

NISGA'A FINAL AGREEMENT

CHAPTER 3 LANDS

NISGA'A LANDS

General

1. On the effective date, Nisga'a Lands consist of all lands, including islands, within the boundaries set out in Appendix A except submerged lands, the Gingietl Creek Ecological Reserve, the Nisga'a Highway corridor, and the lands within the boundaries set out in Appendix B:
 - a. Appendix B-1 – land in the vicinity of Red Bluff that has been set apart as Indian Reserve No. 88;
 - b. Appendix B-2 – land in respect of which British Columbia has granted an estate in fee simple;
 - c. Appendix B-3 – land in respect of which British Columbia has granted an agriculture lease or woodlot licence; and
 - d. Appendix B-4 – roads associated with the land referred to in Appendix B-2.
2. On the effective date, Nisga'a Lands comprise 1,992 square kilometres, more or less, of land in the lower Nass Valley, consisting of:
 - a. 1,930 square kilometres, more or less; and
 - b. 62 square kilometres, more or less, of lands identified as former Nisga'a Indian reserves in Appendix A-4, and which cease to be Indian reserves on the effective date.

Ownership of Nisga'a Lands

3. On the effective date, the Nisga'a Nation owns Nisga'a Lands in fee simple, being the largest estate known in law. This estate is not subject to any condition, proviso, restriction, exception, or reservation set out in the *Land Act*, or any comparable limitation under any federal or provincial law. No estate or interest in Nisga'a Lands can be expropriated except as permitted by, and in accordance with, this Agreement.
4. In accordance with this Agreement, the Nisga'a Constitution, and Nisga'a law, the Nisga'a Nation may:
 - a. dispose of the whole of its estate in fee simple in any parcel of Nisga'a Lands to any person; and
 - b. from the whole of its estate in fee simple, or its interest, in any parcel of Nisga'a Lands, create, or dispose of any lesser estate or interest to any person, including rights of way and covenants similar to those in sections 218 and 219 of the *Land Title Act*

without the consent of Canada or British Columbia.

5. A parcel of Nisga'a Lands does not cease to be Nisga'a Lands as a result of any change in ownership of an estate or interest in that parcel.
6. All methods of acquiring a right in or over land by prescription or by adverse possession, including the common law doctrine of prescription and the doctrine of the lost modern grant, are abolished in respect of Nisga'a Lands.
7. If, at any time, any parcel of Nisga'a Lands, or any estate or interest in a parcel of Nisga'a Lands, finally escheats to the Crown, the Crown will transfer, at no charge, that parcel, estate or interest to the Nisga'a Nation.
8. Neither:
 - a. any estate or interest of the Nisga'a Nation or a Nisga'a Village in any parcel of Nisga'a Lands to which the provincial Torrens system does not apply; nor
 - b. any interest, right, privilege or title of the Nisga'a Nation or a Nisga'a Village reserved or excepted by the Nisga'a Nation or Nisga'a Village from any creation or disposition of an estate or interest in a parcel of Nisga'a Lands

is subject to attachment, charge other than charges that are liens in favour of Canada or British Columbia, seizure, distress, execution, or sale, except under an instrument, including a mortgage or other security instrument, in favour of a person and granted by the Nisga'a Nation or the Nisga'a Village, or if allowed under a law made by Nisga'a Lisims Government under paragraph 44 of the Nisga'a Government Chapter.

Additions to Nisga'a Lands

9. If, at any time, the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen owns the estate in fee simple to any parcel of land within the boundaries set out in Appendix B-1, B-2, or B-3, the Nisga'a Nation may, with the consent of the owner, add that parcel of land to Nisga'a Lands. That parcel of land, together with any roads identified in Appendix B-4 associated with it, will become Nisga'a Lands upon receipt by Canada and British Columbia of written notice from the Nisga'a Nation identifying that parcel of land and attaching the written consent of the owner of that parcel of land.
10. If, at any time:
 - a. British Columbia owns the estate in fee simple to any land within the boundaries set out in Appendix B-2; or
 - b. any land within the boundaries set out in Appendix B-3 ceases to be subject to an agriculture lease or a woodlot licence existing on the effective date

British Columbia will offer to sell the estate in fee simple to that land to the Nisga'a Nation for a price not to exceed fair market value.
11. If, at any time, the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation or a Nisga'a citizen owns the estate in fee simple to a parcel of land that is contiguous with Nisga'a Lands, other than land referred to in Appendix B-1, B-2, or B-3, the Nisga'a Nation may, with the consent of the owner and the agreement of Canada and British Columbia, add the land to Nisga'a Lands. If the owner consents and Canada, British Columbia, and the Nisga'a Nation agree that the land may be added to Nisga'a Lands, the land will become Nisga'a Lands upon receipt by Canada and British Columbia of written notice in accordance with that agreement.

12. If the Nisga'a Nation adds a parcel of land to Nisga'a Lands under paragraph 9 or 11, that land will be subject to:
 - a. any existing charge, encumbrance, licence, or permit;
 - b. any subsisting condition, proviso, restriction, exception, or reservation, contained in:
 - i. the original grant or disposition from the Crown,
 - ii. any other grant or disposition from the Crown, or
 - iii. the *Land Act*other than those in favour of the Crown at the time of the addition of the parcel of land to Nisga'a Lands; and
 - c. any limitation under federal or provincial law comparable to those set out in subparagraph 12(b), other than those in favour of the Crown at the time of the addition of the parcel of land to Nisga'a Lands.
13. When a parcel of land becomes Nisga'a Lands under paragraph 9 or 11, any subsisting condition, proviso, restriction, exception, or reservation referred to in subparagraph 12(b) or (c) that is in favour of the Crown at the time of the addition of the parcel of land to Nisga'a Lands, will terminate.
14. If the Nisga'a Nation adds a parcel of land to Nisga'a Lands under paragraph 9 or 11, Appendix A-1, A-2, and A-3, and Appendix B-1, B-2, B-3, or B-4, as the case may be, will be amended to reflect the change to the boundaries of Nisga'a Lands.

