

**Snuneymuxw First Nation**  
**and**  
**British Columbia**  
**Land Transfer Agreement**



## LAND TRANSFER AGREEMENT

This Land Transfer Agreement is dated for reference September 20, 2020

### **BETWEEN:**

**Her Majesty the Queen in right of the Province of British Columbia**, as represented by the Minister of Indigenous Relations and Reconciliation and the Minister of Forests, Lands and Natural Resource Operations and Rural Development

(the "Province")

### **AND:**

**Snuneymuxw First Nation**, on behalf of itself and its Members, as represented by the Chief and Council

(the "Snuneymuxw First Nation")

(collectively referred to as the "Parties" and individually referred to as a "Party")

### **WHEREAS:**

- A. Concurrently with this Land Transfer Agreement, the Parties have entered into a Reconciliation Implementation Framework Agreement (the "Framework Agreement") which contemplates the transfer by the Province to the Snuneymuxw First Nation of certain provincial Crown lands;
- B. In accordance with the Framework Agreement, the Parties wish to set out the terms and conditions applicable to the transfer of those provincial Crown lands; and
- C. This Land Transfer Agreement is the "Land Transfer Agreement" referred to in the Framework Agreement;

**NOW THEREFORE** the Parties agree as follows:

## ARTICLE 1 - INTERPRETATION

1.1 **Definitions.** In this Land Transfer Agreement:

**“Approved Professional”** means a person who is named on a rooster established under section 42(2) of the *Environmental Management Act*, S.B.C. 2003, c. 53 to be agreed upon by the Parties;

**“Chief”** means, in respect of the Snuneymuxw First Nation, “chief” within the meaning of the *Indian Act*;

**“Closing”** means the completion of the transfer of the Lands by the Province to a Designated Company on the Closing Date;

**“Closing Date”** means the date or dates on which the documents for the transfer of the Lands to a Designated Company are uploaded to the electronic meet and are filed in the Land Title Office, which the parties agree will be approximately 12 months after the satisfaction or waiver of the conditions precedent set out in paragraphs 5.2 and 5.4;

**“Council”** and **“Band Council”** mean, in respect of the Snuneymuxw First Nation, the elected “council” within the meaning of the *Indian Act*;

**“Crown Corridor”** means a highway (as defined in the *Transportation Act*) and the area of any other road, right-of-way, easement or licence over Crown land that is used for transportation or public utility purposes and that, where the Lands are not surveyed or have to be re-surveyed, is identified for illustrative purposes in Schedule “1”;

**“Crown Grant”** means a Crown grant as defined in the *Land Act*;

**“Designated Company”** means a company incorporated under federal or provincial law, all the shares of which are wholly owned directly or indirectly, legally and beneficially, by the Snuneymuxw First Nation and which the Snuneymuxw First Nation has designated to take fee simple title to any of the Lands;

**“Effective Date”** means the date on which this Land Transfer Agreement is executed by the Parties;

**“Estuary Litigation”** has the same meaning as in the Framework Agreement;

**“Framework Agreement”** means the agreement entered into between the Parties concurrently with this Land Transfer Agreement referred to in recital A;

**“Governmental Action”** means all processes, decisions, approvals, authorizations, permits, licences, approvals, Crown land dispositions, Land Transfer Agreements and other actions whatsoever issued, granted, entered into or otherwise taken by a Provincial Official either before or after the date of this Land Transfer Agreement;

**“Group “2” Log Handling Tenures”** has the same meaning as in the Framework Agreement;

**“Group “3” Log Handling Tenures”** has the same meaning as in the Framework Agreement;

**“GST”** means the goods and services tax imposed under the *Excise Tax Act* (Canada) or equivalent tax imposed under federal or provincial law;

**“Interim Injunction”** has the same meaning as in the Framework Agreement;

**“Lands”** means the Mount Benson Parcel or the Mount McKay Parcel, or both the Mount Benson Parcel and the Mount McKay Parcel;

**“Member”** means any person who is a “member of the band”, as that phrase is defined in the *Indian Act*, of the Snuneymuxw First Nation;

**“Mount Benson Parcel”** means those lands with an area of approximately 1003 hectares as shown for illustrative purposes in Part 1 of Schedule “1” and, following completion and approval of the survey or re-survey of those lands, the area legally described in the survey, which, for greater certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Crown Corridor, or any submerged lands;

**“Mount McKay Parcel”** means those lands with an area of approximately 2091 hectares as shown for illustrative purposes in Part 2 of Schedule “1” and, following completion and approval of the survey or re-survey of those lands, the area legally described in the survey, which, for greater certainty, will not include any land below the natural boundary (as defined in the *Land Act*) and the area of any Crown Corridor, or any submerged lands;

