before decisions are made by either the CRD or the MOE (in respect of the Project);

- where feasible, applying First Nations' input to the Project;
- referring information received by the CRD in writing to British Columbia in a timely fashion, relating to any outstanding issues respecting any Aboriginal Interests that may be raised by First Nations;
- ensuring that the CRD's engagement process with First Nations follows a timeline that is complementary to the public consultation process to be undertaken with respect to the Project; and,
- satisfying the Minister of Environment's reporting requirements on the status and content of engagement with First Nations that are potentially affected by the Project.

- The MOE will partner with the CRD to facilitate the discharge of the legal duty to consult with First Nations, and to assist the CRD in meeting its commitment to engage First Nations that may be affected by the Project. To this end, MOE's efforts will include the following:
  - maintaining responsibility for the consultation process with First Nations;
  - providing advice to the CRD on the level of engagement required with individual First Nations that may be affected by the Project;
  - meeting directly with, responding directly to, and, where appropriate accommodating, potentially affected First Nations concerning potential impacts upon their Aboriginal Interests that are more appropriately addressed by the Province; and
  - providing information to the CRD on MOE's response to information received through the CRD engagement process or directly from First Nations regarding potential impacts upon their Aboriginal Interests.

- Where the Parties agree that it is necessary to do so, they will:
  - develop joint strategies, plans and or timelines to guide consultation and engagement with First Nations potentially impacted by the Project; and
  - work to assist the Government of Canada in satisfying its legal obligations to consult with First Nations with regard to the potential impacts upon any Aboriginal Interests that may result from the Project.

Kelly Daniels
Chief Administrative Officer
Capital Regional District

05/20/08
Date

Randy Alexander
Environmental Protection Manager
Vancouver Island Region
Ministry of Environment

MAY 27, 2008
Date

Wastewater Treatment Project Consultation Agreement

This Agreement is dated for reference June 4, 2008.

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA
(as represented by the Minister of the Environment)
hereinafter "British Columbia"

and

BEECHER BAY NATION
(as represented by the Chief of the Beecher Bay Nation)
hereinafter "Beecher Bay"

and

THE CAPITAL REGIONAL DISTRICT
(as represented by the Chair of the Capital Regional District)
hereinafter "CRD"

(collectively referred to as "the Parties")

WHEREAS

A. Section 35 (1) of the *Constitution Act, 1982* states: "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."

B. Beecher Bay has been engaged in the British Columbia Treaty Process ("Treaty Process") since 1993. A key objective for Beecher Bay in the Treaty Process is to secure more land for its growing community and to facilitate the Nation's economic development.

C. Beecher Bay has filed a Statement of Intent claim in the Treaty Process, as shown on the map attached to this Agreement as **Schedule "A"**. Beecher Bay claims Aboriginal title to this area.

D. In July 2007, the CRD was directed to develop a secondary Wastewater Treatment System, pursuant to the British Columbia *Environmental Management Act* ("Project").

E. The Project may consist of facilities on various parcels of land within the Capital Regional District.

F. The options under consideration by the CRD for the location of Project facilities include land within the Beecher Bay Statement of Intent Area, and some of this land is land currently owned by the Government of Canada.

G. The Crown has an obligation to consult with First Nations when contemplating decisions that may affect their rights under s. 35 of the *Constitution Act, 1982* ("Section 35 Rights") and, where appropriate, the Crown must also seek to achieve a reasonable accommodation of any Section 35 Rights that stand to be infringed by a Crown decision.

H. Beecher Bay considers the CRD to share in the Crown's duty to consult with First Nations, whereas the CRD considers that local governments do not have a duty to consult.

I. Notwithstanding the differing views on whether the CRD itself has a legal duty to consult with Beecher Bay about the Project, the CRD is willing to participate in a consultation process with Beecher Bay on the Project on the basis that it is performing certain delegated functions of British Columbia's consultation obligations towards Beecher Bay, and it enters into this Agreement on that basis.

J. The CRD also wishes to engage its First Nation neighbours in a meaningful way by seeking their input about the Project and, where feasible, incorporating that input into the design of the Project so as to avoid or minimize any potential adverse effects on Section 35 Rights and other interests, reduce the likelihood for disputes, and to seek enhanced opportunities for collaboration between the CRD and neighbouring First Nations.

K. British Columbia recognizes its duty to consult with Beecher Bay about the Project and wishes to fulfill that obligation.

L. The CRD and British Columbia intend to collaborate in an efficient and effective manner to address the Section 35 Rights and interests of the Beecher Bay that may be affected by the Project, as set out in their Letter of Understanding, which is attached to this Agreement as **Schedule "B"**.

IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT THE PARTIES AGREE AS FOLLOWS:

Purposes

1. The purposes of this Agreement are as follows:

    a. to establish a meaningful consultation process for the Parties for the Project ("Consultation Process");

    b. to establish the respective roles of the CRD and British Columbia in the Consultation Process, in accordance with their Letter of Understanding;

    c. to foster a positive and productive working relationship among the Parties in respect of the Project;

    d. to foster collaboration between the Parties in the task of encouraging the federal government to work openly with both the CRD and Beecher Bay to discuss, and where possible, address the CRD's need for land to build Project facilities and Beecher Bay's need to hold more land within its Statement of Intent Area.

CRD Commitments

2. The CRD will provide to Beecher Bay, in a timely fashion, relevant information about the Project, and no less information than the CRD provides in any of its other engagement processes for this Project.

3. The CRD will provide Beecher Bay with the opportunity to present its concerns and any information relating to the Project or its potential impact on all of the Section 35 Rights and other interests asserted by Beecher Bay.

4. The CRD will seriously consider the information and concerns that Beecher Bay presents in relation to the Project and the CRD will seek, to the extent reasonably possible, to address those concerns.

5. Where the CRD decides not to address a concern raised by Beecher Bay or decides not to address it in the manner proposed by Beecher Bay, the CRD will provide Beecher Bay and British Columbia with written reasons for that decision.

6. The CRD will advise British Columbia of any position that it takes vis-à-vis concerns raised by Beecher Bay in the Consultation Process.

7. The CRD will provide Beecher Bay with a copy of any report which it makes to British Columbia on the status of the Consultation Process and the exchanges between Beecher Bay and the CRD in the Consultation Process.

British Columbia Commitments

8. British Columbia will maintain ultimate responsibility for the Consultation Process.

9. Where Beecher Bay identifies relevant information about the Project that is not being provided to Beecher Bay by the CRD, British Columbia will provide that relevant information to Beecher Bay, in a timely manner, provided that information is in British Columbia's control.

10. British Columbia will provide Beecher Bay with the opportunity to present all of its concerns and any information relating to the Project or its potential impact on all of the Section 35 Rights and other interests asserted by Beecher Bay.

11. British Columbia will seriously consider the information and concerns that Beecher Bay presents and seek, to the extent reasonably possible, to address those concerns.

12. Where British Columbia decides not to address a concern raised by Beecher Bay or decides not to address the concern in the manner proposed by Beecher Bay, British Columbia will provide Beecher Bay and the CRD with written reasons for that decision.

13. British Columbia will advise the CRD of any position that it takes vis-à-vis concerns raised by Beecher Bay in the Consultation Process.

14. British Columbia will consider a request by Beecher Bay for capacity funding to participate in the Consultation Process.

Beecher Bay Commitments

15. Beecher Bay will provide to the CRD and British Columbia, in a timely manner, relevant information about Beecher Bay's Section 35 Rights and other interests asserted by Beecher Bay relating to the Project, including information on how those Section 35 Rights and other interests may be impacted by the Project.

16. Beecher Bay will make itself available to meet with the CRD and British Columbia to discuss the Project and present responses to the information it receives from the CRD and British Columbia.

Tripartite Commitments

17. The Parties will participate in the Consultation Process in good faith at all times.

18. The Parties will endeavor to maintain a common information base wherever practical and keep a common record of major discussion points, action items, and decisions.

19. The Parties will look for efficiencies in the sharing of information, including joint meetings with other potentially affected First Nations where appropriate.

20. As long as there remains a possibility of the CRD acquiring federal lands within the Beecher Bay Statement of Intent Area to build the Project, the parties will collaborate to encourage the Government of Canada to consult with Beecher Bay about the potential impact of the use of the federal lands on Beecher Bay's asserted Section 35 Rights and other interests. This collaboration may include:

    a) providing information or updates in writing to the Government of Canada relating to the Consultation Process and, in particular, outstanding issues;

    b) exploring strategies, such as letter writing and inter-governmental meetings, for encouraging Canada to make land available to both the CRD and Beecher Bay; and

    c) amending this Agreement to include the Government of Canada as a party.

Confidentiality

21. If Beecher Bay, British Columbia, or the CRD confirms that any information that they provide in the Consultation Process is confidential, the Parties undertake not to disclose that information to the public, subject to any disclosure requirements under British Columbia's *Freedom of Information and Protection of Privacy Act* or as otherwise required by law.