Boundary Resolution

15. If a Party provides the other Parties with a proposal to clarify the location of any part of a boundary of Nisga'a Lands, the Parties will follow the procedure set out in Schedule A.

Designations of Nisga'a Lands

16. Nisga'a Lands comprise Nisga'a Public Lands, Nisga'a Private Lands, and Nisga'a Village Lands.
17. Nisga'a Public Lands are Nisga'a Lands other than those designated by Nisga'a Lisims Government as Nisga'a Village Lands or Nisga'a Private Lands.
18. Nisga'a Private Lands include:
 - a. lands in which Nisga'a Lisims Government creates an exclusive interest; and
 - b. lands that are otherwise required for uses that are incompatible with public access, including commercial, cultural, or resource development uses.

MINERAL RESOURCES

19. For greater certainty, in accordance with paragraph 3, on the effective date the Nisga'a Nation owns all mineral resources on or under Nisga'a Lands.
20. Nisga'a Lisims Government has the exclusive authority to determine, collect, and administer any fees, rents, royalties, or other charges in respect of mineral resources on or under Nisga'a Lands.

21. Nisga'a Lisims Government and British Columbia may enter into agreements in respect of the application on Nisga'a Lands of provincial administrative systems relating to:

- a. claim staking;
- b. recording and inspecting of subsurface exploration and development;
- c. the collection of fees, rents, royalties, and other charges by British Columbia on behalf of Nisga'a Lisims Government; and
- d. other similar matters.

SUBMERGED LANDS WITHIN NISGA'A LANDS

22. British Columbia owns the submerged lands within Nisga'a Lands.
23. British Columbia will provide written notice to the Nisga'a Nation of any proposed disposition of an estate or interest in, or use or occupation of, submerged lands within Nisga'a Lands.
24. British Columbia will not, in respect of submerged lands within Nisga'a Lands:
 - a. grant an estate in fee simple;
 - b. grant a lease that, with any rights of renewal, may exceed 25 years;
 - c. transfer administration and control for a period that may exceed 25 years; or
 - d. otherwise dispose of an estate or interest in, or authorize the use or occupation of, submerged lands within Nisga'a Lands if that disposition, use, or occupation would adversely affect Nisga'a Lands or Nisga'a interests set out in this Agreementwithout the consent of the Nisga'a Nation, which consent will not be unreasonably withheld.
25. If the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen applies to British Columbia to acquire an estate or interest in, or for authorization to use or occupy, submerged lands within Nisga'a Lands, British Columbia will not unreasonably refuse to grant the estate or interest or to issue the authorization if:
 - a. the Nisga'a Nation has consented to the acquisition, use, or occupation; and
 - b. the proposed acquisition or authorization conforms to provincial law respecting the disposition, use, or occupation of submerged lands within British Columbia.
26. A dispute as to whether:
 - a. the Nisga'a Nation is unreasonably withholding consent under paragraph 24; or
 - b. British Columbia is unreasonably refusing to grant an estate or interest, or to issue an authorization, under paragraph 25will be finally determined by arbitration under the Dispute Resolution Chapter.
27. For greater certainty, paragraphs 22 to 26 do not affect any property rights of upland owners of Nisga'a Lands adjacent to submerged lands.

INTERESTS ON NISGA'A LANDS

Definition of "Interests"

28. In paragraphs 29 to 41, **"interests"** includes estates, interests, charges, mineral claims, encumbrances, licences, and permits.

Former Interests Cease to Exist

29. On the effective date:
 - a. the Nisga'a Nation's title to Nisga'a Lands is free and clear of all interests, except:
 - i. those granted or issued under paragraphs 30 to 40,
 - ii. those referred to in paragraph 41,
 - iii. those continued or issued under the transition provisions of the Forest Resources Chapter, and
 - iv. those granted under the Roads and Rights of Way Chapter; and
 - b. subject to paragraph 41, and the transition provisions of the Forest Resources Chapter, every interest that, before the effective date, encumbered or applied to the lands that are Nisga'a Lands, ceases to exist.

Replacement Interests

30. The Nisga'a Nation, in accordance with paragraphs 31 to 40, and the Roads and Rights of Way Chapter, will grant or issue interests to those persons who are named in Appendix C-1 as persons who, immediately before the effective date, had interests in the lands that comprise Nisga'a Lands on the effective date.
31. On the effective date, the Nisga'a Nation will execute documents granting or issuing to each person named in Appendix C-1 that person's interest, as set out in that Appendix.
32. A document executed under paragraph 31 for an interest set out in Part I of Appendix C-1 will be in the applicable form set out in Appendix C-2 and will include any modifications agreed upon in writing before the effective date by the Nisga'a Tribal Council and the person entitled to the interest.
33. On the effective date, the Nisga'a Nation will issue to each person named in Appendix C-5 a certificate of possession for the parcel of Nisga'a Lands ascribed to that person and described in Appendix C-5.
34. On the effective date, the Nisga'a Nation will issue to each person named in Appendix C-6 a certificate of possession for the parcel of Nisga'a Lands ascribed to that person and described in Appendix C-6.
35. A person to whom the Nisga'a Nation issues a certificate of possession under paragraph 33 or 34 will have substantially the same right to possess the described parcel of Nisga'a Lands as the person would have had as the holder of a certificate of possession under the *Indian Act* immediately before the effective date, modified to reflect Nisga'a Government jurisdiction over, and Nisga'a Nation ownership of, Nisga'a Lands.
36. After the effective date, the Nisga'a Nation or a Nisga'a Village may, in accordance with Nisga'a law, replace the certificates of possession issued under paragraphs 33 or 34 with estates or interests in, or licences to use or possess, the described parcels of Nisga'a Lands. If the certificates of possession are replaced with licences, the licences will include rights to use and possess the land comparable to, or greater than, those set out in those certificates of possession.