**“Permitted Encumbrances”** means the exceptions, reservations, liens, charges, and interests described in Schedule “2” for each of the Lands or any other Permitted Encumbrances agreed to by the Parties;

**“Proceeding”** includes any claim, demand, cause of action, action, suit or other proceeding, including any expenses, legal fees, damages, costs or other liability, incurred, directly or indirectly, in relation thereto;

**“Provincial Official”** means:

- a) the Province or any minister, public official, employee, contractor, agent or representative of the Province;

- b) any government corporation or any director, officer, employee, contractor, agent or representative of a government corporation; or
- c) any person acting as a decision maker under any enactment of the Province;

**“PST”** means the sales tax imposed under the *Provincial Sales Tax Act* or equivalent tax imposed under federal or provincial law;

**“Reconciliation Agreement”** has the same meaning as in the Framework Agreement;

**“Subsequent Estuary Tenures”** has the same meaning as in the Framework Agreement;

**“Subsequent Log Handing Tenures”** has the same meaning as in the Framework Agreement;

**“Reservation”** means the exceptions and reservations contained in the *Land Act* and all subsisting exceptions and reservations of interests, rights and privileges and title contained in any previous grant of land;

**“Snuneymuxw First Nation”** means the “band”, as that term is defined in the *Indian Act*, named the “Snuneymuxw First Nation” and includes all Members;

**Snuneymuxw Section 35 Rights”** means Snuneymuxw rights under the Treaty of 1854 and any Aboriginal rights, including title, recognized and affirmed under section 35 of the *Constitution Act, 1982*;

**“South forks/Haslam Elk Population Unit #142 Area”** means the area depicted on the map attached to this Land Transfer Agreement as Schedule “10”;

**“Spruston Staging Area Recreation Site”** means those lands with an area of approximately 1.33 hectares as shown for illustrative purposes on Schedule “8”;

**“Traditional Territory”** has the same meaning as in the Framework Agreement;

**“Trans-Canada Trail”** means the existing Trans-Canada Trail system within the Mount McKay Parcel as shown approximately in Schedule “7”; and

**“Ungulate Winter Range Areas”** means those lands comprising approximately 300 hectares within the Mount McKay Parcel to be identified and agreed to by the Parties in accordance with the Framework Agreement where no logging will be permitted in order to protect ungulate winter range.

1.2 **Interpretation.** For purposes of this Land Transfer Agreement:

- a) "this Land Transfer Agreement" means this Land Transfer Agreement, and includes the Schedules and any agreement, document or instrument executed or delivered pursuant to this Land Transfer Agreement;
- b) "including" means "including, but not limited to" and "includes" means "includes, but not limited to";
- c) the recitals and headings are for convenience only, do not form a part of this Land Transfer Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Land Transfer Agreement;
- d) words importing gender include the masculine, feminine or neuter gender and words in the singular include the plural and vice versa;
- e) any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity;
- f) a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it;
- g) any reference to the delivery on Closing of an agreement, document or instrument "in the form" of an attached schedule means an agreement, document or instrument substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Parties;
- h) each and every acknowledgement, agreement, release or other covenant given, and action to be taken, by the Snuneymuxw First Nation under this Land Transfer Agreement means the Snuneymuxw First Nation acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by the Snuneymuxw First Nation on its own behalf, and for and on behalf of its Members;
- i) there will be no presumption that doubtful expressions, terms or provisions in this Land Transfer Agreement are to be resolved in favour of any Party;
- j) capitalized terms not otherwise defined in this Land Transfer Agreement have the same meaning as given to them in the Reconciliation Agreement; and
- k) the Land Transfer Agreement prevails to the extent of any inconsistency or conflict between this Land Transfer Agreement and the Reconciliation Agreement for the purposes of the transfers set out herein.

