

Building a Syilx Vision for Protection



Final Report

**Assessing Feasibility of a Syilx/Parks Canada
Protected Area: Findings and Guiding Concepts**

**Submitted by the Syilx Working Group
December 18th, 2012**

Foreword

Way` the Okanagan and Similkameen have been here since the creation of our peoples, we have utilized the land and its bountiful resources which were given when all the tmix` gave from themselves for our survival. We continue to exercise what was given to us by giving thanks through ceremony and hold the responsibility of ensuring that the tmix` that gives us life is looked after in the reciprocal manner which was taught through oral stories passed down through the generations.

The National Park concept came from our people upholding their responsibility to protect the land from encroachment by people who have a different view of utilizing the land and resources. Parks Canada has been more receptive to how the Park will be operated and the relationship that has formed in the process is built on a firm foundation of trust and respect. Parks Canada has begun to engage in more productive dialogue with the Okanagan/Similkameen Peoples. The Parks Working Group has worked very hard in gathering facts for our Nation to be able to see what the possibilities could be if we continue down this path.

Way` limlimt, Chief Robert Edward

Acknowledgements

A note of appreciation and thanks to the Southern Chiefs, the Syilx Working Group, Elders, youth, and community members for your guidance, support, insights and contributions to the feasibility assessment process.

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Thank you to Parks Canada for supporting and funding the Syilx feasibility assessment process.



A Tribute to Our Friend

Alison Jeanine Terbasket

“Jen”

March 6, 1967 – February 11, 2012

We recognize Jen as a strong spiritual leader and teacher. Working alongside Chief Edward, she set up the ground work for the Feasibility Study process that was agreed upon and later signed by Chief Edward, Chief Clarence Louie and Parks Canada.

We recognize Jen as a person of strong conviction, never losing sight of the traditions of the Okanagan People, the Stories and the importance of being the Caretakers' of the Land. Working alongside Debbie Clark, Parks Canada and the Working Group, with Jen's strong legal background, she set up the Terms of Reference that guided the process throughout.

We recognize Jen as an eternal friend. She listened, she respected and she made us laugh. It is a miracle how life can be touched so deeply by one.

We recognize Jen, and it could not be stated better than that written on Jen's memorial Program – “There comes a time when one must take a position that is neither safe, not polite, nor popular; but rather one must take it because it is right.” (Dr. Martin Luther King)

We recognize Jen with appreciation for the contribution of her work and her willingness to share her thoughts and beliefs. She inspired us to carry this work through, and she is greatly missed... Jen we thank you, and we love you.

Disclaimer:

This report has been prepared by a technical working group with relevant expertise in environment, community process, tourism and culture. We recognize that the issues around this work and topic are complex, and at the appropriate time, will require specialized expertise. This paper is not designed to take the place of legal advice or legal perspective. For technical purposes, the term *Syilx* is used to describe the cultural group of the Okanagan/Similkameen, whereas the term Okanagan is used in reference to Syilx governance, specifically at the level of the Okanagan Nation Alliance.

Sts-oomsts yeeh *S-Ooknahkchinx* OKANAGAN NATION DECLARATION

*Yeeh koo S-Ooknahkchinx kgoohlentem yarpnah shchellhcharlt
kthlkidekmintet kgel yayart yeeh sentsoo-weeptet. Oothl yalah
yarpnah koo lsoot.*

*We, the Okanagan Nation make this declaration today as a sign for every
generation to come. Therefore, we hereby declare that:*

*Mneemhtlet yeeh koo xahtmaskchiluk, koo temskchiwhewh yalah te
temwpoolahwh, yeeh toomhtemhtet.*

We are the unconquered aboriginal peoples of this land, our mother;

*Telh kgoohlentsooten suhitzetxet yeeh toomhtemhtet, ksnpee-
eelshmenhtemh, kstxetdenhtimh oothl kskgethikchiwhenhtemh.*

The creator has given us our mother, to enjoy, to manage and to protect;

*Telhs mecas qchesapihs, yeeh koo xahtmaskchiluk koo queleewx eel
toomhtemhtet.*

We, the first inhabitants, have lived with our mother from time immemorial;

*Yeeh koo S-Ooknahkchinx yeeh tzohehtsootentet koo xeehxeestim koo
kgel yayart phchwikstmentem an hchastan yeeh telh toomhtemhtet.*

*Our Okanagan Governments have allowed us to share equally in the
resources of our mother;*

*Loot penhkinh tde xeehxeexementem yeeh stethltethtet yeeh kgel
toomhtemhtet, yeeh telh toomhtemh an hchastantet, yeeh
txtdiplahntet oothl yeeh noonemwheentet.*

*We have never given up our rights to our mother, our mother's resources,
our governments and our religion;*

*Loot penhkinh koo tdeks ntzespoolawhahx. Peentk kstxtdiplahntemh
yeeh telh toomhtemh an hchastantet koo kgel yayart, telh yarpnah
oothl tdeswpoos.*

*We will survive and continue to govern our mother and her resources
for the good of all for all time.*

CHIEFS AND COUNCILORS

OSOYOOS INDIAN BAND

Chief - Clarence Louie

Councillors - Vernice McCombie

- Thomas Alex

PENTICTON INDIAN BAND

Chief - Adam Enns

Councillors - Jennifer Armstrong

- Len Olland

- Joseph Pierre

- Andrew Jack

UPPER SIMILKAMEEN INDIAN BAND

Chief - Hazel Squakwam

Councillors - Karen Holmes

- Carrie Allison

LOWER SIMILKAMEEN INDIAN BAND

Chief - Robert Kison

Councillors - Richard Tenbasket

- Ralph Bern

- Pauline Tenbasket

OKANAGAN INDIAN BAND

Chief - Murray Alex

Councillors - Gracie Alex

- Johnny (Tim) Alex

- Albert Saddleman

- Carol Louis

- Matthew Bourneau

- Holly Bourneau

- Herbert Simpson

- Raymond Gregoire

- Daniel Wilson

WESTBANK INDIAN BAND

Chief - Robert Louie

Councillors - Harold Derickson

- Rose Derickson

NICOLA INDIAN BAND

Chief - Fred Holmes

Councillors - Harvey McLeod

- Walter Archibald

- Sharon Lindley

- Richard McLeod

Executive Summary

In November 2010, the Syilx Working Group began assessing the feasibility of a potential Syilx/Parks Canada protected area in the South Okanagan - Lower Similkameen, an area within the Okanagan Nation Territory. The Syilx Working Group was tasked by the Okanagan Nation Alliance Chiefs Executive Council to determine if it was feasible to consider development of a National Park Reserve as part of a broader Syilx vision to protect valued lands and cultural values within the Okanagan Nation Traditional Territory. A National Park Reserve would be established under the authority of the *Canada National Parks Act*, allowing a National protected area to be established where land claims and treaties are not settled.

This Final Report consolidates the findings of the feasibility assessment process. It was determined that there is sufficient protection of Syilx interests, common ground, relationship, and communication with Parks Canada to move to the next phase of the park establishment process. The next phase will provide additional information and clarity on issues, such as Syilx inherent rights (harvesting, hunting), collaborative decision-making, and the inclusion of traditional ecological knowledge in park management and decision-making.