37. A document referred to in paragraph 31, 33 or 34, or in paragraph 7 of the Roads and Rights of Way Chapter, will be deemed to be:
- a. delivered by the Nisga'a Nation on the effective date; and
 - b. executed and delivered by each person referred to in those paragraphs on the effective date, whether or not the document is actually executed or delivered by that person.
38. The Nisga'a Nation will, as soon as practicable after the effective date, physically deliver the applicable document:
- a. to each person named in Appendix C-1, C-5, or C-6; or
 - b. to any other person who, before the effective date:
 - i. was identified in writing to the Nisga'a Tribal Council by Canada or British Columbia as the person who, instead of a person named in Appendix C-1 or C-5, should receive an interest referred to in Appendix C-1 or C-5 by reason of death, any form of transfer, error or operation of law, or
 - ii. was identified in writing to Canada and British Columbia by the Nisga'a Tribal Council as the person who, instead of a person named in Appendix C-6, should receive an interest referred to in Appendix C-6 by reason of death, any form of transfer, error or operation of law
- and the Appendix will be amended to reflect the change.
39. If Canada or British Columbia notifies the Nisga'a Nation that an interest granted under paragraph 30, 31, 33, or 34:
- a. is in the name of a person who was not actually entitled to the interest on the effective date; or
 - b. contains a clerical error or a wrong description of a material fact
- the appropriate Parties will take reasonable measures to rectify the error.
40. Any right of way of the nature described in section 218 of the *Land Title Act* that is granted by the Nisga'a Nation under this Agreement is legally binding and enforceable notwithstanding that the Nisga'a Lands to which the right of way relates are not subject to the *Land Title Act*.

Licences and Traplines

41. The traplines, guide outfitter licence and certificate, and angling guide licences set out in Appendix C-7 are retained by the persons who hold those interests on the effective date in accordance with provincial laws of general application and the Wildlife and Migratory Birds Chapter. If an interest referred to in this paragraph is not renewed or replaced, that interest will cease to exist.

Indemnities

- 42.** British Columbia will indemnify and save harmless the Nisga'a Nation from any damages, losses, liabilities, or costs, excluding fees and disbursements of solicitors and other professional advisors, that the Nisga'a Nation may suffer or incur in connection with or as a result of any claims, demands, actions, or proceedings relating to or arising out of:
- a. the omission from Appendix C-1 of the name of a person who, immediately before the effective date, had an interest in Nisga'a Lands that had been granted by British Columbia; or
 - b. the incorrect naming of a person in Appendix C-1 as a person entitled to an interest, where another person was actually entitled, immediately before the effective date, to the interest in Nisga'a Lands that had been granted by British Columbia.
- 43.** Canada will indemnify and save harmless the Nisga'a Nation from any damages, losses, liabilities, or costs, excluding fees and disbursements of solicitors and other professional advisors, that the Nisga'a Nation may suffer or incur in connection with or as a result of any claims, demands, actions, or proceedings relating to or arising out of:
- a. the omission from Appendix C-1 or C-5 of the name of a person who, immediately before the effective date, had an interest in or a certificate of possession in respect of Nisga'a Lands that had been granted by Canada; or
 - b. the incorrect naming of a person in Appendix C-1 or C-5 as a person entitled to an interest or certificate of possession, where another person was actually entitled, immediately before the effective date, to the interest or the certificate of possession in respect of Nisga'a Lands that had been granted by Canada.

SITE REMEDIATION

- 44.** British Columbia will inspect the sites set out in Schedule B and will undertake, or cause to be undertaken, appropriate remediation of any contamination at each site as follows:
- a. British Columbia, or the person undertaking the remediation, will give notice to the Nisga'a Nation no more than 60 days before commencing the remediation; and
 - b. whether a site is contaminated, and the nature and extent of the appropriate remediation, will be determined under British Columbia law and, for the purposes of those determinations, the use of the site will be deemed to be either:
 - i. the actual use of the site on the date of the notice under subparagraph (a); or
 - ii. if the site is not in use on the date of the notice under subparagraph (a), the use identified in Schedule B.

NISGA'A FEE SIMPLE LANDS OUTSIDE NISGA'A LANDS

- 45.** Nisga'a Fee Simple Lands consist of Category A Lands and Category B Lands as described in Appendix D.

Category A Lands

46. Category A Lands are the parcels of land set out in Appendix D-2 and D-3, and consist of:
 - a. the lands identified as former Nisga'a Indian reserves in Appendix D-2 and D-3; and
 - b. certain lands adjacent to some of those former Nisga'a Indian reserves.
47. On the effective date, the lands outside Nisga'a Lands that are identified as former Nisga'a Indian reserves in Appendix D-2 and D-3 cease to be Indian reserves.
48. On the effective date, the Nisga'a Nation owns the estate in fee simple to Category A Lands.
49. The estate in fee simple to Category A Lands is subject to the rights referred to in subparagraph 50 (1) (a) (iii) of the *Land Act* but is not subject to any other conditions, provisos, restrictions, exceptions, or reservations set out in section 50 of the *Land Act*, and no estate or interest in Category A Lands can be expropriated from the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen except as permitted by, and in accordance with, this Agreement.
50. On the effective date, subject to paragraph 51, the estate in fee simple to Category A Lands is free and clear of all estates, interests, charges, mineral claims, encumbrances, licences, and permits, except those set out in Appendix D-4.
51. On the effective date, the Nisga'a Nation owns all mineral resources on or under Category A Lands, free and clear of all estates, interests, charges, mineral claims, encumbrances, licences, and permits, except for the mineral claims set out in Appendix D-4.
52. On the effective date, British Columbia owns the submerged lands within the Category A Lands other than the submerged lands within the Category A Lands described in Appendix D-2 as former I.R. Nos. 24, 27, and 27A, and extensions, and those submerged lands are owned by the Nisga'a Nation.
53. A parcel of Category A Lands ceases to be Category A Lands if no estate or interest in that parcel is owned by the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation or a Nisga'a citizen.
54. If the Nisga'a Nation disposes of the estate in fee simple in the Category A Lands described in Appendix D-2 as former I.R. No. 15 and extension, it will reserve to itself a blanket right of way for the purpose of providing road access across that parcel to adjacent lands. The Nisga'a Nation will, on request of British Columbia, assign the benefit of the right of way over that portion of that parcel upon which the forest service road existing on the effective date is located, in accordance with the following:
 - a. any assignment will be on reasonable terms, including the location of the requested right of way area, its width considering the intended use, its effect on neighbouring lands and payment of fair compensation, but, notwithstanding subparagraph (d) of the definition of "fair compensation", particular cultural values will not be included in the determination of fair compensation; and
 - b. if British Columbia and the Nisga'a Nation are unable to agree on the terms of the assignment, including the reasonableness of the proposed terms or location of the requested right of way area, the terms of the assignment will be finally determined by arbitration under the Dispute Resolution Chapter, but the arbitrator will not have authority to require British Columbia to accept an assignment of the right of way.

