
SUNSHINE COAST TRAIL AGREEMENT

THIS AGREEMENT made April 5, 2016.

BETWEEN:

POWELL RIVER PARKS AND WILDERNESS SOCIETY, a society incorporated under the laws of British Columbia, having an office or principal place of business at Box 345, Powell River, British Columbia, V8A 5C2

(“PRPAWS”)

AND:

TLA’AMIN NATION, as represented by Tla’amin Government, having an address or principal place of business at RR#2, Sliammon Road, Powell River, British Columbia, V8A 4Z3

(“Tla’amin Nation”)

WHEREAS:

- A. Canada, British Columbia and the Tla’amin Nation have entered into the Tla’amin Final Agreement;
- B. Paragraph 27 of the Access Chapter provides that the public will continue to have reasonable access to and use of that portion of the Sunshine Coast Trail on Tla’amin Lands subject to the conditions set out in paragraph 10 of the Access Chapter; and
- C. Paragraph 29 of the Access Chapter provides that PRPAWS and the Tla’amin Nation will enter into an agreement relating to the management and maintenance of that portion of the Sunshine Coast Trail on Tla’amin Lands;

NOW THEREFORE the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

“**Agreement**” means this agreement;

“**Effective Date**” means the date on which the Tla’amin Final Agreement takes effect;

“**Parties**” means the parties to this Agreement; and

“Tla’amin Final Agreement” means the Tla’amin Final Agreement ratified by Canada, British Columbia and Tla’amin Nation and includes any amendments from time to time.

2. SUNSHINE COAST TRAIL (SCT)

2.1 For the purposes of this Agreement:

- (a) an overview map of Tla’amin Lands is attached to this Agreement as Schedule 1;
- (b) an overview map of the Sunshine Coast Trail is attached to this Agreement as Schedule 2; and
- (c) an overview map of that portion of the Sunshine Coast Trail on Tla’amin Lands is attached to this Agreement as Schedule 3 (the “Sunshine Coast Trail on Tla’amin Lands”).

2.2 This Agreement applies primarily to the portion of the Sunshine Coast Trail that is on Tla’amin Lands and, except as otherwise expressly stated, only applies to the main trail itself as mapped out in Schedule 3 and not to any spur trails, side trails, or additional infrastructure such as signs, benches, picnic tables, huts, cabins or other facilities.

2.3 The Parties will work towards permitting or exploring other potential authorizations for infrastructure mentioned in section 2.2 which was validly constructed by PRPAWS and is outside of the Sunshine Coast Trail as mapped out in Schedule 3.

2.4 The Parties agree that the Sunshine Coast Trail:

- (a) Shall be designed and used for foot traffic and shall not be designed for any motorized or wheeled traffic except in specific areas for wheel chair or wheel walked access for disabled individuals;
- (b) Shall have an approximate tread width of 80 cm or 0.80 m;
- (c) Shall have a maximum cleared width of approximately 1 m except for areas of switch-backs, stairs or other areas agreed upon by the Parties where a wider trail may be appropriate.

2.5 PRPAWS will have access to Tla’amin Lands for the purposes of this Agreement.

3. REPRESENTATIONS AND WARRANTIES OF PRPAWS

3.1 PRPAWS represents and warrants to Tla’amin Nation that:

- (a) It is in good standing as a society;
- (b) It has the legal capacity to enter into this Agreement and to carry out its obligations under this Agreement, all of which have been duly and validly authorized by all necessary corporate or society proceedings, as required;

- (c) To the best of its knowledge, it is not in breach of any statute, regulation or bylaw applicable to it or its operations and its role in relation to the Sunshine Coast Trail; and
- (d) To the best of its knowledge, it holds all permits, licenses, consents and authorities issued by any federal, provincial, First Nation, regional or municipal government or any agency of any of them, that are necessary in connection with its operations and its role in relation to the Sunshine Coast Trail.

3.2 PRPAWS acknowledges and agrees that:

- (a) It has inspected the portion of the Sunshine Coast Trail on Tla'amin Lands and accepts the condition of the trail and the lands on an as-is where is basis;
- (b) Access to the portion of the Sunshine Coast Trail on Tla'amin Lands through other areas of Tla'amin Lands is not guaranteed;
- (c) It will comply with all applicable federal, provincial, Tla'amin, and local government laws, bylaws and regulations;
- (d) It is solely responsible for any applicable employee or contractor labour costs including statutory contributions; and
- (e) When PRPAWS hires any workers or contracts with any individual or company, PRPAWS shall observe and enforce all safety measures required by all enactments including the Workers Compensation Act of BC.