The study found that it is feasible to engage in further discussions with Parks Canada about a future National Park Reserve without diminishing protection of Syilx Title and Rights. Parks Canada has committed to ensuring that appropriate legislative measures to establish a National Park Reserve will not compromise future settlements of Aboriginal Rights and Title claims for the Okanagan Nation. It was deemed feasible to establish a collaborative and consensus based model with Parks Canada that would seek cooperative management and decision-making, similar to Gwaii Haanas. Although the current park concept is deemed feasible, it is insufficient in size to promote the broader vision for protection of Syilx cultural and ecological integrity in the South Okanagan Lower Similkameen. Additional work should be initiated to address the broader Syilx vision for protection of land and culture. A *Socio-Cultural, Environmental and Economic Impact Assessment* has determined that a National Park Reserve has the potential to provide benefits to Syilx people and culture, research funding and increased employment opportunities.

Based on the findings of this report, the Syilx Working Group makes the following recommendations to the Okanagan Nation Alliance Chiefs Executive Council:

Recommendation 1: That ONA advance to the next phase of the NPR establishment process, the negotiations phase, as there will be no diminishment to Syilx Title and Rights, and that on all of the issues, with the exception of the issues related to the Province's role, a determination of feasibility was made.

Recommendation 2: That the Okanagan Nation plan for and build appropriate capacity to prepare for future dialogue and negotiations, including but not limited to, Syilx inclusion in a cooperative consensus-based decision-making framework, integrating and showcasing TEK to guide park planning and management in the NPR, and ensuring Syilx access to the land and resources for traditional and cultural purpose within proposed National Park Reserve boundaries.

Recommendation 3: That a communication (media) strategy be developed and implemented in a timely fashion to ensure effective and accurate public communication relative to the Syilx engagement in the NPR establishment process, findings and future steps.

Recommendation 4: That the Okanagan Nation re-engage the Province by sending a letter to the Premier and to Cabinet outlining the findings of the Syilx feasibility process and expected re-engagement from the Province in future discussions.

Recommendation 5: That the Okanagan Nation seek a similar ‘approach’ to the Park SWG using a SARA group or committee (e.g. SOSSEC) to initiate solution-based dialogue with Environment Canada/Canadian Wildlife Service (CWS) and Parks Canada with clear objectives to build an effective working relationship and to resolve outstanding SARA implementation issues in the Okanagan-Similkameen prior to the establishment of a NPR. Appropriate capacity will be required.

Recommendation 6: That the Okanagan Nation continue ongoing strategic communications between the Syilx Chiefs and the PCA senior executives, including an agreed upon meeting following the conclusion of the feasibility study.

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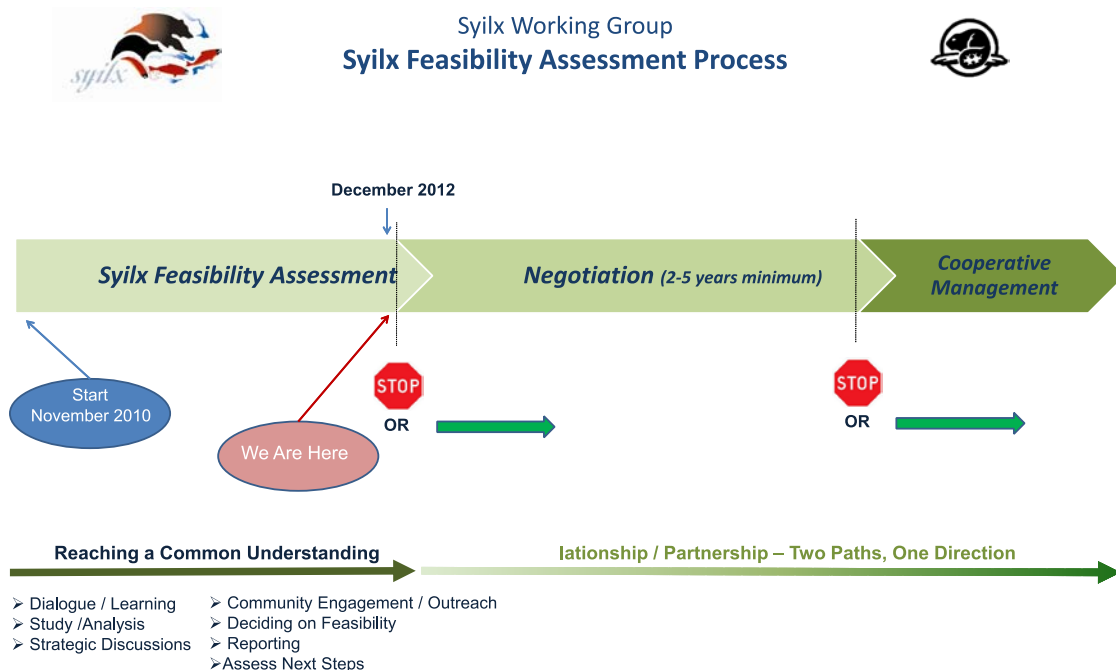
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Introduction

In November 2010, the Syilx Working Group¹ (SWG) began work to assess feasibility of a potential Syilx/Parks Canada protected area in the South Okanagan- Lower Similkameen (SOLS), part of the Okanagan Nation Territory. The SWG was tasked by the ONA Chiefs Executive Council (CEC) to consider whether a National Park Reserve (NPR) established under the authority of the *Canada National Parks Act* is feasible for the Okanagan Nation Alliance (ONA). A NPR would enable Parks Canada to establish a protected area where land claims or treaties with the local First Nations have not been settled. The SWG was also asked to develop a broader Syilx vision, and a concept for how a protected area fits within this vision.²

The feasibility assessment addressed in this report is the first phase of a three-phase process, which could result in NPR establishment (See Figure 1). The second phase is the negotiation of the terms of any agreement and the third phase would be NPR establishment. The SWG has developed recommendations for the CEC to consider when determining if the ONA should move to further dialogue and into the negotiations phase with the Parks Canada Agency (PCA). The final decision of whether a NPR will be established follows the negotiations phase.

Figure 1: Three phase process towards NPR establishment



¹ For simplicity in reporting purposes, the South Okanagan Bands Parks Working Group (as defined in the *South Okanagan Bands Parks Working Group DRAFT Terms of Reference*, December, 2010) was shortened to the Syilx Working Group.

² CEC Resolution 2011/12 No. 224 *South Okanagan National Park Feasibility Assessment*

This Final Report describes the findings of the SWG feasibility assessment process and outlines guiding concepts for moving forward. The Final Report is designed to inform Syilx leadership about the potential impacts and benefits of a proposed NPR and makes a conclusion regarding the feasibility of moving forward to the negotiation phase. This report:

- 1) Summarizes the findings regarding Title and Rights, foundational, and other issues that were outlined by the Band Chiefs, elders and community members;
- 2) Articulates a conclusion and lists specific recommendations by the SWG;
- 3) Describes the methodology used in the feasibility assessment; and
- 4) Summarizes guiding concepts and deliverables, including a description of a Syilx Vision, shared understandings, a concept for a protected area, and an outline of community issues and concerns.

The report also fulfills a reporting requirement under the Parks Canada contribution agreements³ with the Lower Similkameen Indian Band and the Osoyoos Indian Band (2011). Prior to this report being submitted to Parks Canada, key sensitive sections, such as legal opinions on Title and Rights, will be omitted.

Summary of Feasibility Findings

The findings in this report are designed to inform a decision by the CEC about whether or not to move forward into the next phase of the NPR establishment process, the negotiations phase. The CEC directed the SWG to explore foundational issues, such as Title and Rights implications and decision-making structures. The SWG addressed additional community issues and concerns as well. The socio-cultural, environmental and economic impacts were assessed. A Syilx vision for protection was defined in a *Draft Syilx Vision for a Protected Area* (Appendix 1) and conceptualized in terms of the NPR in a draft *National Park Reserve Concept* (Appendix 2). The results and findings of these works are summarized below and are followed by conclusions and recommendations.