Provincial Expropriation of Category A Lands

- 55.** A provincial expropriating authority may expropriate an estate or interest in Category A Lands from the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen under provincial legislation only if the expropriation is:
- a. justifiable and necessary for a provincial public purpose;
 - b. of the smallest estate or interest necessary, and for the shortest time required, for that provincial public purpose;
 - c. by and for the use of a provincial ministry or agent of the provincial Crown; and
 - d. with the consent of the Lieutenant Governor in Council.
- 56.** If a provincial expropriating authority expropriates less than the estate in fee simple in Category A Lands from the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen, British Columbia will provide the owner of the interest expropriated with fair compensation.
- 57.** If a provincial expropriating authority expropriates the estate in fee simple, including the mineral resources, in Category A Lands from the Nisga'a Nation, a Nisga'a Village, or a Nisga'a Corporation, British Columbia will provide the owner of the estate in fee simple with:
- a. equivalent Crown land if:
 - i. the owner and the Nisga'a Nation request compensation in the form of equivalent Crown land, and
 - ii. equivalent Crown land is available; or
 - b. fair compensation if:
 - i. the owner and the Nisga'a Nation do not request equivalent Crown land,
 - ii. equivalent Crown land is not available, or
 - iii. the owner, the Nisga'a Nation, and British Columbia otherwise agree.
- 58.** If a provincial expropriating authority expropriates the estate in fee simple, including the mineral resources, in Category A Lands from a Nisga'a citizen, British Columbia will provide the owner of the estate in fee simple with fair compensation.
- 59.** If a provincial expropriating authority expropriates the estate in fee simple, excluding any mineral resources, in Category A Lands under paragraph 55, the owner of the estate in fee simple and the Nisga'a Nation may require British Columbia to include the mineral resources in the expropriation. If the owner and the Nisga'a Nation require British Columbia to include the mineral resources in the expropriation, paragraph 57 applies to the expropriation.
- 60.** Unless British Columbia and the Nisga'a Nation otherwise agree, any lands provided by British Columbia to the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen as compensation for an expropriation of an estate or interest in Category A Lands will become Category A Lands.

Category B Lands

- 61.** Category B Lands are the parcels of land outside Nisga'a Lands set out in Appendix D-6 and D-7.
- 62.** On the effective date, the Nisga'a Nation owns the estate in fee simple to Category B Lands.

63. The estate in fee simple to Category B Lands is subject to the conditions, provisos, restrictions, exceptions, and reservations set out in paragraph 50 (1) (a) of the *Land Act*, except that set out in subparagraph 50 (1) (a) (i) of the *Land Act*, but no estate or interest in Category B Lands can be expropriated from the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen except as permitted by, and in accordance with, this Agreement.
64. On the effective date, subject to paragraph 65, the estate in fee simple to Category B Lands is free and clear of all estates, interests, charges, mineral claims, encumbrances, licences, and permits, except those set out in Appendix D-8.
65. On the effective date, British Columbia owns the submerged lands within the Category B Lands.
66. On the effective date, British Columbia owns the mineral resources on or under the Category B Lands that are reserved to the Crown under subparagraph 50 (1) (a) (ii) of the *Land Act*.
67. A parcel of Category B Land ceases to be Category B Lands if no estate or interest in that parcel is owned by the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen.

Provincial Expropriation of Category B Lands

68. A provincial expropriating authority may expropriate the estate in fee simple or any interest in Category B Lands from the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen under provincial legislation only if compensation is provided in accordance with paragraphs 69 to 72.
69. If a provincial expropriating authority expropriates less than the estate in fee simple in Category B Lands from the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen, British Columbia will provide the owner of the interest expropriated with fair compensation.
70. If a provincial expropriating authority expropriates the estate in fee simple in Category B Lands from the Nisga'a Nation, a Nisga'a Village, or a Nisga'a Corporation, British Columbia will provide the owner of the estate in fee simple with:
 - a. equivalent Crown land if:
 - i. the owner and the Nisga'a Nation request compensation in the form of equivalent Crown land, and
 - ii. equivalent Crown land is available; or
 - b. fair compensation if:
 - i. the owner and the Nisga'a Nation do not request equivalent Crown Land,
 - ii. equivalent Crown land is not available, or
 - iii. the owner, the Nisga'a Nation and British Columbia otherwise agree.
71. If British Columbia expropriates the estate in fee simple in Category B Lands from a Nisga'a citizen, British Columbia will provide the owner with fair compensation.
72. Unless British Columbia and the Nisga'a Nation otherwise agree, any lands provided by British Columbia to the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen as compensation for an expropriation of an estate or interest in Category B Lands will become Category B Lands.

FEDERAL ACQUISITION OF INTERESTS IN NISGA'A LANDS AND NISGA'A FEE SIMPLE LANDS

General

73. Canada acknowledges that it is of fundamental importance to maintain the size and integrity of Nisga'a Lands and Nisga'a Fee Simple Lands, and therefore, as a general principle, estates or interests in Nisga'a Lands, or Nisga'a Fee Simple Lands, will not be expropriated under federal legislation.