1.3 **Schedules.** The following are the Schedules to this Land Transfer Agreement:

- Schedule "1" – Maps of Lands for Illustrative Purposes
  - Part 1 – Maps of Mount Benson Parcel
  - Part 2 – Map of Mount McKay Parcel
- Schedule "2" – Permitted Encumbrances
  - Part 1 – Permitted Encumbrance Applicable to All Lands
  - Part 2 – Permitted Encumbrance Applicable to Mount Benson Parcel
  - Part 3 – Permitted Encumbrance Applicable to Mount McKay Parcel
- Schedule "3" – Form of Permitted Encumbrances
- Schedule "4" – Designated Company Land Transfer Agreement
- Schedule "5" – GST Certificate
- Schedule "6" – Consent of Snuneymuxw First Nation in relation to PTT Matters
- Schedule "7" – Map of Trans-Canada Trail
- Schedule "8" – Map of Spruston Staging Area Recreation Site
- Schedule "9" – Private Road Easement Form
- Schedule "10" - South forks/Haslam Elk Population Unit #142 Area

## **ARTICLE 2 – RECONCILIATION AND PURPOSE**

2.1 **Reconciliation.** The Snuneymuxw First Nation acknowledges and agrees that the Lands transferred to the Snuneymuxw First Nation in accordance with this Land Transfer Agreement constitute a contribution by the Province towards the reconciliation of the Province's and the Snuneymuxw First Nation's interests and the settlement of the Snuneymuxw Section 35 Rights within the Traditional Territory.

- 2.2 **Purpose.** The purpose of this Land Transfer Agreement is to implement the commitments set out in the Framework Agreement regarding the transfer of the Lands by setting out the terms and conditions governing the transfer of the Lands.

### **ARTICLE 3 - COMING INTO EFFECT AND TERMINATION**

- 3.1 **Coming into Effect.** This Land Transfer Agreement comes into effect when the Parties have executed it and, where it has been executed in counterparts, on the date the last Party signing the Land Transfer Agreement executes it.
- 3.2 **Termination.** This Land Transfer Agreement terminates if the Framework Agreement is terminated in accordance with its terms.
- 3.3 **Survival of Lands Conditions.** Despite 3.2, where any of the Lands are transferred under this Land Transfer Agreement, Articles 7, 10 and 12 will survive the completion of the transfers or the termination of this Land Transfer Agreement and, for greater certainty, will continue to apply to the Lands.

### **ARTICLE 4 - REPRESENTATIONS AND WARRANTIES**

- 4.1 **Snuneymuxw First Nation Representations.** The Snuneymuxw First Nation represents and warrants to the Province, with the intent and understanding that they will be relied on by the Province in entering into this Land Transfer Agreement, that:
- a) it enters into this Land Transfer Agreement for, and on behalf of, its Members;
  - b) it, as represented by its Chief and Council, has the legal power, capacity and authority to enter into and to carry out its obligations under this Land Transfer Agreement on behalf of the Snuneymuxw First Nation and its Members;
  - c) any company designated by the Snuneymuxw First Nation for the purposes of this Land Transfer Agreement will be a Designated Company;
  - d) any Designated Company has the legal power, capacity and authority to enter into and to carry out its obligations under each Land Transfer Agreement and transaction to which it is a party in accordance with this Land Transfer Agreement; and

- e) the Province has fulfilled its obligation to consult with Snuneymuxw First Nation in relation to the transfer of the Lands to a Designated Company and the Permitted Encumbrances on the Lands.

4.2 **Provincial Representations.** The Province represents and warrants to the Snuneymuxw First Nation, with the intent and understanding that they will be relied on by the Snuneymuxw First Nation in entering into this Land Transfer Agreement, that:

- a) it has the legal power, capacity and authority to enter into this Land Transfer Agreement; and
- b) on satisfaction or waiver of the conditions precedent under 5.2, it will have the legal power, capacity and authority to transfer the fee simple title to the Lands to a Designated Company as contemplated by this Land Transfer Agreement.

#### **ARTICLE 5 – CONDITIONS PRECEDENT**

5.1 **Band Council Resolution.** Prior to the execution of this Land Transfer Agreement, the Snuneymuxw First Nation will deliver to the Province a resolution made by its elected Council authorizing the Snuneymuxw First Nation's representatives named in the resolution to execute this Land Transfer Agreement on behalf of the Snuneymuxw First Nation.

5.2 **Conditions Precedent to Land Transfers.** The obligation of the Province to transfer any of the Lands to the Snuneymuxw First Nation under this Land Transfer Agreement is, with respect to each parcel of Lands, subject to:

- a) the Treasury Board and Cabinet having approved the Framework Agreement and this Land Transfer Agreement;
- b) the Parties having completed engagement on the terms and conditions of the Subsequent Estuary Tenures that is consistent with the recognition of Snuneymuxw Section 35 Rights in accordance with section 4 (b) (i) of the Framework Agreement and the Snuneymuxw First Nation confirming to the Province, in form and substance acceptable to the Province acting reasonably, that it has been adequately consulted and accommodated and consents to the issuance of the Subsequent Estuary Tenures;
- c) the Parties having completed engagement on applications to renew or replace the Group "2" Log Handling Tenures, in a manner that is consistent with a reconciliation approach and recognition of Snuneymuxw Section 35 Rights in accordance with section 4 (b) (ii) of the Framework Agreement, and the Snuneymuxw First Nation confirming to the Province,

in form and substance acceptable to the Province acting reasonably that it has been adequately consulted and accommodated and consents to the issuance of the Subsequent Log Handling Tenures;