1) Foundational and Other Issues

A feasibility matrix was developed based on the foundational issues outlined by the CEC. The SWG examined and assessed each foundational issue and additional issues brought to the working group through internal SWG discussions, community outreach, elders meetings and community meetings. Table 1 summarizes the assessment of each foundational issue and is followed by a brief synopsis for each issue. *The Foundational Issues Feasibility Matrix* in Appendix 3 describes the methodology for how feasibility for each issue was determined.

³ In July 2011 both OIB and LSIB signed contribution agreements with PCA

Table 1: Feasibility Matrix

Foundational and Other Issues	Working Group Assessment
*Title and Rights are undiminished	✓ Feasible
*Appropriate legislative mechanism for park establishment	✓ Feasible (with condition)
*Develop Crown understanding of cultural aspect & Okanagan perspective	✓ Feasible (with condition)
*Decision-making leading to park establishment	Unresolved
*Decision-making following park establishment	✓ Feasible
Agreement on geographic area for park establishment	✓ Feasible (with further consideration)
Common ground & interest for collaborative relationship	✓ Feasible
ONA capacity	Unresolved
Role of the government of British Columbia	Unresolved
Determine Band/Nation roles & responsibilities	✓ Feasible
Regular communication & transparency at working and senior levels	✓ Feasible
Understanding of Syilx inherent Rights	✓ Feasible (with recommendation)
Species at Risk Act (SARA)	✓ Feasible (with condition)
Socio-Cultural, Environmental, Economic Impact Assessment	✓ Feasible

* **Note:** Foundational issues addressed were scoped by SWG and endorsed as a focus for the SWG by the ONA CEC in Dec 2010 ⁴

2) Title and Rights Protection

The protection of Title and Rights was the most important topic throughout the feasibility stage. This foundational issue was scoped by SWG in December 2010⁵

⁴ Okanagan Nation and Parks Canada Southern Band/ONA/PCA Working Group Outcome and Recommendations from Preliminary Meetings, December, 2010

resulting in an approved work plan by the CEC to address Title and Rights and to explore solutions to foundational and other issues.⁶ Specifically, it was stated that the “Okanagan Nation cannot agree to have their Title and Rights diminished” and that this issue, in the context of a NPR, would require legislative clarity.⁷

To achieve this, the SWG held discussions with Parks Canada, commissioned two legal opinions⁸ and conducted a Title and Rights workshop in May, 2012. As a result of this analysis, the SWG determined that a National Park Reserve can be negotiated and implemented in a manner that is consistent with the Syilx position on Title and Rights.⁹ Specifically, it is feasible for the Syilx Nation to have further discussions with Parks Canada to advance the establishment of a NPR while ensuring and providing assurances to the Syilx people that protection of Syilx Title and Rights can be maintained, subject to meeting other conditions of feasibility¹⁰ (see *Feasibility Conclusions and Recommendations*, Page 14).

3) *Appropriate Legislative Mechanism for Park Establishment*

Syilx Title and Rights are unresolved in the South Okanagan - Similkameen and neither land claims nor a treaty are under consideration within the ONA Territory. Typically, the National Park Act establishes NPR's in areas where Title is still unresolved but under discussion, i.e., land claims or treaty. However, as a means to address ONA's requirement that Title and Rights remain undiminished, Parks Canada is committed to pursuing legislative change to allow for the establishment of a NPR in the SOLS. To support this, a commitment was made in a letter from Alan Latourelle, CEO Parks Canada, in October 2010, wherein he states that “appropriate legislative measures will not compromise future settlements of Aboriginal Rights and Title claims for your First Nations¹¹.” The SWG has identified this as a condition of feasibility, ensuring that specific legislative measures are developed and adopted for the Okanagan Nation in establishing a NPR in the South Okanagan.

4) *Develop Crown Understanding of Cultural Aspect and Okanagan Perspective*

An important factor in fostering positive relations between PCA and the Okanagan Nation was to develop a Crown understanding of the Syilx culture and perspective. Parks

⁵ Okanagan Nation and Parks Canada Southern Band/ONA/PCA Working Group Outcome and Recommendations from Preliminary Meetings, December, 2010

⁶ South Okanagan Bands Parks Working Group DRAFT Terms of Reference, December 2010

⁷ Okanagan Nation and Parks Canada Southern Band/ONA/PCA Working Group Outcome and Recommendations from Preliminary Meetings, December, 2010

⁸ Rosalie Wilson, 2012; Robert Janes, 2012

⁹ Rosalie Wilson 2012

¹⁰ Stemming from the Crown's obligation to uphold Section 35 of the Canadian Constitution Act (1982) and the legal precedents of current case law, the governments in Canada have a duty to consult with aboriginal groups when making decisions which has potential to impact aboriginal title and rights interests

¹¹ PCA CEO (Alan Latourelle) Letter to Southern Okanagan Band Chiefs, Dec, 2010

Canada is committed to further understanding the Syilx culture and applying traditional ecological knowledge (TEK) in park planning and management; the Parks Canada CEO letter referenced above supported this. The SWG has assessed this foundational issue as feasible if Syilx principles continue to guide the process, and if the future park applies and showcases Syilx traditional ecological knowledge and management practices. The details and scope of how TEK can be integrated and implemented would be addressed in the negotiation phase.

5) *Decision-Making Leading to Park Establishment*

The Okanagan Nation required certainty “regarding roles in decision-making (at all levels.)”¹² This issue was prominent in the Okanagan Nation’s previous encounter with Parks Canada when only Parks Canada and the Province were represented at the Steering Committee level. Currently, “Parks Canada will not advance the project without the support of the provincial government and the Okanagan Nation.”¹³ However, British Columbia is not engaged in the process at this time and as a result, decision-making leading to park establishment remains unresolved. The SWG recommends that the Okanagan Nation develop a strategy to re-engage the province into the NPR establishment discussion (See *Feasibility Conclusions and Recommendations, Page 14*).

6) *Decision-Making Following Park Establishment*

Importantly, as the SWG worked to understand certainty “regarding roles in decision-making (at all levels)”,¹⁴ an understanding of potential models for cooperative NPR management was achieved. Through a verbal briefing from Parks Canada on a Department of Justice Paper on NPR’s, the review of a Background Paper: *National Park Reserves*, the outcome of the Title and Rights Workshop, numerous working group discussions, and a trip by SWG members to Gwaii Haanas, the working group has deemed that establishing an appropriate model for decision-making following park establishment is feasible. Although specific details of this model and management structures would be determined in a negotiations phase, the Okanagan Nation has asserted that decision-making must be collaborative and consensus based so as not to extinguish the authority of the Okanagan Nation.

7) *Agreement of Geographic Area for Park Establishment*

The current park concept area (see *National Park Reserve Concept, Page 22*) has been used in the feasibility assessment. Through SWG discussions and analysis, the current park concept area is deemed feasible at this time, but insufficient in promoting the broad Syilx vision to protect cultural and ecological integrity in the SOLS. Further work is recommended to scope out Syilx perspectives affirming a Syilx concept of a protected

¹² South Okanagan Bands Parks Working Group DRAFT Terms of Reference, December 2010

¹³ PCA CEO (Alan Latourelle) Letter to Southern Okanagan Band Chiefs, Dec, 2010

¹⁴ South Okanagan Bands Parks Working Group DRAFT Terms of Reference, December 2010

area, including a use and occupancy study, cultural landscaping, archaeological work, and a Syilx land use plan.