Governor in Council Consent

74. Notwithstanding paragraph 73, an estate or interest in a parcel of Nisga'a Lands, or Nisga'a Fee Simple Lands, may be expropriated under federal legislation if the Governor in Council consents to the expropriation.
75. The Governor in Council will consent to an expropriation of an estate or interest in a parcel of Nisga'a Lands, or Nisga'a Fee Simple Lands, only if the expropriation:
- a. is justifiable and necessary for a federal public purpose; and
 - b. is of the smallest estate or interest necessary, and for the shortest time required, for that federal public purpose.
76. The Governor in Council will not consent to an expropriation of a parcel of Nisga'a Lands, or Nisga'a Fee Simple Lands, if other lands suitable for the federal public purpose are reasonably available.
77. Before the Governor in Council considers an expropriation of an estate or interest in a parcel of Nisga'a Lands, or Nisga'a Fee Simple Lands, it will ensure that Canada has:
- a. consulted the Nisga'a Nation;
 - b. ensured that reasonable efforts have been made to acquire the estate or interest through agreement with the owner of the estate or interest; and
 - c. provided the Nisga'a Nation with all information relevant to the expropriation other than federal Cabinet documents.
78. If the Governor in Council consents to an expropriation, Canada will provide the Nisga'a Nation with the reasons for the expropriation.

Effect of Expropriation

79. If an estate or interest in a parcel of Nisga'a Lands is expropriated under paragraph 74, Nisga'a laws continue to apply to that parcel of land except to the extent that those laws are inconsistent with the ability to use and occupy that land for the purpose for which that estate or interest was expropriated.
80. If less than the estate in fee simple as described in paragraph 3 in a parcel of Nisga'a Lands is expropriated under paragraph 74, the owner of the estate in fee simple in that parcel of land may continue to use and occupy that land, except to the extent that the use or occupation is inconsistent with the purpose for which that estate or interest was expropriated.

81. If there is an expropriation under paragraph 74 of the estate in fee simple as described in paragraph 3 in a parcel of Nisga'a Lands, or of the estate in fee simple in a parcel of Nisga'a Fee Simple Lands, Canada will, at the request of Nisga'a Lisims Government, ensure that reasonable efforts are made to acquire alternative land of equivalent significance and value to offer as part or all of the compensation for the expropriation. Any alternative land that is contiguous with Nisga'a Lands may become Nisga'a Lands in accordance with paragraph 9.
82. Canada will ensure that the owner of the estate or interest that is expropriated under paragraph 74 receives compensation, taking into account:
 - a. the cost of acquiring alternative land of equivalent significance and value;
 - b. the market value of the estate or interest that is expropriated;
 - c. the replacement value of any improvements on the land that is expropriated;
 - d. disturbance caused by the expropriation; and
 - e. if the owner of the estate or interest that is expropriated is the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen, any adverse effect on any cultural or other special value of the land to the Nisga'a Nation or a Nisga'a Village.
83. If less than the estate in fee simple as described in paragraph 3 in a parcel of Nisga'a Lands, or less than the estate in fee simple in a parcel of Nisga'a Fee Simple Lands, has been expropriated under paragraph 74 but is no longer required for the purpose for which it was expropriated, Canada will ensure that the interest in those lands is transferred at no charge to the owner of the estate in fee simple. The terms of that transfer will be negotiated by the Nisga'a Nation and Canada at the time of the expropriation.
84. If the estate in fee simple as described in paragraph 3 in a parcel of Nisga'a Lands, or a parcel of Nisga'a Fee Simple Lands, has been expropriated under paragraph 74 but is no longer required for the purpose for which it was expropriated, Canada will ensure that the estate in fee simple is transferred at no charge to the Nisga'a Nation or the Nisga'a Village, as the case may be. The terms of that transfer will be negotiated by the Nisga'a Nation and Canada at the time of the expropriation.
85. The consent of the Governor in Council is not required to determine whether the estate or interest is no longer required for the purpose for which it was expropriated.
86. The Nisga'a Nation or Canada may refer a dispute in respect of the value and nature of the compensation, or the terms of transfer, to be finally determined by arbitration under the Dispute Resolution Chapter.

INITIAL SURVEYS

87. Before the effective date, or as soon as practicable after the effective date, surveys will be conducted of the boundaries of Nisga'a Lands and Nisga'a Fee Simple Lands in accordance with instructions to be issued by the Surveyor General of British Columbia and approved by the Parties (the "Initial Surveys").
88. British Columbia and Canada will, as agreed between them, pay the full cost of the Initial Surveys.

89. The Parties may, before or after the effective date, amend Appendices A and D to reflect minor adjustments that may be agreed upon by the Parties as a result of the Initial Surveys.

COMMERCIAL RECREATION TENURE

90. After the effective date, at the request of the Nisga'a Nation, British Columbia will issue a commercial recreation tenure (the "Nisga'a commercial recreation tenure") to the Nisga'a Nation, or to a Nisga'a Corporation designated by the Nisga'a Nation, for the areas set out in Appendix E based on the "Nisga'a Commercial Recreation Tenure Management Plan" developed by the Nisga'a Tribal Council and British Columbia and approved on July 6, 1998.
91. The term of the Nisga'a commercial recreation tenure will be 27 years.
92. If no request is made under paragraph 90 within 90 days after the effective date, British Columbia will issue the Nisga'a commercial recreation tenure to the Nisga'a Nation no later than 100 days after the effective date.
93. The first seven years of the term of the Nisga'a commercial recreation tenure will be a phase-in period, and during that period:
- a. the Nisga'a commercial recreation tenure will permit, but not require, the Nisga'a Nation or the designated Nisga'a Corporation to carry out activities in accordance with the Nisga'a Commercial Recreation Tenure Management Plan; and
 - b. British Columbia will not issue another commercial recreation tenure within the areas set out in Appendix E that conflicts with the Nisga'a Commercial Recreation Tenure Management Plan.
94. The Nisga'a Nation may, with the consent of British Columbia, which consent will not be unreasonably withheld, assign the Nisga'a commercial recreation tenure to a Nisga'a Corporation, and upon that assignment British Columbia will release the Nisga'a Nation from any obligations under the tenure that are assumed by the assignee.