4. PUBLIC ACCESS TO THE SUNSHINE COAST TRAIL ON TLA'AMIN PUBLIC LANDS

4.1 Subject to the terms and conditions set out in this Agreement Tla'amin will allow public access to the portions of the Sunshine Coast Trail on Tla'amin Lands provided that:

- (a) All such public access shall be in accordance with the Final Agreement and Tla'amin Law;
- (b) Public access to Tla'amin Public Lands does not include:
 - (i) the harvesting or extraction of resources owned by the Tla'amin Nation unless authorized by the Tla'amin Nation or as set out in the Final Agreement;
 - (ii) causing mischief or nuisance;
 - (iii) causing damage to Tla'amin Public Lands or resources owned by the Tla'amin Nation; or

- (iv) interfering with other uses authorized by the Tla'amin Nation or interfering with the ability of the Tla'amin Nation to authorize uses or dispose of Tla'amin Public Lands.

5. MAINTENANCE OF SUNSHINE COAST TRAIL

- 5.1 PRPAWS will be responsible for the management and maintenance of those portions of the Sunshine Coast Trail on Tla'amin Lands.
- 5.2 PRPAWS will notify the Tla'amin Nation prior to undertaking any trail maintenance on those portions of the Sunshine Coast Trail on Tla'amin Lands.
- 5.3 PRPAWS shall maintain, operate and oversee the portion of the Sunshine Coast Trail on Tla'amin Lands in accordance with the practices and standards that are reasonably applicable to the Sunshine Coast Trail from the ones set out in Schedule 'F', Operational Standards, of the Partnership Agreement between PRPAWS and Her Majesty the Queen in Right of British Columbia, dated July 1, 2014 and all subsequent renewals or versions of the Partnership Agreement and those practices and standards are incorporated into and form part of this Agreement.
- 5.4 PRPAWS will exercise due diligence and all reasonable care to prevent damage to, or loss of any property in relation to the Sunshine Coast Trail. On the occurrence of damage or loss to property, PRPAWS will immediately take appropriate action to mitigate or prevent further damage or loss and immediately notify the Tla'amin Nation so the Tla'amin Nation can provide direction as to remedial measures to be undertaken. PRPAWS will comply in a timely manner with any directions given to PRPAWS by Tla'amin Nation under this section.
- 5.5 PRPAWS shall work with Tla'amin to apply for permits or develop other authorizations prior to clearing, altering or building on any land within Tla'amin Lands outside of the portion of the Sunshine Coast Trail mapped out in Schedule 3 of this Agreement, including any clearing of new trails, side trails or spur trails and the building or placement of any structures.
- 5.6 Despite sections 5.2 and 5.5, PRPAWS may carry out work to deal with emergencies such as clearing danger trees that pose an imminent threat to public safety without notifying Tla'amin providing that PRPAWS notifies Tla'amin as soon as possible after the work is carried out and explains the reason for it.

6. TLA'AMIN NATION LAND MANAGEMENT

- 6.1 The Tla'amin Nation land management plans will take into consideration continued public access to and use of those portions of the Sunshine Coast Trail on Tla'amin Lands.

- 6.2 The Tla'amin Nation will notify and, if requested by PRPAWS, discuss with PRPAWS any land management plan or proposed use of Tla'amin Lands that may affect public access to or use of the Sunshine Coast Trail on Tla'amin Lands.
- 6.3 In the event that the Tla'amin Nation's use, designation or granting of interests in Tla'amin Lands prevents continued public access to or use of those portions of the Sunshine Coast Trail on Tla'amin Lands, the Tla'amin Nation and PRPAWS will develop a work plan which identifies:
- (a) alternative locations for the Sunshine Coast Trail; and
 - (b) costs and responsibilities of each Party pertaining to trail relocation.