- d) the Parties having finalized new arrangements and processes for engagement on applications to renew the Group “3” Log Handling Tenures consistent with a reconciliation approach and the recognition of Snuneymuxw Section 35 Rights in accordance with section 4(b)(iii) of the Framework Agreement;
- f) the Parties having reached an agreement in accordance with section 4(b)(v) of the Framework Agreement and a consent dismissal to that effect, in a form and content acceptable to legal counsel for the Parties, having been filed in respect of the Estuary Litigation and the Interim Injunction having been lifted or terminated accordingly;
- g) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable the Province in any fiscal year, when any expenditure in respect of an obligation may be required, to make that expenditure;
- h) Snuneymuxw First Nation being in compliance with its material obligations under the Framework Agreement and this Land Transfer Agreement;
- i) the representations and warranties of the Snuneymuxw First Nation under this Land Transfer Agreement and the Framework Agreement being true and correct on and up to the applicable Closing Date;
- j) in respect of all previously transferred Lands, all obligations of the Snuneymuxw First Nation and the Designated Company having been fully performed in accordance with this Land Transfer Agreement;
- k) the Province being satisfied that, with respect to each transfer of the Lands, it has fulfilled any consultation obligations it may have with respect to assertions of Aboriginal rights to the Lands by First Nations other than the Snuneymuxw First Nation;
- l) the Province and the Snuneymuxw First Nation reaching agreement on:
  - i. the location and size of Crown Corridors in accordance with section 8.3 and updating and amending Schedule “1” accordingly;
  - ii. the Permitted Encumbrances in accordance with section 8.2 and updating and amending Schedule “2” accordingly;

- iii. measures to address required third party access across the Lands to reach any existing privately held interests in land and amending Schedule "2" accordingly;
  - iv. measures to address ongoing public access for recreational purposes within the Lands and amending Schedule "2" accordingly; and
  - v. measures to address access required by British Columbia Timber Sales ("BCTS") in order for BCTS to meet any ongoing silviculture obligations existing after the Closing Date.
- m) the Province having received a notice from Snuneymuxw First Nation in accordance with section 7.9 confirming that it has reviewed the environmental condition of the applicable Lands and that it wishes to proceed with the transfer of those lands in accordance with this Land Transfer Agreement;
  - n) legal surveys for the Lands having been completed on or before the applicable Closing Date;
  - o) any and all necessary subdivision approvals having been obtained for the applicable Lands; and
  - p) the minister responsible having authorized the disposition of the Lands in accordance with Provincial Law.

**5.3 Satisfaction of Conditions Precedent.** The Province will not be required to satisfy the conditions precedent under paragraph 5.2 and 5.4 until such time as the Snuneymuxw First Nation has notified the Province in writing that it is prepared to proceed with the transfer of the Lands under this Land Transfer Agreement.

**5.4 Conditions Precedent to Transfer of Mount McKay Parcel.** In addition to the conditions precedent set out in section 5.2, the obligation of the Province to transfer the Mount McKay Parcel under this Land Transfer Agreement is subject to:

- a) the Parties reaching an agreement on the Ungulate Winter Range Areas and on measures to address that shared interest; being registered on title to the Mount McKay Parcel on the Closing Date under section 219 of the *Land Title Act* in order of priority as agreed to by the Province;
- b) the Parties reaching an agreement on the terms and conditions of a statutory-right-of way providing ongoing public access and use for recreational purposes of the Spruston Staging Area Recreation Site and for the use,

maintenance and upgrading of the related facilities and infrastructure. The Parties agree that the statutory right-of-way will enable the Spruston Staging Recreation Site to be designated as a recreation site and or trail under applicable legislation;