HERITAGE SITES AND KEY GEOGRAPHIC FEATURES

95. On the effective date, British Columbia will designate as provincial heritage sites the sites of cultural and historic significance outside Nisga'a Lands that are set out in Appendix F-1. The Parties acknowledge that those sites may have cultural or historic significance to persons or groups other than the Nisga'a Nation.
96. On the effective date, British Columbia will:
- a. record the Nisga'a names and historic background information for the geographic features that are set out in Appendix F-2 in the British Columbia Geographic Names data base (BCGNIS); and
 - b. name or rename in the Nisga'a language the geographic features that are set out in Appendix F-3.
97. After the effective date, the Nisga'a Nation may propose that British Columbia name or rename other geographic features with Nisga'a names, and British Columbia will consider those proposals in accordance with applicable provincial laws.

PARKS AND ECOLOGICAL RESERVE

Definitions

98. In paragraphs 99 to 118:
- a. **“Park”** means *Anhluut’ukwsim Laxmihl Angwinga’asanskwhl Nisga’a*, the Nisga’a Memorial Lava Bed Park; and
 - b. **“Ecological Reserve”** means the Gingietl Creek Ecological Reserve, #115.

General

99. Subject to this Agreement, British Columbia’s authority and responsibilities in respect of the Park and the Ecological Reserve will continue.
100. Subject to paragraph 101, Nisga’a citizens have the right to traditional uses of the lands and resources within the Park and the Ecological Reserve, including domestic resource harvesting, in accordance with this Agreement and in a manner consistent with any management plan agreed to by the Nisga’a Nation and British Columbia.
101. Unless the Nisga’a Nation and British Columbia otherwise agree, British Columbia will not permit commercial resource extraction or other commercial activity within the Park or the Ecological Reserve.
102. The Nisga’a Nation has the right to participate in the planning, management, and development of the Park and the Ecological Reserve in accordance with this Agreement.

Anhluut’ukwsim Laxmihl Angwinga’asanskwhl Nisga’a, Nisga’a Memorial Lava Bed Park

103. Unless the Nisga’a Nation and British Columbia otherwise agree, British Columbia will continue the Park as a Class “A” provincial park or a provincial park with an equivalent classification.
104. On the effective date, the boundaries of the Park are as set out in Appendix G-1.
105. Nisga’a history and culture are, and will be promoted as, the primary cultural features of the Park.
106. In order to facilitate the planning, management, and development of the Park, British Columbia and the Nisga’a Nation will continue the Joint Park Management Committee that was established under the Memorandum of Understanding between the Nisga’a Tribal Council and British Columbia dated April 30, 1992.
107. The Joint Park Management Committee will review and make recommendations to the Minister and Nisga’a Lisims Government in respect of:
- a. the development and periodic revision of the master plan, and all other plans, applicable to or proposed for the Park;
 - b. encumbrances, park use permits, and other interests and authorizations, applicable to or proposed for the Park;
 - c. any business plans, operations budgets, and capital budgets proposed for the Park;

- d. archaeological and other research projects, cultural and interpretive programs, publications, and communications strategies proposed for the Park or the Ecological Reserve;
 - e. planning and management of activities, including development, on Crown land and Nisga'a Lands that could affect the Park;
 - f. issues relating to the management of the Ecological Reserve; and
 - g. issues relating to traditional uses of resources, including cedar trees.
- 108.** The Joint Park Management Committee has no more than six members. The Nisga'a Nation and British Columbia will each appoint no more than three members as their representatives.
- 109.** The Joint Park Management Committee will meet as often as is necessary to carry out its responsibilities, and will establish its procedures.
- 110.** Whenever possible, the Joint Park Management Committee will carry out its responsibilities by consensus. If there is no consensus, the Joint Park Management Committee will submit the recommendations of each Party's representatives.
- 111.** After considering the recommendations of the Joint Park Management Committee made under paragraph 107, the Minister, on a timely basis, will approve or reject in whole or in part the recommendations, other than those in respect of Nisga'a Lands, made by the Joint Park Management Committee or its members, and will provide written reasons for rejecting in whole or in part those recommendations. Any approval or rejection of a recommendation will be consistent with this Agreement.
- 112.** If special circumstances make it impracticable to receive recommendations from the Joint Park Management Committee, the Minister:
- a. may make the decision or take the action that the Minister considers necessary, without receiving recommendations from the Joint Park Management Committee;
 - b. will advise Nisga'a Lisims Government and the Joint Park Management Committee as soon as practicable of that decision or action; and
 - c. will provide Nisga'a Lisims Government and the Joint Park Management Committee with written reasons for that decision or action.
- 113.** British Columbia has the responsibility to fund the Park in accordance with appropriations for parks in British Columbia. British Columbia will provide similar treatment over time to the Park as it generally provides to comparable parks in British Columbia.

Gingietl Creek Ecological Reserve

- 114.** Unless the Nisga'a Nation and British Columbia otherwise agree, British Columbia will continue the Ecological Reserve as an ecological reserve or another equivalent designation.
- 115.** On the effective date, the boundaries of the Ecological Reserve are as set out in Appendix G-2.
- 116.** At the request of the Nisga'a Nation, the Nisga'a Nation and British Columbia will jointly determine whether, and the terms and conditions under which, a road across the Ecological Reserve can be located, constructed, and controlled, in a manner that will have minimal adverse impact on the unique ecological values for which the Ecological Reserve was established.

117. If it is determined under paragraph 116 or 118 that a road across the Ecological Reserve can be constructed, the Nisga'a Nation may construct, operate, and maintain the road as if it were a Nisga'a road that is not within Nisga'a Village Lands, and British Columbia will issue to the Nisga'a Nation an exclusive and perpetual right of way for those purposes, in accordance with the terms and conditions determined under paragraph 116 or 118.
118. The Nisga'a Nation or British Columbia may refer a dispute under paragraph 116 or 117 to be finally determined by arbitration under the Dispute Resolution Chapter.

Other Parks

119. British Columbia will consult with the Nisga'a Nation in respect of planning and management of other provincial parks in the Nass Area.
120. On the effective date, British Columbia will establish, and thereafter continue, Bear Glacier Park as a Class "A" provincial park, or a provincial park with an equivalent classification, with the boundaries set out in Appendix G-3.
121. At the request of any of the Parties, the Parties will negotiate and attempt to reach agreement on the establishment of a marine park in the Nass Area, but, for greater certainty, Canada is not obliged to establish a national park, national park reserve, or a national marine park, or to reach agreement on the establishment of a national park, national park reserve, or a national marine park.