Dispute Resolution

22. For the purposes of this Article, a "Dispute" is defined as any disagreement arising out of the interpretation of this Agreement of which written notice is provided by a Party in the manner required by this Agreement.

23. A Party that raises a Dispute must give written notice of the Dispute to the other Parties by setting out a summary of the particulars of the Dispute.

24. The Parties will make best efforts to meet within two weeks of the written notice being given of the Dispute and will attempt to resolve the Dispute through collaborative negotiations.

25. If the meeting referred to in section 24 fails to resolve the Dispute, the Parties may jointly agree to refer the Dispute to mediation, and will confirm that agreement in writing.

26. The mediator will be jointly appointed by the Parties. If the Parties cannot agree on the appointment of a mediator within thirty days of agreeing to engage in mediation, the Parties will request the appointment to be made from a roster made up of mediators from the British Columbia International Commercial Arbitration Centre. Each Party will bear its own costs in the mediation and the Parties will share the others costs of the mediation equally.

27. Unless the Parties agree otherwise, the mediation process will serve to provide non-binding recommendations to the Parties.

28. The fact that a Dispute resolution process is taking place or has taken place (including the date, location and participants) will be part of the public record. Factual information, specific conversations, canvassing of options and other creative exchanges will be without prejudice to positions the Parties may subsequently take in any litigation associated with the Dispute, and will not be admitted into evidence in any litigation related to the Agreement or be deemed to constitute an admission of liability.

General Provisions

29. Nothing in this Agreement obliges a statutory decision-maker to act in a manner inconsistent with provincial or Canadian law, and nothing in this Agreement fetters or is to be interpreted as fettering the discretion of a statutory decision-maker.

30. This Agreement does not recognize, modify, suspend, limit, amend, deny, abrogate, extinguish or replace any Section 35 Rights.

31. This Agreement does not constitute a treaty or a land claim agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982.*

32. The Parties acknowledge that they may have differing positions regarding the nature and scope of Beecher Bay's Section 35 Rights.

33. Nothing in this Agreement is intended to limit the participation by Beecher Bay in any public processes established by British Columbia or the CRD to assess the Project.

34. This Agreement does not limit the positions that any Party may take in any other ongoing or future negotiations, settlements, court actions or proceedings between the Parties concerning Beecher Bay's Section 35 Rights or any other rights or interests.

35. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of any particular Party.

36. This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed by the Parties.

37. Beecher Bay represents that this Agreement is binding on Beecher Bay and that all necessary actions have been taken to authorize the execution of this Agreement by Beecher Bay.

38. British Columbia represents that this Agreement is binding upon it and that all necessary actions have been taken to authorize the execution of this Agreement.

39. The CRD represents that this Agreement is binding upon it and that all necessary actions have been taken to authorize the execution of this Agreement.

Ratification

40. The CRD ratifies this Agreement when the Chair or the CRD, or his/her authorized representative, has signed the Agreement and has delivered the execution page to the First Nation in accordance with the notice provisions set out in this Agreement.

41. British Columbia ratifies this Agreement when the Minister of Environment or his/her authorized representative, has signed the Agreement and has delivered the execution page to the First Nation in accordance with the notice provisions set out in this Agreement.

42. Beecher Bay ratifies this Agreement when the Chief of Beecher Bay has signed the Agreement pursuant to a duly passed Band Council Resolution and has delivered the execution page to British Columbia in accordance with the notice provisions set out in this Agreement.

Term

43. This Agreement takes effect on the date it is signed by all of the Parties and, subject to termination in accordance with the terms in this Agreement, it expires on the date of completion of the Project unless the Parties agree to extend the term of the Agreement.

Termination

44. Any Party may terminate this Agreement by giving the other Parties 60 days' advance written notice.

Amendments

45. The Parties may make amendments to this Agreement. Any such amendments shall be in writing and ratified by the appropriate signatories.

Notice

46. Any notice or other communication required or permitted to be given under this Agreement must be given in writing and will be deemed to have been well and sufficiently given if:
    a. sent by courier or personally delivered to the Party's representative at the address set out below or to such other representative or address as the Party may from time to time direct in writing; or

    b. sent by facsimile to the number set out below or to such other number as the Party may from time to time direct in writing.