- c) the Snuneymuxw First Nation reaching an agreement with the Regional District of Nanaimo on the terms and conditions of a statutory-right-of way providing ongoing public access to the Trans-Canada Trail for recreational purposes and for the use, maintenance and upgrading of the related facilities and infrastructure.
- 5.5 **Waiver of Conditions Precedent.** The conditions precedent set out in 5.2 and 5.4 are for the sole benefit of the Province and may be waived by the Province on written notice to the Snuneymuxw First Nation.
- 5.6 **Engagement on Estuary and Log Handling Tenures.** For certainty, the Province acknowledges that engagement on the Subsequent Estuary Tenures and the Subsequent Log Handling Tenures and attempting to reach the agreements contemplated under section 5.2 b) and c) will involve a consideration of the impact of any proposed renewal or replacement tenure on Snuneymuxw Section 35 Rights and may involve amendments to the existing terms and conditions of those tenures to mitigate any such impacts.
- 5.7 **Alternate Ungulate Habitat Protection Measures.** If the Parties reach an agreement on alternate measures to preserve and protect ungulate habitat within the South forks/Haslam Elk Population Unit #142 Area, the Parties will amend or replace the restrictive covenant registered against title to the Mount McKay Parcel contemplated under section 5.4(a) accordingly.

## ARTICLE 6 – TRANSFER OF LANDS

- 6.1 **Pre-Closing Deliveries by Snuneymuxw First Nation.** The Snuneymuxw First Nation will notify the Province when the Designated Company is ready to proceed with the transfer of the Lands.
- 6.2 **Transfer by Province.** As soon as practicable after the Effective Date and the satisfaction or waiver of the conditions precedent under 5.1, 5.2 and 5.4, and subject to the Reservations and Permitted Encumbrances and the terms of this Land Transfer Agreement, the Province will provide the Designated Company with a Crown Grant transferring the indefeasible title to the Lands.
- 6.3 **Closing Deliveries by Snuneymuxw First Nation.** Not less than 14 days before the Closing Date, or such other date as may be agreed to by the Parties, the Snuneymuxw First Nation will execute and deliver, or cause to be executed and delivered, or deliver, as the case may be, to the Province:

- a) a restrictive covenant granted by the Designated Company in the form attached as Schedule 4 in relation to the applicable Lands;
- b) a Land Transfer Agreement executed by the Designated Company in the form attached as Schedule 5 in relation to the applicable Lands;
- c) a certificate signed by an officer of the Designated Company in the form attached as Schedule 6 confirming the Designated Company's GST registration number and registered status;
- d) a letter of undertaking signed by the Snuneymuxw First Nation's legal counsel undertaking, among other things, that the restrictive covenant (Schedule 4) will be filed concurrently with the Crown Grant and that the Province will be provided with a signed copy of the Designated Company Land Transfer Agreement (Schedule 5) and the GST Certificate (Schedule 6);
- e) a signed consent of Snuneymuxw First Nation in relation to Property Transfer Tax form executed by the Snuneymuxw First Nation (Schedule 7); and
- f) all such other documents that may be necessary or advisable for the Snuneymuxw First Nation or a Designated Company to provide to complete the transactions contemplated under this Land Transfer Agreement.

**6.4 Registration of Lands.** All Lands transferred under 6.2 will be registered in the Land Title Office.

**6.5 Closing Procedure.** The legal counsel for the Snuneymuxw First Nation and the Province will confirm in writing the manner in which the documents necessary or advisable to transfer and register the Lands will be produced, managed, exchanged and delivered. Without limiting the generality of the foregoing, legal counsel responsible for registering the Lands will:

- a) provide a letter of undertaking to legal counsel for the other Party;
- b) use the Land Title and Survey Authority electronic filing system; and
- c) provide all documents filed under 6.5(b) to legal counsel for the other Party.

## ARTICLE 7 – CONDITION OF LANDS

- 7.1 **Lands “As Is”.** The Snuneymuxw First Nation acknowledges and agrees that any of the Lands acquired by a Designated Company under this Land Transfer Agreement are acquired “as is”.
- 7.2 **Viability of Lands.** The Snuneymuxw First Nation acknowledges and agrees that the Province has not given any representation or warranty concerning:
- a) physical access to the Lands including, without limitation, overland access;
  - b) the economic feasibility of the development of the Lands;
  - c) the fitness of the Lands for any particular use, including the intended use of it by the Snuneymuxw First Nation or by a Designated Company; and
  - d) the provisions of any enactments or bylaws of any governmental body which relate to the development, use and occupation of the Lands.
- 7.3 **Environmental Condition.** The Snuneymuxw First Nation:
- a) waives the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* for any of the Lands; and
  - b) acknowledges and agrees that the Province has not given any representation or warranty concerning the environmental condition of the Lands (including surface water and groundwater), including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Lands or on or under any surrounding or neighbouring land or the current and past uses of the Land or any surrounding or neighbouring land.
- 7.4 **Environmental Conditions.** The Snuneymuxw First Nation will from and after the Closing:
- a) assume all environmental liabilities relating to the Lands including all liability for the clean-up of any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Lands or migrating from the Lands (including surface water and groundwater);
  - b) release the Provincial Officials from and against any and all Proceedings with respect to any and all environmental liabilities relating to the Lands described in 7.4(a); and

- c) indemnify and save harmless the Provincial Officials from and against any and all Proceedings after the Closing arising out of or in connection with any and all environmental liabilities relating to the Lands described in 7.4(a).