WATER VOLUMES

Nisga'a Water Reservation

122. On the effective date, British Columbia will establish a Nisga'a water reservation, in favour of the Nisga'a Nation, of 300,000 cubic decametres of water per year from:
 - a. the Nass River; and
 - b. other streams wholly or partially within Nisga'a Landsfor domestic, industrial, and agricultural purposes.
123. The Nisga'a water reservation will have priority over all water licences other than:
 - a. water licences issued before March 22, 1996; and
 - b. water licences issued pursuant to an application made before March 22, 1996.
124. The Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen may, with the consent of the Nisga'a Nation, apply to British Columbia for water licences for volumes of flow to be applied against the Nisga'a water reservation.
125. The total volume of flow under water licences to be applied against the Nisga'a water reservation of each stream may not exceed:
 - a. the percentage of the available flow, specified in Schedule C, of each stream set out in that Schedule; or
 - b. 50% of the available flow of any stream not set out in Schedule C.

126. If the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen applies to British Columbia for a water licence for a volume of flow to be applied against the Nisga'a water reservation and:

- a. the Nisga'a Nation has consented to the application;
- b. the application conforms to provincial regulatory requirements;
- c. the application is for a volume of flow that, together with the total volume of flow licenced for that stream under this paragraph, does not exceed the percentage of available flow for that stream referred to in paragraph 125; and
- d. there is a sufficient unlicensed volume of flow in the Nisga'a water reservation

British Columbia will approve the application and issue the water licence. The volume of flow approved in a water licence issued under this paragraph will be deducted from the unlicensed volume of flow in the Nisga'a water reservation.

127. If a water licence issued under paragraph 126 is cancelled, expires, or otherwise terminates, the volume of flow in that licence will be added to the unlicensed volume of flow in the Nisga'a water reservation.

128. A water licence issued under paragraph 126 will not be subject to any rentals, fees, or other charges by British Columbia.

129. If the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen applies to British Columbia for a water licence for a volume of flow from a stream wholly or partially within Nisga'a Lands and:

- a. all of the available flow for that stream referred to in paragraph 125 is licensed under paragraph 126;
- b. the Nisga'a Nation has consented to the application;
- c. the application conforms to provincial regulatory requirements; and
- d. the stream contains a sufficient volume of:
 - i. unrecorded water, and
 - ii. flow to ensure conservation of fish and stream habitats, and to continue navigability, as determined by the Minister in accordance with the provisions of this Agreement

to meet the volume of flow requested in the application

British Columbia will approve the application and issue the water licence. The volume of flow approved in a water licence issued under this paragraph will not be deducted from the unlicensed volume of flow in the Nisga'a water reservation.

130. British Columbia will consult with the Nisga'a Nation about all applications for water licences in respect of streams wholly or partially within Nisga'a Lands.

- 131.** If a person other than the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen has a water licence and reasonably requires access across, or an interest in, Nisga'a Lands for the construction, maintenance, improvement, or operation of works authorized under the licence, Nisga'a Government may not unreasonably withhold consent to, and will take reasonable steps to ensure, that access or the granting of that interest, if:

 - a. the licence holder offers fair compensation to the owner of the estate or interest affected; and
 - b. the licence holder and the owner of the estate or interest affected agree on the terms of the access or the interest, including the location, size, duration, and nature of the interest.
- 132.** If the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen has a water licence approved under paragraph 126 or 129 and reasonably requires access across, or an interest in, Crown land for the construction, maintenance, improvement, or operation of works authorized under the licence, British Columbia will grant the access or interest on reasonable terms.
- 133.** British Columbia or the Nisga'a Nation may refer a dispute arising under paragraph 131 or 132 to be finally determined by arbitration under the Dispute Resolution Chapter.
- 134.** If the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen has a water licence approved under paragraph 126 or 129 and reasonably requires access across, or an interest in, lands set out in Appendix B-2 for the construction, maintenance, improvement, or operation of works authorized under the licence, the Nisga'a Nation, Nisga'a Village, Nisga'a Corporation, or Nisga'a citizen may acquire the access or interest in accordance with provincial laws of general application.
- 135.** The Nisga'a Nation may nominate a water bailiff under the *Water Act* for:

 - a. that portion of the Nass River within Nisga'a Lands; and
 - b. other streams wholly or partially within Nisga'a Lands

and British Columbia will not unreasonably withhold appointment of that nominee.
- 136.** Notwithstanding paragraph 128, if British Columbia appoints a water bailiff nominated by the Nisga'a Nation under paragraph 135, the water bailiff will be compensated in accordance with provincial laws of general application.
- 137.** This Agreement is not intended to grant the Nisga'a Nation any property in water.
- 138.** This Agreement does not preclude the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen from selling water in accordance with federal and provincial laws.
- 139.** The Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, or a Nisga'a citizen may apply in accordance with provincial laws of general application for a water licence in respect of a stream wholly outside Nisga'a Lands.

Nisga'a Hydro Power Reservation

- 140.** In addition to the Nisga'a water reservation established under paragraph 122, British Columbia will establish a water reservation in favour of the Nisga'a Nation, for 20 years after the effective date, of all of the unrecorded waters of all streams, other than the Nass River, that are wholly or partially within Nisga'a Lands (the "Nisga'a Hydro Power Reservation"), to enable the Nisga'a Nation to investigate the suitability of those streams for hydro power purposes, including related storage purposes.
- 141.** If the Nisga'a Nation applies for a water reservation for hydro power purposes on a stream subject to the Nisga'a Hydro Power Reservation, British Columbia will, after considering the results of any investigations referred to in paragraph 140, establish a water reservation for hydro power purposes and any related storage purposes on the unrecorded waters of that stream if it considers that stream to be suitable for hydro power purposes.
- 142.** If British Columbia establishes a water reservation for a stream under paragraph 141, the Nisga'a Hydro Power Reservation will terminate in respect of that stream.
- 143.** If, after British Columbia establishes a water reservation under paragraph 141, the Nisga'a Nation applies for a water licence for hydro power purposes and any related storage purposes for a volume of flow from the stream subject to that water reservation, British Columbia will grant the water licence if the proposed hydro power project conforms to federal and provincial regulatory requirements.
- 144.** If British Columbia issues a water licence under paragraph 143 for a stream, the water reservation established under paragraph 141 will terminate in respect of that stream.