8) Common Ground and Interest For a Collaborative Relationship

Reaching common ground was a topic thoroughly analyzed and discussed at the working group level. A key first step was producing the *Shared Understandings* document (Appendix 4), as well as developing the *National Park Reserve Concept* (Appendix 2). To ensure a balanced perspective, the SWG analyzed other collaboratively managed park models within Canada. Based on this assessment, the SWG deemed it feasible to develop common ground and interest with Parks Canada to establish a long-term collaborative relationship.

9) ONA Capacity

To continue building a relationship between PCA and the Okanagan Nation and to facilitate further discussion about a potential NPR, the Okanagan Nation requires capacity and resourcing. Continued engagement by PCA and future funding for this project requires engagement and support from the Province of British Columbia. Since BC has withdrawn support for the NPR process and will not proceed with further discussions “at this time”¹⁵, the issue of ONA capacity and how this will be developed and maintained remains unresolved.

10) Government of British Columbia Role

Parks Canada has committed to “secure an agreement that enables the establishment of a future protected area in the South Okanagan and respects the priorities, goals and needs of the Okanagan Nation.”¹⁶ However, “Parks Canada will not advance the project without the support of the provincial government and the Okanagan Nation.” Since the province has backed out of discussions and publicly withdrew support for this project, the role of the Province is unsupportive of an NPR “at this time”.¹⁷ The future role of the Province remains unresolved for the time being and the SWG recommends that the Okanagan Nation develop a strategy to re-engage the province into the NPR establishment discussion (See *Feasibility Conclusions and Recommendations*, Page 14).

11) Determine Band/Nation roles and responsibilities

The PCA contribution agreement work plan outlined a protocol for inter-band collaboration on this project that included PIB, OIB, LSIB, and USIB. This protocol has effectively enabled collaboration between the bands through the SWG. Relationships between the bands have further guidance in the *Syilx Cooperative Protocol*. The *Syilx Cooperative Protocol* agreement was signed in principle (July 2012) and it outlines Band/Nation roles and responsibilities for the ONA Member Bands and the ONA. The

¹⁵ Letter from British Columbian Minister of Environment (Terry Lake) to the President of the British Columbian Wildlife Federation, Okanagan Region (Ken Sward) on December 21st 2011

¹⁶ PCA CEO (Allan Latourelle) Letter to Southern Chiefs, Dec, 2010

¹⁷ PCA CEO (Allan Latourelle) Letter to Southern Chiefs, Dec, 2010

SWG deems it feasible to continue to work collaboratively and with clear understanding of Band/Nation roles and responsibilities.

12) *Regular communication & transparency at working and senior levels*

The Terms of Reference (TOR) of the SWG requires that “strategic communications between PCA senior executives and chiefs”¹⁸ occur to promote a communications protocol that respects “transparency and regular communications at working and senior levels.”¹⁹ Project coordinators have ensured consistent meetings with the Southern Okanagan Chiefs and PCA employees have ensured consistent updates to PCA senior executives. The SWG determines that the current strategy for communication is feasible. The SWG therefore recommends ongoing strategic communication between the Syilx Chiefs and the PCA senior executives, including an agreed meeting following the conclusion of the feasibility study.

13) *Understanding of Syilx inherent rights*

To facilitate an understanding of Syilx inherent rights and to promote the indigenization of PCA staff, the SWG have promoted discussion in working group meetings, conducted a cultural visioning workshop, and a Title and Rights workshop. The PCA have stated that, “traditional activities that have been carried out within the boundaries of a proposed future protected area will continue.”²⁰ The SWG understands that the continuation of the current process of building understanding is feasible and recommends further studies and discussion persist in a negotiations phase, such as those outlined in the *Agreement of geographic area for park establishment* issue discussion above.

14) *Species at Risk Act (SARA)*

SARA will apply in a NPR. Given current Syilx opposition to SARA, the SWG proposes a condition that further solution-based dialogue with Environment Canada, Canadian Wildlife Service (CWS), and Parks Canada occur; the clear objective being to resolve outstanding SARA implementation issues in the Okanagan- Similkameen prior to the establishment of a NPR. Government must appropriately fund this process. The SWG highlighted Section 3 of SARA²¹ as a key agenda item for discussion and a potential platform for seeking solutions (See *Feasibility Conclusions / Recommendations* below and *Syilx Working Group Discussions on the Species at Risk Act* Appendix 5). Based on the SWG findings it is deemed feasible to address SARA issues related to park establishment; however, since SARA has such a broad reach, clarity on the full scope of Rights implications and the commitment to a productive relationship must be achieved

¹⁸ South Okanagan Bands Parks Working Group DRAFT Terms of Reference, December 2010

¹⁹ Foundational Issues Feasibility Matrix: Appendix 3

²⁰ PCA CEO (Allan Latourelle) Letter to Southern Chiefs, Dec, 2010

²¹ *Species at Risk Act*, SC 2002, c29 (3)

in order to ensure that SARA impacts to Rights can be dealt with, whether or not they occur in a NPR.

15) *Socio-Cultural, Environmental and Economic Assessment*

Through a Socio-Cultural, Environmental and Economic Impact Assessment *study*, the SWG has determined that a NPR has potential to provide benefits to Syilx culture in forms of increased access to healthy resources, research funding, and increasing employment opportunities based on Syilx culture. *The Socio-Cultural, Environmental and Economic Impact Assessment Report* is found in Appendix 6.

Feasibility Conclusions and Recommendations

The SWG has concluded there is sufficient protection of Syilx Rights, common ground, relationship, and communications with Parks Canada to move to the next phase of the park establishment process. The next phase provides time and the ability to clarify issues, such as Syilx inherent Rights (harvesting, hunting), collaborative decision-making, and the inclusion of TEK in park management and decision-making, while preparing for negotiations.

PCA requires support from both the Okanagan Nation and BC in order to advance discussions for a NPR. Three unresolved issues relate to the lack of provincial support for this project at this time.²² As a result, the future of funding for the Okanagan Nation to conduct necessary research, continue work, and strengthen a relationship with Parks Canada remains unclear.

Based on the findings of this study, the Okanagan Nation must be thorough in a negotiations phase to ensure meaningful Syilx inclusion in decision-making, inclusion of TEK in park planning and management, and Syilx access to the land and resources for traditional and cultural purposes within NPR boundaries.

1) *Recommendations*

The Syilx Working Group recommends the following to the Chief Executive Council:

Recommendation 1: That ONA advance to the next phase of the NPR establishment process, the negotiations phase, as there will be no diminishment to Syilx Title and Rights, and that on all of the issues, with the exception of the issues related to the Province's role, a determination of feasibility was made.

²² In January 2011 BC backed out of discussions with PCA; in December of 2011 BC publicly withdrew support for the project. A provincial election will be held on May 14th of 2013.

Recommendation 2: That the Okanagan Nation plan for and build appropriate capacity to prepare for future dialogue and negotiations, including but not limited to, Syilx inclusion in a cooperative consensus-based decision-making framework, integrating and showcasing TEK to guide park planning and management in the NPR, and ensuring Syilx access to the land and resources for traditional and cultural purpose within proposed NPR boundaries.

Recommendation 3: That a communication (media) strategy be developed and implemented in a timely fashion to ensure effective and accurate public communication relative to the Syilx engagement in the NPR establishment process, findings and future steps.

Recommendation 4: That the Okanagan Nation re-engage the Province by sending a letter to the Premier and to Cabinet outlining the findings of the Syilx feasibility process and expected re-engagement from the Province in future discussions.