**7.5 Effect of 7.4.** For greater certainty:

- a) 7.4 applies where:
  - i. any contamination relating to the Lands, whether disclosed or undisclosed, known or unknown, created or existing, arose before the Closing Date or arose before and continues after the Closing Date; and
  - ii. any environmental liability relating to the costs of remediation of the Lands are incurred after the Closing Date and relate to contamination that arose before the Closing Date or arose before and continues after the Closing Date; and
- b) 7.4 does not apply where any environmental liability relating to the Lands results from the acts or omissions of the Province after the Closing Date.

**7.6 Environmental Condition of the Lands.** Snuneymuxw First Nation acknowledges that the Lands may have been used for forestry, coal mining or other industrial purposes and as a result may have toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under them.

**7.7 Pre-Closing Preliminary Site Investigations – Stage 1.** As soon as practicable after the Effective Date the Province will, at its cost, obtain and provide the Snuneymuxw First Nation with a stage 1 preliminary site investigation report in respect of the Lands prepared by an Approved Professional.

**7.8 Pre-Closing Preliminary Site Investigations – Stage 2.** Where the stage 1 preliminary site investigation report obtained by the Province in accordance with section 7.7, recommends that a stage 2 preliminary site investigation report be prepared in respect of the applicable Lands, the Province will, at its cost, obtain and provide the Snuneymuxw First Nation with a stage 2 preliminary site investigation report prepared by an Approved Professional.

**7.9 Direction to Proceed Following Preliminary Site Investigations.** Within [90] days of receiving the preliminary site investigation reports under section 7.7 and, if applicable, section 7.8, Snuneymuxw First Nation will notify the Province whether it is prepared to accept the environmental condition of the applicable Lands and proceed with the transfer of the Lands in accordance with this Land Transfer Agreement.

- 7.10 **Direction Not to Proceed.** If, after reviewing the applicable preliminary site investigation reports, Snuneymuxw First Nation determines that it is not prepared to proceed with the transfer of the Lands, the Parties will discuss obtaining a detailed site investigation from an Approved Professional regarding the applicable Lands.
- 7.11 **Detailed Site Investigation Report.** Following discussions under section 7.10, subject to obtaining required financial approvals, the Province may elect to obtain a detailed site investigation report regarding the applicable Lands and, if so, will provide that report to Snuneymuxw First Nation.
- 7.12 **Remediation Plan Discussions.** Following receipt of a detailed site investigation report under section 7.11, the Parties will discuss obtaining a remediation plan from an Approved Professional regarding remediation of the applicable Lands to an industrial land use standard under the *Environmental Management Act*, S.B.C. 2003, c. 53 and regulations thereunder.
- 7.13 **Remediation Plan Request.** Following discussions under section 7.12, subject to obtaining required financial approvals, the Province may obtain a remediation plan from an Approved Professional regarding the applicable Lands to enable the Lands to be used for industrial purposes and, if so, will provide that plan to Snuneymuxw First Nation.
- 7.14 **Remediation Plan Review.** Following receipt and discussion of a remediation plan under section 7.13, the Parties will determine whether they wish to proceed to remediate the applicable Lands in accordance with the remediation plan and, if so, the Province may, subject to obtaining all required internal approvals, including Treasury Board and Cabinet approval, elect to remediate the applicable Lands to an industrial land use standard in accordance with the agreed to remediation plan.
- 7.15 **Transfer after Remediation.** If the Province receives required approvals and elects to remediate the applicable Lands to an industrial land use standard, the Lands will be transferred to Snuneymuxw First Nation in accordance with this Agreement.
- 7.16 For certainty, notwithstanding the provision of any preliminary site assessment, detailed site assessment, remediation plan or the remediation of any of the Lands under sections 7.7 to 7.14, sections 7.1 to 7.6 of this Land Transfer Agreement apply to any of the Lands that may be transferred to a Designated Company.