7. INDEMNITY AND WAIVER; LIABILITY AND INSURANCE

- 7.1 For greater certainty, the provisions of this section 7 apply to all portions of the Sunshine Coast Trail on Tla'amin Lands but also to any additional work, spur trails, side trails, or additional infrastructure such as signs, benches, picnic tables, huts, cabins or other facilities on Tla'amin Lands that relate to the Sunshine Coast Trail.
- 7.2 PRPAWS will work with the provincial government to:
- (a) ensure that the portion of the Sunshine Coast Trail on Tla'amin Lands will be insured to the same extent as the rest of the Sunshine Coast Trail; and
 - (b) have the Tla'amin Nation added as an additional insured under this insurance.
- 7.3 For greater certainty, the requirement for PRPAWS to secure insurance and add the Tla'amin Nation as an additional insured under that insurance is a requirement for, at a minimum, the first full year of this Agreement, and the Parties agree to work together with the provincial government to secure insurance for subsequent years.
- 7.4 PRPAWS will provide, maintain, and pay for any additional insurance which PRPAWS is required by law to carry or which PRPAWS considers necessary to cover risks not otherwise covered by insurance specified in this Agreement.
- 7.5 PRPAWS waives all rights of recourse against the Tla'amin Nation and releases the Tla'amin Nation from all liability for any losses or damage to any property owned by PRPAWS including PRPAWS' structures, improvements and equipment relating to the Sunshine Coast Trail regardless of whether or not PRPAWS purchases, arranges for or maintains insurance.
- 7.6 PRPAWS acknowledges and agrees that it will indemnify and save harmless the Tla'amin Nation, its servants, employees, agents and contractors against all losses, claims, damages, actions, costs and expenses that Tla'amin, its servants, employees, agents and contractors may sustain, incur, suffer or be put to arising:

- (a) Directly from the on-site operations in relation to the portion of the Sunshine Coast Trail on Tla'amin Lands during the Term of this Agreement by PRPAWS, its employees, members, volunteers or subcontractors;
- (b) From any breach of any obligation of this Agreement by PRPAWS; or
- (c) the willful misconduct, gross negligence or the bad faith actions of PRPAWS, its employees, members, volunteers or subcontractors;

except to the extent that any such loss or claim is caused or significantly contributed to by the negligence of the Tla'amin Nation.

7.7 The Tla'amin Nation hereby releases and waives its rights of recourse against PRPAWS for all losses, claims, damages, actions, costs and expenses that the Tla'amin Nation may sustain, incur, suffer or be put to at any time, either during or following this Agreement for amounts exceeding the amount of collectible insurance available to PRPAWS with respect to indemnified matters covered by sections 7.2 and 7.3 above, unless any such loss, claim, damage, action, costs or expenses are caused or contributed to by the gross negligence, bad faith actions or willful misconduct of PRPAWS, its employees, members, volunteers or and contractors or was in breach of its obligations under this Agreement or was caused by any activity of PRPAWS or its employees, members, volunteers or subcontractors.

8. FEES

- 8.1 PRPAWS is not entitled to collect any user fees or access fees unless expressly authorized in writing by Tla'amin Nation.
- 8.2 Upon reasonable notice and at reasonable times, the Tla'amin Nation may inspect and take copies of and cause an audit to be undertaken of the books and records of PRPAWS as they pertain to any fees or revenues collected under this Agreement.

9. LEGAL

- 9.1 The Tla'amin Nation authorizes PRPAWS to enter into the portion of the Sunshine Coast Trail on Tla'amin Lands for the purposes of this Agreement but nothing in this Agreement grants to PRPAWS any exclusive use or occupancy of any area of Tla'amin Lands.
- 9.2 Nothing in this Agreement constitutes PRPAWS as the agent, joint venture, or partner of the Tla'amin Nation or in any way conveys any authority or power for PRPAWS to bind the Tla'amin Nation in any way.
- 9.3 Nothing in this Agreement inhibits the Tla'amin Nation from conducting its mandate and exercising its governance in relation to the Sunshine Coast Trail on Tla'amin Lands including the right to reserve for its own purpose and to grant dispositions of

land within the Sunshine Coast Trail on Tla'amin Lands. However, PRPAWS may be afforded an opportunity to comment on management issues in relation to this part of Tla'amin Lands.