Recommendation 5: That the Okanagan Nation seek a similar ‘approach’ to the Park SWG using a SARA group or committee (e.g. SOSSEC) to initiate solution-based dialogue with Environment Canada/Canadian Wildlife Service (CWS) and Parks Canada with clear objectives to build an effective working relationship and to resolve outstanding SARA implementation issues in the Okanagan-Similkameen prior to the establishment of a NPR. Appropriate capacity will be required.

Recommendation 6: That the Okanagan Nation continue ongoing strategic communications between the Syilx Chiefs and the PCA senior executives, including an agreed upon meeting following the conclusion of the feasibility study.

2) Other Required Elements

In addition to the above, the SWG has listed the following considerations as the ONA moves toward the next stage of the process. These are key items to be studied, clarified and prepared for negotiation:

- 1) The Okanagan Nation will require completion of a Use and Occupancy study and a Syilx Land Use Plan.
- 2) Syilx traditional cultural purposes within proposed NPR boundaries must include: harvesting, hunting, fasting, water use, spiritual retreat, gatherings, education, and other uses to be determined.
- 3) Methods of land access must be considered to facilitate Syilx uses of land, e.g., certain areas are only accessible by ATV.

- 4) The Syilx Nation must have employment and procurement opportunities in future operation and management of a NPR (See Appendix 6: *Economy and the National Park Reserve Scenario* for more information).
- 5) Thorough cultural landscaping needs to be initiated, including archaeology, place name research, Captik^{WI} and Smaymay review and research etc.
- 6) Consistent and sufficient funding for TEK must be prioritized in NPR budget.
- 7) Exploration of the possibility of developing a visitor reception centre on an ONA Member Band Reserve.

Methodology

The CEC established the SWG in November 2010²³ and followed with formal direction in March 2011 to “assess a feasible approach for the development of a common vision for a protected area within the Okanagan Nation Territory” and “develop and articulate a unique Syilx Perspective including a vision and a concept for a protected area.”²⁴ These directives were applied with a specific focus on assessing the feasibility of a NPR in the SOLS. Other models for protected areas were discussed at the working group level to inform understanding of feasibility; however, these models were not considered in their full scope by the SWG (see *Alternative Options for Protected Areas* in Appendix 7) due to capacity constraints.

The SWG convened and developed the following goals to guide the work towards the CEC’s directives:²⁵

1. We will oversee the process to protect the Title and Rights and of the Syilx Nation (s.35).
2. We will assess all available options for a protected area within the Syilx territory (e.g. UN Declaration, provincial protected area, etc.).
3. We will collaborate with Parks Canada to seek legislative clarity re: future options under the *Canada National Parks Act*.
4. We will seek certainty in decision-making (at all levels).
5. We will seek a strategy of engagement with Parks Canada and British Columbia to facilitate discussions that would address underlying Title and Rights issues of the Okanagan Nation.
6. We will explore opportunities for collaboration around a protected area that would fulfill the vision of both the Syilx Nation and Parks Canada.
7. We will ensure inclusion of Okanagan Nation Law, Knowledge, and protocol in the process.

²³ South Okanagan Bands Parks Working Group: DRAFT Terms of Reference

²⁴ CEC TCR 2011/12 No. 224

²⁵ South Okanagan Bands Parks Working Group: DRAFT Terms of Reference

In order to achieve these goals, the SWG endorsed a work plan and methodology for the Syilx feasibility assessment as designed by the Lower Similkameen Indian Band. The work plan was designed to achieve an inclusive and thorough process of research, analysis, community engagement, and leadership involvement. As much as possible, the study built upon research and understandings from the earlier Syilx process (2004-08), and Parks Canada's work. The process was intended to lead to a conclusion regarding the feasibility of advancing forward to negotiations of a NPR established through a Syilx/Parks Canada partnership.

The work plan was the basis for two Parks Canada Contribution Agreements, one with LSIB and the other with OIB. Project management, work plan, and financial responsibilities were shared between the two bands. Oversight of discussions, research, and progress of the work plan was conducted in collaboration with the SWG.

Information regarding Title and Rights, cultural interests, community issues and concerns, legal reviews, and other relevant data and information was collected by the working group and analyzed during the course of regular SWG meetings. Reports on the collected information and findings were written and community meetings were held. The *Detailed Methodology* is contained in Appendix 8.

The original TOR states that "communications protocols and strategies will be developed together over time."²⁶ Initially, communications strategies were developed according to the requirements of each band community and were planned to be implemented independently; however, new communication requirements, such as unforeseen staffing changes, resulted in a revised communication strategy and approach that encompassed all southern bands working together. This ultimately resulted in a shift from the original communication work plan as the SWG adapted to a new reality and responded to the need to collectively inform communities and provide an avenue to receive community feedback.

The new approach to communication included regular band community meetings, a 2-day cultural visioning workshop (Oct. 2011), a Title and Rights Workshop (May, 2012), working group community outreach with presentation and discussion (two sessions held summer and fall 2012), a newsletter (spring and fall 2012), and regular meetings with elders and youth. Project Coordinators and SWG members provided regular progress reports to CEC, and Chief and Council of each of the four bands.

The Southern Band's Chief and Council's assigned two elders from each community to form an elder's advisory group. This group's objective was to provide advice and guidance to Chiefs and other elders on issues that arose from the Working Group process.²⁷ Although the elders were invited to attend the Title and Rights Workshop,

²⁶ South Okanagan Bands Parks Working Group DRAFT Terms of Reference, December 2010

²⁷ *ibid.*

they were not consistently able to attend and engage in the process. To address elder engagement, the project coordinators communicated with elders at Band level meetings and through nationwide elders meetings.

Guiding Concepts for Protected Areas

The following section summarizes key deliverables that guided the feasibility assessment. In discussing feasibility, it was necessary for the working group to [*Build*] a *Syilx Vision for a Protected Area*, and to devise a *National Park Reserve Concept*. Additionally, the SWG has reported on *Building Shared Understandings* with PCA and *Community Feedback*, which were integral components to achieving the deliverables. The deliverables were outlined in the SWG's TOR as inclusions to the final discussion paper.²⁸

1) Building a Syilx Vision for a Protected Area

“The Creator has given us our mother to enjoy, to manage and to protect.” –
Cultural Visioning Workshop

The term “protected area” is defined by the International Union for Conservation of Nature (IUCN) as “a clearly defined geographical space, recognized, dedicated and managed through legal or other effective means to achieve the long term conservation of nature with associated ecosystem services and cultural values.”²⁹ Protected areas, such as national parks, wilderness areas, community conservation areas and nature reserves are a mainstay of biodiversity conservation. They conserve nature and the services it provides, like food, clean water, medicines, while contributing to people's livelihoods and protecting communities from the impacts of natural disasters.