47. A person(s) may be designated from time to time by any of the Parties to act as the representative of that Party for the purposes of this Agreement. Until the Parties to this Agreement are otherwise advised, the designated persons who represent each of the Parties are:

Chief Russell Chipps Beecher Bay Nation	4901B East Sooke Rd. Sooke, B.C. V0S 1No Fax: (250) 478-3585

Ken Howes
Manager, Aboriginal Relations
Ministry of the Environment

PO Box 9334 Stn Prov Govt
Victoria, B.C.
V8W 9M1
Fax: (250) 356-5496

John Balogh
Special Advisor
Aboriginal Relations
CRD

625 Fisgard St.
PO Box 1000
Victoria, B.C.
V8W 2S6
Fax: (250) 360-3270

IN WITNESS WHEREOF the Parties have signed this Agreement:

Signed on behalf of Her Majesty the Queen in Right of the Province of British Columbia, as represented by Minister of the Environment, in the presence of:

Signature: _____

Name of Witness: _____

_____
Minister Barry Penner

_____

_____
Date

Signed on behalf of the Capital Regional District, as represented by the Chair of the Capital Regional District, in the presence of:

Signature: _____

Name of Witness: _____

_____
CRD Chair Denise Blackwell

_____
Date

Signed on behalf of the Beecher Bay Nation, as represented by the Chief of Beecher Bay, in the presence of:

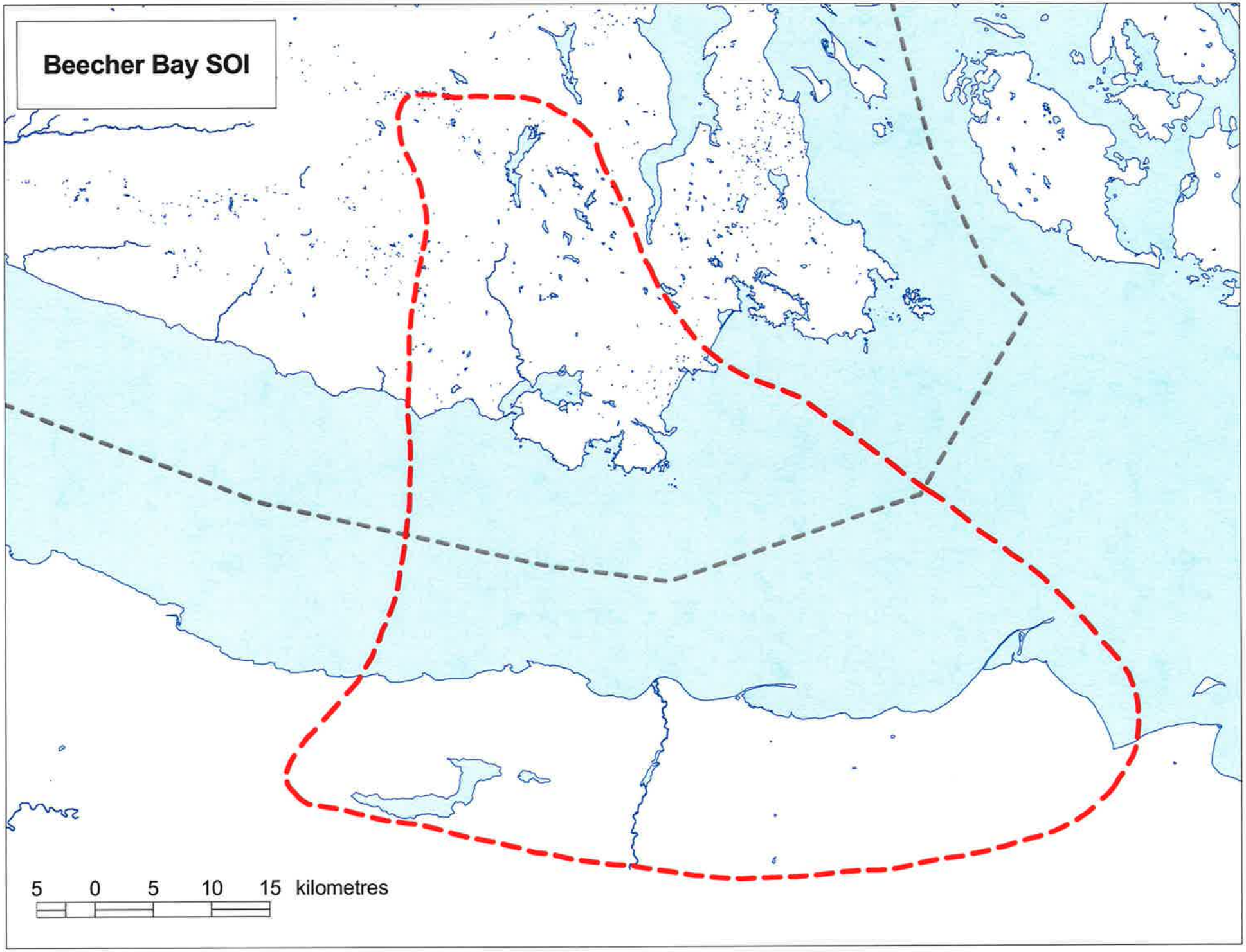
Signature: _____

Name of Witness: _____

_____
Chief Russell Chipps

_____
Date

Schedule A
Beecher Bay Nation Statement of Intent Area


Beecher Bay SOI
5 0 5 10 15 kilometres

Schedule B

Capital Regional District/Province of British Columbia
Letter of Understanding

Consultation and Engagement with Potentially Affected First Nations
Re: CRD Wastewater Treatment

Whereas:

- The Parties – the Capital Regional District (CRD) and the Province of BC – are mutually committed to the implementation of the direction to the CRD from the Minister of Environment (MOE) that was issued in July 2007 pursuant to the *Environmental Management Act* pertaining to Wastewater Treatment (the "Project").
- The existing Aboriginal and treaty rights of First Nations are protected under the *Constitution Act, 1982.*
- The federal and provincial governments ("the Crown") have an obligation to consult with First Nations when making decisions that may affect First Nations' existing Aboriginal and treaty rights ("Aboriginal Interests") and, where appropriate, to accommodate such Aboriginal Interests.
- The Crown may delegate procedural aspects of such consultation to third parties such as the CRD; these steps include exchanging and gathering information pertinent to assessing the potential for impacts upon Aboriginal Interests as a result of proposed activities relating to the Project.
- The CRD is anxious to engage its First Nations neighbours in a meaningful way -- to seek their input, to apply their input to avoid and mitigate any potential adverse effects to their Aboriginal Interests, to reduce the likelihood for disputes, and to seek opportunities to work together.
- The CRD and MOE intend to collaborate in an efficient and effective manner to address the Aboriginal Interests of First Nations that may be impacted by the Project.

The Parties therefore agree as follows:

- The Parties will work together to ensure there is a clear understanding of their respective roles in the discharge of their respective responsibilities as regards the First Nations potentially affected by the Project.

- The CRD will partner with the Province to facilitate the discharge of the Crown's legal duty to consult with First Nations, and likewise to meet the CRD's commitment to engage in a meaningful way with those First Nations affected by the Project. To this end the CRD's efforts will include the following:
    - generating appropriate processes for engaging with potentially affected First Nations;
    - ensuring that First Nations have adequate and timely information concerning the Project, including the potential impacts of sewage treatment and related facilities upon their current and traditional activities;
    - providing First Nations with opportunities for effective input before decisions are made by either the CRD or the MOE (in respect of the Project);

- where feasible, applying First Nations' input to the Project;
- referring information received by the CRD in writing to British Columbia in a timely fashion, relating to any outstanding issues respecting any Aboriginal Interests that may be raised by First Nations;
- ensuring that the CRD's engagement process with First Nations follows a timeline that is complementary to the public consultation process to be undertaken with respect to the Project; and,
- satisfying the Minister of Environment's reporting requirements on the status and content of engagement with First Nations that are potentially affected by the Project.

- The MOE will partner with the CRD to facilitate the discharge of the legal duty to consult with First Nations, and to assist the CRD in meeting its commitment to engage First Nations that may be affected by the Project. To this end, MOE's efforts will include the following:
  - maintaining responsibility for the consultation process with First Nations;
  - providing advice to the CRD on the level of engagement required with individual First Nations that may be affected by the Project;
  - meeting directly with, responding directly to, and, where appropriate accommodating, potentially affected First Nations concerning potential impacts upon their Aboriginal Interests that are more appropriately addressed by the Province; and
  - providing information to the CRD on MOE's response to information received through the CRD engagement process or directly from First Nations regarding potential impacts upon their Aboriginal Interests.

- Where the Parties agree that it is necessary to do so, they will:
  - develop joint strategies, plans and or timelines to guide consultation and engagement with First Nations potentially impacted by the Project; and
  - work to assist the Government of Canada in satisfying its legal obligations to consult with First Nations with regard to the potential impacts upon any Aboriginal Interests that may result from the Project.

Kelly Daniels
Chief Administrative Officer
Capital Regional District

05/20/08
Date

Randy Alexander
Environmental Protection Manager
Vancouver Island Region
Ministry of Environment

MAY 27, 2008
Date