## **ARTICLE 8 – RESERVATIONS, ENCUMBRANCES AND CROWN CORRIDORS**

- 8.1 **Permitted Encumbrances.** The Snuneymuxw First Nation accepts fee simple title to each Parcel subject to the Permitted Encumbrances and covenants not to do, or allow to be done, anything that would interfere with any rights under any of the Permitted Encumbrances or that would otherwise result in any claim against the Province by anyone claiming by, through or under a Permitted Encumbrance.
- 8.2 **Finalization of Permitted Encumbrances.** The Parties acknowledge that as of the Effective Date the land status review of the Parcels required to identify all existing reservations, exceptions, liens, charges and interests has not been completed and that between the Effective Date and the transfer of a Parcel to a Designated Company, the Parties will review and amend Schedule 2 (Permitted Encumbrances) in respect of that Parcel accordingly.
- 8.3 **Finalization of Crown Corridors.** The Parties acknowledge that as of the Effective Date:
- a) the location and size of Crown Corridors required to be excluded from the Parcels; and
  - b) the location, size and terms and conditions of easements or statutory rights of way required to address transportation routes, including public trails, railway routes, electrical and natural gas transmission infrastructure and water, sewage or other utility corridor requirements on or through the Parcels to service the Parcels or lands outside the Parcels;
- have not been finalized, and agree that between the Effective Date and the transfer of each Parcel to a Designated Company they will review and amend Schedule 1 in respect of that Parcel accordingly.
- 8.4 **Amendments Form Part of Land Transfer Agreement.** Where any amendments are made under 8.3, Schedule "2" and Schedule "3" will be revised and initialed. The Parties acknowledge and agree that, notwithstanding any amendments under 8.3 being made after the execution of this Land Transfer Agreement, the revised and initialed Schedule will form part of this Land Transfer Agreement.
- 8.5 **Registration of Unregistered Interests.** Snuneymuxw First Nation will consent, or will cause the Designated Company to consent, to the registration of any interests identified in Schedule "2" which are not registered against the applicable Lands in the Land Title Office on or after the Closing Date.
- 8.6 **Indemnity for Charges.** Snuneymuxw First Nation will indemnify and save harmless the Province and all Public Officials from and against any and all Proceedings arising out of or in connection with Snuneymuxw First Nation's or a Designated Company's acts or omissions in connection with any Permitted Encumbrance.

- 8.7 **BC Hydro Right of Ways.** The Snuneymuxw First Nation will work with BC Hydro to identify any BC Hydro right of ways and works on the Lands and will endeavor to reach an agreement with BC Hydro on BC Hydro's continued access to and use of the Lands.

## ARTICLE 9 – TRANSACTION COSTS

- 9.1 **Property Transfer Tax and Other Costs.** The Province is responsible for the following costs in connection with the transfer of the Lands:
- a) the cost associated with ensuring the Lands have a survey which meets the requirements for registration in the Land Title Office;
  - b) any costs or fees associated with the preparation and issuance of Crown Grants and any other documents required to register the Lands and Permitted Encumbrances;
  - c) any fees charged by the Land Title Office or the Land Title and Survey Authority relating to the registration of the Lands and the Permitted Encumbrances; and
  - d) property transfer tax payable under the *Property Transfer Tax Act* which, for greater certainty, the Province will pay or seek an exemption.
- 9.2 **Public Utility Permitted Encumbrances.** Notwithstanding 9.1, all costs associated with the surveying and registration of Permitted Encumbrances held by a public utility will be the responsibility of the public utility.
- 9.3 **GST, PST and Other Charges.** The Snuneymuxw First Nation is responsible for any federal or provincial sales tax, including GST and PST, and any other transfer or registration charges for which the Province has not expressly agreed to accept responsibility under the terms of this Land Transfer Agreement.
- 9.4 **Annual Taxes and Other Costs.** The Snuneymuxw First Nation agrees that the Designated Company will be responsible for any and all annual taxes payable in respect of the Lands in accordance with provincial law. For greater certainty, on and after the applicable Closing Date, the Province is not required to assume financial or other obligations with respect to the Lands.

## ARTICLE 10 - OTHER COVENANTS

- 10.1 **Other Snuneymuxw First Nation Covenants.** The Snuneymuxw First Nation acknowledges and agrees that:

- a) unless otherwise agreed by the Province, any of the Lands that may be transferred to a Designated Company in accordance with this Land Transfer Agreement will not be “lands reserved for the Indians” within the meaning of section 91(24) of the *Constitution Act, 1867* or a reserve within the meaning of the *Indian Act*;
- b) the Lands are subject to provincial and local government laws, including applicable zoning, land use, land development and property tax laws; and
- c) the Snuneymuxw First Nation releases and forever discharges the Province and all Provincial Officials from all claims of infringement of its Snuneymuxw Section 35 Rights in respect of the Lands, and that it has been adequately consulted and accommodated with respect to the terms and conditions of the transfer of the Lands, including the Reservations and Permitted Encumbrances and any related extensions, renewals or replacements or any further rights related to the Permitted Encumbrances in accordance with provincial law.