From a Syilx worldview, the *tmix^w* includes humans as an equal component of all living things; a commandment of the Syilx peoples is “to continuously unify with all of the strands of life that make up [Syilx] land, all of [Syilx] earth, water, insects, roots, animals, berries, relatives...mountains..trees, the land, air, and the rocks are one with [the Syilx].”³⁰ Non-human members of the *tmix^w* are perceived as relatives to the Syilx peoples. The connection between Syilx peoples and their relatives is maintained through an obligation of Syilx peoples to act as caretakers of the land that they occupy. This obligation is reflected in the four-food-chiefs story (See Appendix 1: *Draft Syilx*

²⁸ South Okanagan Bands Parks Working Group: DRAFT Terms of Reference. December, 2010

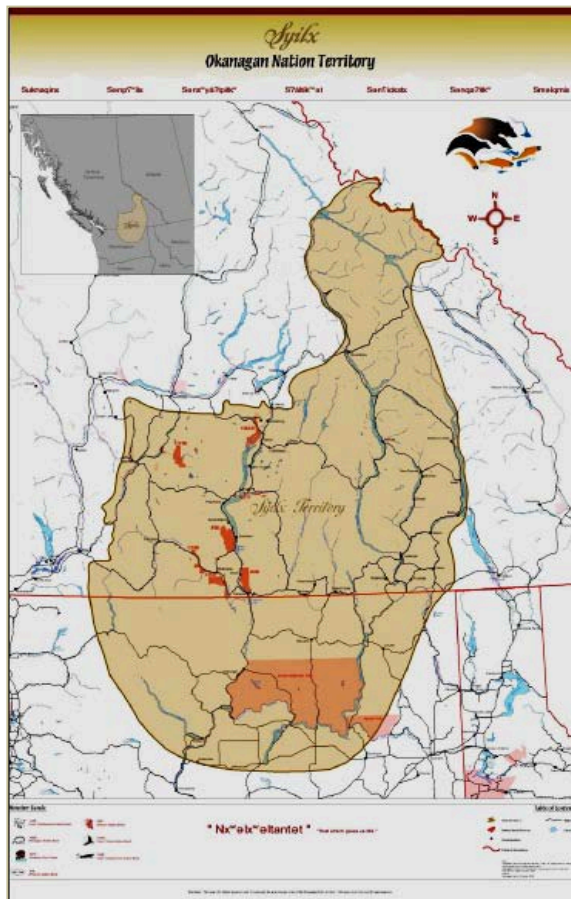
²⁹ International Union for Conservation of Nature, *Theme on Indigenous Peoples, Local Communities, Equity and Protected Areas (TILCEPA)*. July, 2011

³⁰ Affidavit of Jeannette Armstrong #1. Action No. 23911, Vernon Registry. April 25th, 2007.

Vision for a Protected Area). As a result, Syilx communities have deep concerns about their environment, and all living things within it.

Based on understandings of the *tmix^w* and the four-food-chiefs story, the concept of a protected area takes on a different meaning. For the Syilx, protection is:

Figure 2: Syilx/Okanagan Nation Territory



- ✚ Focused on the whole of Syilx territory (outlined in Figure 2)
- ✚ Interlinked with cultural practice and ecological protection
- ✚ The ability for Syilx peoples to connect and interact with their relatives and land
- ✚ The ability for Syilx peoples to act as caretakers of the land and *tmix^w* according to Syilx environmental laws
- ✚ The ability to practice and strengthen cultural beliefs, ceremony, and activities
- ✚ For the perpetuity of all living things for generations to come

The Syilx vision laid a foundation to guide the working group in dialogue about options and assessing a path forward with governments or agencies, such as Parks Canada.

“We have to take after our relatives out there, they look after the land and we do as well. They take care of us, we have to look at that instead of money” – Southern Band Elders Meeting

“We need to think about the people of forever” – Cultural Visioning Workshop

Figure 3: Draft Syilx Principles for a Protected Area



The principles in Figure 3 were applied by the SWG to assess how the Syilx vision may be achieved through the establishment of a National Park Reserve in the SOLS. The *Draft Syilx Vision for a Protected Area* can be found in Appendix 1.

2) Building a shared understanding

The Syilx vision for a protected area envisions the use of captikwl stories in guiding process. A Syilx captik^{wl} story foretells the coming of 'little brother'. Little brother is, in many respects, conceptualized as the settlers of Syilx territory. The story explains that Syilx peoples will one day have to teach their 'little brothers' how to live according to the Syilx obligation to act as caretakers of their land and environment. This captik^{wl} story and the understandings of what Syilx obligations are to their land and environment inform discussions that build shared understandings between the Syilx and PCA for a protected area. In a NPR scenario, Parks Canada can be a tool in facilitating Syilx teachings to the settlers of the SOLS.

The SWG collaborated with Parks Canada to build the basis of a vision and a concept that was mutually compatible, recognizing that the feasibility process was not negotiations. In addition, the SWG clearly understood that the concept outline in this report recognizes that a protected area considered with Parks Canada is only a small component of a larger Syilx vision and this vision is a work in progress.

Early in the process it was recognized that the Syilx people and Parks Canada share common ground and interests.

Figure 4: Shared Interests of the Syilx and Parks Canada



The illustration in Figure 5 (Page 23) portrays LSIB and PCA shared interests in protecting the land, ecosystems, animals, First Nation culture and its people, and the need to protect these values for future generations. In short, the Parks Canada Mandate is compatible with the Syilx vision and does not diminish Syilx connection to the land. With this understanding and drawing on the Syilx principles and the proposed NPR concept, the SWG developed the shared objectives outline in Figure 5.

Our people are the scientists, we are the biologists, we are the doctors, we are the caregivers of the forests and the animals and all of that. - Title and Rights Workshop, May 2012

Figure 5: Draft Objectives for Syilx/Parks Canada Protected Area

Draft Objectives for Syilx/Parks Canada Protected Area

"Syilx People are a part of the health of the land, you can't protect our areas by keeping our people out. People harvest the fruits and that helps the land."
(Cultural visioning, Oct. 2011)

"Traditional renewable resource activities of Aboriginal people such as hunting, fishing and trapping continue in a national park reserve."
(Parks Canada)

A Syilx concept and vision for a Syilx/Parks Canada Protected Area begins with building common objectives. Here is a start. Let us know what you think!



"Unimpaired for future generations."

<p>To work collaboratively over the long term beginning with learning from each other and building toward enduring relationships.</p> <p>To develop a model of shared responsibility for the planning, operation and management of a future protected area that respects the goal of protecting, restoring and maintaining healthy and productive ecosystems.</p> <p>To maintain the continuity of Syilx culture, including a plan for sustained traditional renewable resource harvesting and protection of sites of special spiritual-cultural significance.</p>	<p>To base the protection, management and heritage presentation of Syilx cultural and spiritual areas on traditional knowledge.</p> <p>To create a positive net social, economic and environmental benefit from park establishment for the Okanagan Nation Bands and surrounding communities.</p> <p>To work towards benefits for the Syilx people including employment with Parks Canada and training leading to employment opportunities, as well as economic opportunities associated with a future protected area.</p>	<p>To contribute to a benchmark for science, traditional knowledge, and human understanding of the interior dry plateau environment by supporting and promoting opportunities for research and monitoring.</p> <p>To promote greater public understanding and appreciation of the natural and cultural features of the interior dry plateau and South Okanagan Lower Similkameen region.</p> <p>To provide opportunities for local residents and visitors to experience, appreciate, enjoy, and learn about the protected area in ways that leave it unimpaired for future generations.</p>
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It is important to remember landmarks, sacred sites, place names, and have these reflected in the protected area so that future Syilx peoples will understand, know, and experience their obligation to these lands, their history to these lands, and pass on that knowledge. - Dustin Louis, SWG researcher

The Syilx vision, shared interests, and the details of how the Okanagan Nation and PCA could work together would be refined during a negotiations phase. The negotiations phase would discuss and examine a potential agreement between the Syilx and Parks Canada.