- 9.4 The obligations of PRPAWS under this Agreement are subject to other rights of use and occupation and other interests granted by the Tla'amin Nation, and PRPAWS must not interfere with the exercise of those rights by any other Person.
- 9.5 PRPAWS shall not assign, transfer or subcontract out its obligations under this Agreement without the prior written consent of the Tla'amin Nation. This does not limit PRPAWS' right to perform services under this Agreement using their employees or registered volunteers.
- 9.6 The Tla'amin Nation is under no obligation to provide management assistance, support services, patrols, or conduct inspections during the term of this Agreement. At its sole discretion, the Tla'amin Nation may contribute certain raw materials, supplies, access to tools, or reimburse PRPAWS for incidental expenses but is under no obligation to do so at any time under this Agreement.
- 9.7 Nothing in this Agreement constitutes any grant of any right to use any part of Tla'amin Lands for any purpose other than the portions of Tla'amin Lands set out in this Agreement for the purposes set out in this Agreement.

10. ENTIRE AGREEMENT

- 10.1 Subject to section 2.3, this Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement.

11. AMENDMENT

- 11.1 The Parties agree to review this Agreement and its effectiveness from time to time as may be requested by either Party.
- 11.2 Any amendments to this Agreement will require the written consent of both Parties, and will take effect on the date designated in the amendment.

12. TERM AND TERMINATION

- 12.1 This Agreement will take effect upon the later of the Effective Date for the Final Agreement or the date that it is signed by the authorized signatories of the Parties.
- 12.2 The term of this Agreement shall be ten (10) years but may be extended by the written agreement of the Parties.

- 12.3 Nothing in this Agreement will be considered to have been waived by Tla'amin unless such a waiver is in writing.
- 12.4 Either Party may cancel this Agreement by giving 60 days prior written notice to the other Party. Upon receiving a cancellation notice, the party receiving the cancellation notice may request a meeting and, if a meeting is requested, the Parties will use their best efforts to get together and resolve any outstanding issues within the 60-day period.
- 12.5 Despite any termination of this Agreement, Tla'amin Nation shall continue its commitment to provide reasonable public access to the portions of the Sunshine Coast Trail in accordance with the Final Agreement.
- 12.6 If PRPAWS winds up or ceases to be a society in good standing and fails to assign this Agreement to another eligible society with similar objectives, this Agreement shall be terminated.

13. ASSIGNMENT AND ENUREMENT

- 13.1 This Agreement may be assigned by PRPAWS, either in whole or in part, without the consent of the Tla'amin Nation, providing that any successor party shall be bound by all of commitments and agreements set out in this Agreement.
- 13.2 This Agreement will enure to the benefit of and be binding upon the Parties and their respective permitted assigns.

14. MEETINGS AND DISPUTE RESOLUTION

- 14.1 Unless otherwise agreed by the Parties in writing, the Parties shall meet at least once per year to exchange plans and information and review the functionality of this Agreement and the operations and state of the Sunshine Coast Trail.
- 14.2 If any disputes arise between the Parties, either Party may send a written notice to the other party to request a meeting and the other party shall agree to meet within 30 days. Both Parties will make good faith efforts to resolve any disputes.

15. NOTICES AND CONTACTS

- 15.1 Unless otherwise stated, the contacts for the Parties are:
- (a) For the Tla'amin Nation, the Tla'amin Lands Manager; and
 - (b) For PRPAWS, the President.
- 15.2 Unless otherwise provided, notice must be in writing and delivered personally or by courier, transmitted by fax or mailed by prepaid registered post.

15.3 Notice will be considered to have been given, made, or delivered, and received if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;

(a) if transmitted by fax and the sender receives confirmation of the transmission, at the start of business on the business day next following the day on which it was transmitted; or

(b) if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.

15.4 If a fax number has not been provided by a Party, notice will be delivered or mailed to the address appearing on the first page of this Agreement.

16. EXECUTION IN COUNTERPARTS

16.1 This Agreement may be executed in counterparts and by facsimile. Each signature will be deemed to be an original signature and all executed documents together will constitute one and the same document.

THIS AGREEMENT HAS BEEN EXECUTED as of the day and year first above written.

EXECUTED in the presence of:)


_____)

(Witness signature) As to the authorized signatory for PRPAWS

Powell River Parks and Wilderness Society


_____)
Per: duly authorized signatory

EXECUTED in the presence of:)


_____)

(Witness signature) As to the signature of:

Tla'amin Nation as represented by Tla'amin Government


_____)
Per: duly authorized signatory

Clint Williams
(Print name of Tla'amin signatory)