SCHEDULE A – BOUNDARY RESOLUTION

1. Within a reasonable time after a Party provides the other Parties with a written proposal to clarify the location of a part of a boundary of Nisga'a Lands, the Parties will negotiate and attempt to reach agreement on whether, how, and at whose cost to undertake the proposed clarification of boundary location.
2. Unless the Parties otherwise agree, the cost as between the Parties of any field survey undertaken to clarify the location of a part of a boundary of Nisga'a Lands will be borne by:
 - a. the Party authorizing an activity causing the need for clarification of the boundary location; or
 - b. the Party proposing clarification of the boundary location, if no Party has authorized an activity causing the need for clarification of the boundary location.
3. If the Parties do not agree on whether, how, or at whose cost to undertake the proposed boundary clarification, any Party may refer the matter to be finally determined by arbitration under the Dispute Resolution Chapter.
4. If the Parties agree to undertake the field survey of a part of a boundary of Nisga'a Lands, or if an arbitrator orders the field survey of a part of a boundary of Nisga'a Lands, the Parties will provide notice to the Surveyor General of British Columbia of the agreement of the Parties or the order of the arbitrator.
5. Upon receiving notice under paragraph 4, the Surveyor General will prepare and submit to the Parties for approval provisional survey instructions, based on prevailing provincial survey standards, for the part of the boundary of Nisga'a Lands.
6. After the Parties have approved the survey instructions for the part of the boundary of Nisga'a Lands, the Surveyor General will issue the approved survey instructions to the British Columbia Land Surveyor designated by the Party responsible for the costs of the survey or, where more than one Party is responsible, to the British Columbia Land Surveyor designated by those Parties. The Party or Parties responsible for the costs of the survey will be determined in accordance with paragraphs 2 and 3.
7. After the designated British Columbia Land Surveyor has, in accordance with the approved survey instructions, completed the field survey and submitted the required survey plans to the Surveyor General and the Parties, Appendix A will be amended to reflect the survey.

SCHEDULE B – LIST OF SITES

Sites On Nisga'a Lands That Are Not On Former Nisga'a Indian Reserves

Site Name and Use	General Location
Forestry Activities	
Lavender Logging Camp	Located in general vicinity of Taylor Creek on Nass Kwinatahl FSR 7876-04 103P.046
Ksedin Logging Camp SUP 16189	Northern side of Nisga'a Highway at 10km from Ginlulak 103P.013
Ginlulak Log Sort and Dump SUP 9764	On Ishkheenickh Road at 2.5km from Nisga'a Highway turnoff 103P.003
Kwinatahl Camp Sim Gan Logging Camp and Dryland Sort SUP 19897 and 22417	Near Kwinatahl River on Ksadin to Alice Arm Road 103P.035
Tower Logging Camp	In vicinity of bridge crossing of Ishkheenickh River 103I.093
Monkley Log Dump	In vicinity of northwestern corner of former IR12, Lacktesk 103I.092
Upper and Lower Clark Log Sort and Dump	In vicinity of eastern boundary of former IR9 and Ishkheenickh Road RO7816 103P.003
Kinskuch Log Sort and Dump	In vicinity of former IR53, southern shore of Nass River opposite mouth of Kinskuch River 103P.056
Log Sort and Dump	On eastern side of Nass River where road comes down to river west of Cassiar DL3061 103P.025
Omar Island Log Sort	Nass River in vicinity of former IR29A 103P.014
River Shack Fuelling Area	In vicinity of southwestern corner of former IR29 Zaulzap, near Nisga'a Highway 103P.014
Water Gauge and Stoney Point General Work Area	On northern side of Nisga'a Highway at 18km from Ginlulak 103P.014
14k General Work Area	In vicinity of Nisga'a Highway at 14km from Ginlulak

	103P.014
Dragon Lake Forestry Camp	In area of campground 103P.036
Sort Yard	On both sides of Nass - Kinskuch FSR near junction with Nass - Kwinatahl Road 103P.046

Landfills

New Aiyansh Landfill	At end of Dump Road 103P.025
Ksedin Landfill	Southern side of Nisga'a Highway, 12km from Ginlulak 103P.014

Highway Activities

MOTH Gravel Pits	Listed in Schedule A, Roads and Rights of Way Chapter
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**Sites On Nisga'a Fee Simple Lands That Are Not On
Former Nisga'a Indian Reserves**

Site Name and Use	General Location
Echo Cove Logging Camp	Iceberg Bay 103I.091

SCHEDULE C – WATER VOLUMES

Streams Partially Within Nisga'a Lands for Which a Percentage of Available Water Flow Has Been Specified

Stream Name	Percentage of Available Flow	B.C.G.S. Map References
Scowban Creek (unofficial name)	50%	103P.001
Ishkheenickh River	26%	103I.062, 103I.063, 103I.072, 103I.073, 103I.074, 103I.082, 103I.083, 103I.084, 103I.092, 103I.093 and 103I.094
Ksemamaith Creek	29%	103P.003, 103P.004, 103P.013 and 103P.014
Kshadin Creek	10%	103P.044, 103P.045, 103P.046, 103P.054 and 103P.055
Tseax River	10%	103I.094, 103I.095, 103I.096, 103P.004, 103P.005, 103P.006, 103P.014, 103P.015, 103P.016, 103P.017, 103P.025 and 103P.026
Kwinatahl River	10%	103P.033, 103P.034, 103P.035, 103P.043, 103P.044 and 103P.045
Tchitin River	10%	103P.044, 103P.045, 103P.046, 103P.054, 103P.055, 103P.056, 103P.064 and 103P.065
Ksedin Creek	12%	103I.084, 103I.085, 103I.093, 103I.094, 103I.095, 103P.003 and 103P.004