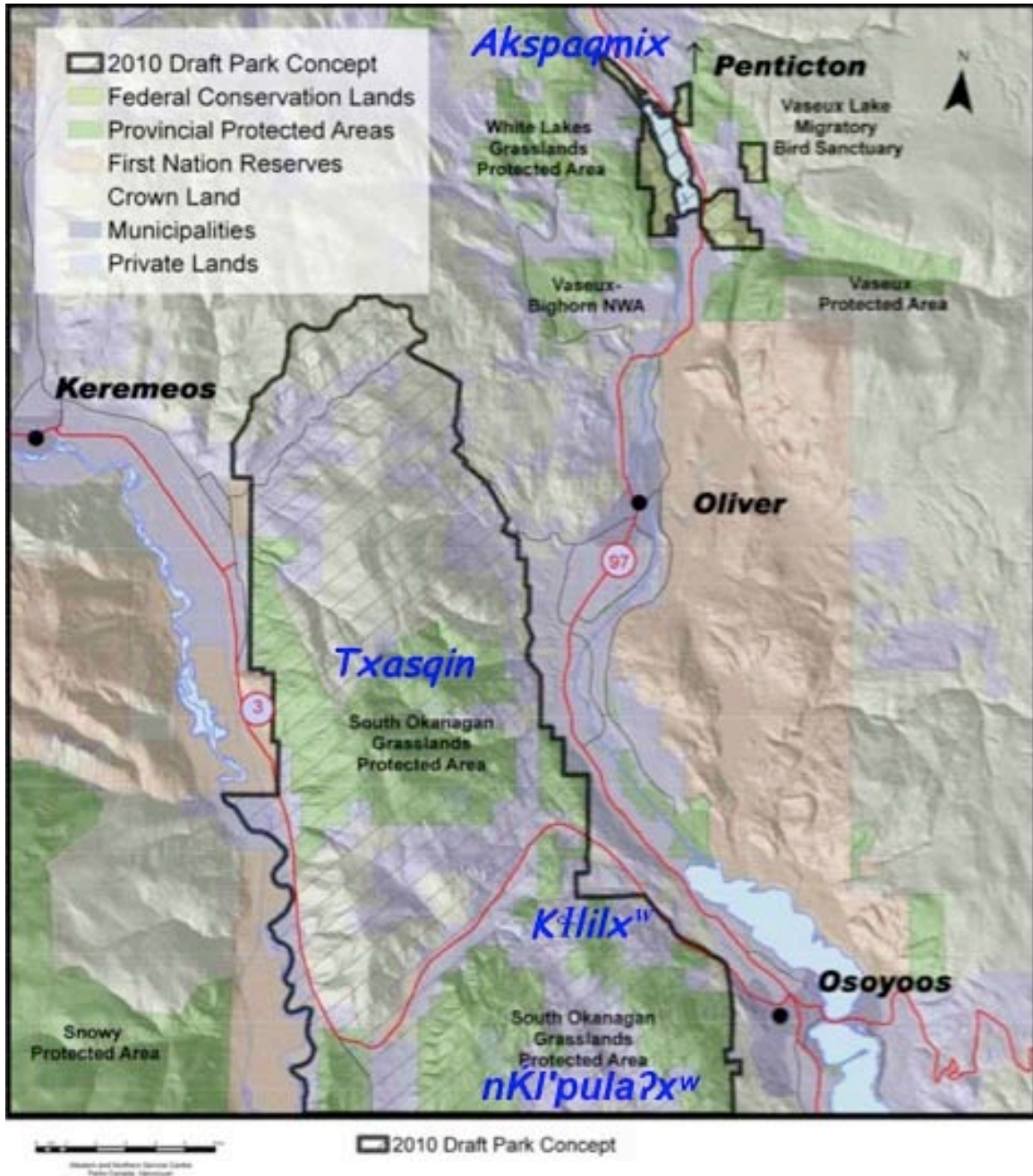
3) **National Park Reserve Concept**

The proposed NPR concept area came from an initial concept proposed by members of the Syilx Nation as a way of protecting the area around Kʷililx³¹ (Spotted Lake) and to prevent the "lights from going up the hill".³¹ Although we have heard from Syilx communities that additional areas should be protected, the area around Txasqin:

³¹ LSIB elders meeting, 2011

Nkl'pula?xw, Akspaqmix, Chopak (Kobau, Kilpoola, Chopaka, Vaseux Lake) would be a place to start (See Figure 6).

Figure 6: Park Concept Area



The 2010 Draft Park Concept presented by Parks Canada consists of two components. The first component includes 1000 Ha of existing federal lands around Vaseux Lake Migratory Bird Sanctuary and the Vaseux-Bighorn National Wildlife Area (seen at top of

map). The second component is the larger area toward the bottom of the map, which includes Txasqin (Mt. Kobau), covering approximately 27,400 Ha.

From a Syilx perspective, these areas encompasses prime hunting and harvesting grounds, include sites of spiritual significance, bear Syilx place names, and is significant in the captik^wl and smaymay stories. The area also directly borders LSIB reserve land and is in close proximity to OIB reserve land. The Syilx will never cede their inherent Title to the land, or allow the diminishment of Okanagan Rights in the park concept area.

If the Okanagan Nation decides to continue working with Parks Canada towards the establishment of a NPR, a specific boundary for the NPR will be established as part of a the negotiations phase. From a Syilx perspective, it is important to protect their lands and cultural values contained within the Syilx territory from future development and loss. Consequently, the Syilx Nation would like to see additional areas added to the park vision, including lands within the White Lake area and McIntyre Bluff.

If the ONA moves forward towards NPR establishment, the next stage would more fully address interests and concerns and would seek formal agreement with Parks Canada. If it is not possible to achieve agreements at the negotiations stage, it is highly unlikely the project would advance.

Figure 7: Two Paths - One Direction

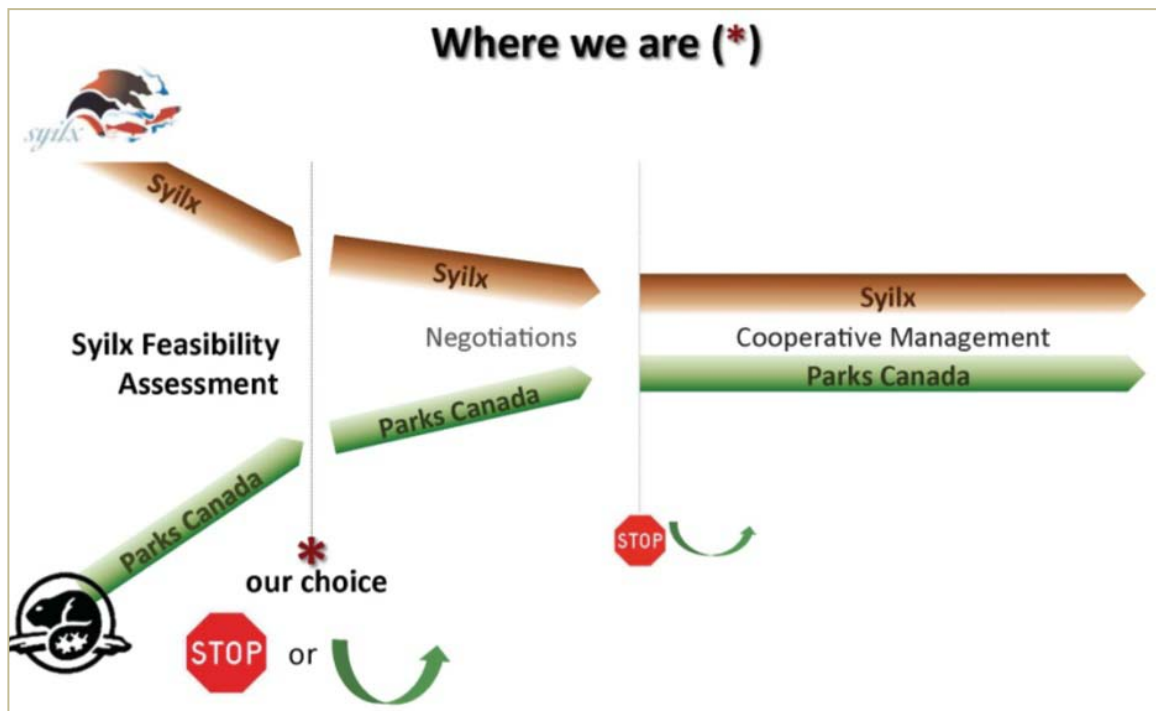


Figure 7 (Page 24) depicts that this feasibility stage can lead to a cooperative management relationship with Parks Canada. The converging lines represent the potential growth of a relationship that respects the different perspectives and common ground between the Syilx people and Parks Canada. It represents an important philosophy based on shared interest and a common understanding moving forward: *Two Paths – One Direction*.

Assuming that the ONA moves forward, the SWG understands that Parks Canada would pursue legislative options to allow for establishment of a NPR in the SOLS. This was a fundamental assumption made by the SWG and was supported by a letter from Alan Latourelle, CEO Parks Canada (October 2010).

“Parks Canada recognizes that relationships with Aboriginal peoples are essential in carrying out its mandate in local areas... The knowledge Aboriginal peoples bring through oral traditions and traditional use of the land contributes greatly and is essential for the deeper and stronger understanding required in order to safeguard these treasures...

Parks Canada has come a long way over the past 30 years in terms of working in a positive and respectful manner with Aboriginal peoples. This change has been driven in part by legal precedents, but more importantly by the desire of Parks Canada and Aboriginal peoples to work together toward common goals. Our system of national parks, national historic sites, and national marine conservation areas will only grow with the support of Aboriginal peoples” - Alan Latourelle, CEO Parks Canada

The SWG understands that a NPR can be established where there is a desire to protect lands as a NPR but the area has unsettled Aboriginal land claims. A NPR does not prejudice unresolved land claims. A NPR operates like a national park, except that traditional renewable resource activities of Aboriginal people such as hunting, fishing and trapping can continue in a NPR.

Through a future negotiation process the ONA would work with Parks Canada to define the type and scope of cultural uses of the land within the proposed NPR and would agree on an approach for planning and management. The types of traditional uses that are found in other NPR's include hunting, fishing, trapping, gathering of plants for foods and medicines, spiritual activities, ceremonial activities, small scale removal of rock for artistic or other purposes, aboriginal tourism products and services, and culturally defined management activities (e.g. traditional burns). A negotiated agreement would outline the terms and conditions of how PCA and the ONA will work together. As part of this agreement, the ONA would seek a consensus-based cooperative management model similar to Gwaii Hannas.

4) ***Community Feedback***

The scope and strategy for community engagement changed from outset of the contribution agreements resulting from loss of staff and a lack of trust towards governmental institutions like Parks Canada in Syilx communities. The SWG experienced delays in process and communications in the spring of 2012 as a result of loss in staff. As a result, the SWG shifted from the original communication work plan to provide a new approach outlined below. It has become clear from community feedback that community outreach lacked in consistency and quantity during the feasibility process; however, an effort was made by the SWG to provide a balanced approach to community engagement.

A series of meetings and workshops were held, including: 2 USIB community meetings, 3 PIB community meetings, 1 PIB elders meeting, 1 PIB Youth Meeting, 2 OIB elders meetings, 3 OIB community meetings, 2 LSIB community meetings, 2 LSIB elders meetings, 1 Southern Band elders meeting, 1 Okanagan Nation elders meeting, one 2-day Cultural Visioning Workshop (Southern Band Elders), and one 2-day Title and Rights Workshop (Southern Band elder representatives).³² Following is a summary of the most prominent community concerns and topics that emerged from the discussions (See *Community Outreach – Feedback in Appendix 9* for more detail).

There have been concerns about the lack of community engagement regarding the proposed NPR. Southern band communities and elders groups have expressed their desire to work as a nation on this issue. Communities have requested that final reporting be brought back to communities in a simplified form.³³

There is agreement between the southern bands that the health of the land and tmixw are diminishing and that protection is an urgent priority. The protection of health and access to cultural foods and medicines are primary concerns for southern band communities. It has been brought forward that the concept area is not large enough to satisfy a broad vision for cultural and ecological integrity. There are also concerns that a NPR may cause negative impacts to the tmixw based on an increase in traffic within the park concept area and an increase in hunting outside of the park concept area from 'displaced hunters'. Access includes all cultural activities on the land through the use of necessary transportation technologies (e.g. horses, ATVs etc.). Issues pertaining to the protection of water quality, quantity and rights in the SOLS were prominent in community discussion and the current concept area does not satisfy these concerns. Additional areas for consideration were brought forward in community outreach

³² More meetings were held with USIB and LSIB communities and elder groups. Reporting on these meetings has been displaced due to unforeseen circumstances.

³³ The Syilx Working Group have created and distributed a final community newsletter outlining the results of the feasibility study in a simplified format.

including: White Lake area, Yellow Lake area, McIntyre Bluff, Rattlesnake Island, and Giants Head.

Language preservation was one of the most prominent topics in community discussion. It has been suggested that Okanagan and Similkameen place names be recorded, documented, and used in the SWG's process. If the Okanagan Nation is to move forward to an agreement with Parks Canada, elders and community alike have suggested that the agreement be made in N'syilxcen.

The elders have expressed the importance of using, protecting, and passing down cultural knowledge including: captik^WI, language, smaymay, and TEK. The principles ingrained in these forms of knowledge should guide any process discussing protected areas and/or the management plan/operations of any future protected area.

There has been a request to better understand alternative options to a NPR for protected areas or to achieve the Syilx vision for protection. Some community members articulated the need to "find common allies"³⁴ to collaborate on conservation work (i.e. Parks Canada), while others have firmly stated that Syilx communities must work on their own to protect their interests and that there can be no trust for government and/or government entities to promote Syilx interests. However, it has been suggested that *if* the Okanagan Nation chooses to work with Parks Canada, Syilx governance must retain at least 50% authority.

Acronyms

SWG: Syilx Working Group, shortened from Southern Okanagan Bands Parks Working Group (as defined in South Okanagan Bands Parks Working Group DRAFT Terms of Reference, December, 2010)

NPR: National Park Reserve – *Refers to a potential future Syilx/Parks Canada National Park Reserve concept*

CEC: Chiefs Executive Council

PCA: Parks Canada Agency

SOLS: South Okanagan-Lower Similkameen

BC: British Columbia

TOR: Terms of Reference

Note: For technical purposes, the term *Syilx* is used to describe the cultural group of the Okanagan/Similkameen, whereas the term Okanagan is used in reference to Syilx governance, specifically at the level of the Okanagan Nation Alliance.

³⁴ Southern Band Cultural Visioning Workshop, October 2011

Appendices

- 1) Draft Syilx Vision For a Protected Area**
- 2) National Park Reserve Concept**
- 3) Foundational Issues Feasibility Matrix**
- 4) Shared Understandings**
- 5) Syilx Working Group Discussion on *The Species at Risk Act***
- 6) Socio-Cultural, Environmental and Economic Impact Assessment Report**
- 7) Alternative Options for Protected Areas**
- 8) Detailed Methodology**
- 9) Community Outreach – Feedback**

Appendices not referenced in the report

- 10) Title and Rights – Legal Opinions (confidential)**
- 11) Background and History**
- 12) Alternate Scenarios Table**