#### **ARTICLE 11 – OVERLAPPING CLAIMS**

- 11.1 **Shared Territories.** Prior to the transfer of the Lands to the Designated Company, the Snuneymuxw First Nation will discuss and will make reasonable efforts to resolve any overlap or shared territory claims by other First Nations. In the event any such claims are not resolved to the Province's satisfaction, the Province may amend the boundaries of the Lands, not transfer the Lands, or transfer other lands.
- 11.2 **Other First Nations' Litigation.** In the event of any Proceeding brought by any other Aboriginal group against the Province or any Provincial Official with respect to the transfer of the Lands to the Designated Company, the Snuneymuxw First Nation will provide the Province with reasonable assistance, upon request, in support of its defense of the Proceeding.

#### **ARTICLE 12 - DISPUTE RESOLUTION**

- 12.1 **Representatives.** If a dispute arises between the Province and the Snuneymuxw First Nation regarding the interpretation of a provision of this Land Transfer Agreement, the Parties or their duly appointed representatives will meet as soon as is practical to attempt to resolve the dispute.
- 12.2 **Senior Representatives.** If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Province and the Snuneymuxw First Nation.

- 12.3 **Other Means.** The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

### **ARTICLE 13 - NOTICES**

- 13.1 **Notices.** Any notice, document, statement, report, demand or grant that any Party may be required or may desire to give to any other Party under this Land Transfer Agreement must be in writing, unless otherwise specified in this Land Transfer Agreement, and will be deemed validly given to and received by the addressee, if served personally, on the date of personal service or, if delivered by mail, e-mail or facsimile copier, when received as follows

if to the Province:

Deputy Minister  
Ministry of Indigenous Relations and Reconciliation  
P.O Box 9100 Stn. Prov. Gvt.  
Victoria, B.C. V8W 9B1

and if to the Snuneymuxw First Nation

Snuneymuxw First Nation  
668 Centre Street  
Nanaimo, BC V9R 4Z4  
Attention: Chief Councillor

- 13.2 **Change of Address.** Either Party may, from time to time, give notice to the other Party of any change of address, email address or facsimile number of the Party giving such notice and after the giving of such notice, the address, email address or facsimile number will, for purposes of this Land Transfer Agreement be conclusively deemed to be the address, email address or facsimile number of the Party giving such notice.

### **ARTICLE 14 - GENERAL**

- 14.1 **Entire Land Transfer Agreement.** This Land Transfer Agreement and the Framework Agreement are the entire agreement between the Parties in respect of the subject matter of this agreement and, except as set out in this Land Transfer Agreement and Reconciliation Agreement, there are no representations, warranties, collateral agreements, conditions, rights or obligations affecting this Land Transfer Agreement.

- 14.2 **Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of the other Party, do such further lawful acts or deliver such further documents in a timely fashion as are reasonably required in order to fully perform and carry out the terms of this Land Transfer Agreement.
- 14.3 **No Implied Waiver.** Any waiver of a provision of this Land Transfer Agreement, the performance by a Party of an obligation under this Land Transfer Agreement or a default by a Party of an obligation under this Land Transfer Agreement will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.
- 14.4 **Successors.** This Land Transfer Agreement will endure to the benefit of and be binding on the Snuneymuxw First Nation and its successors and the Province.
- 14.5 **No Admissions.** Nothing in this Land Transfer Agreement will be construed as an:
- a) admission by the Province of the validity of any claim by the Snuneymuxw First Nation to any Snuneymuxw Section 35 Right; or
  - b) acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to the Snuneymuxw First Nation.
- 14.6 **Not a Treaty.** This Land Transfer Agreement does not:
- a) constitute a treaty or land claims Land Transfer Agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada); or
  - b) recognize, affirm, define, deny, limit or amend any Snuneymuxw Section 35 Right or any responsibilities of the Parties except as set out in this Land Transfer Agreement.
- 14.7 **No Fettering.** Nothing in this Land Transfer Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment. [For greater certainty, this Land Transfer Agreement does not fetter or limit the discretion of any Provincial statutory decision maker to make any decision in accordance with applicable law prior to the establishment of any engagement or decision making process contemplated under this Land Transfer Agreement or the Framework Agreement.]
- 14.8 **Amendment.** This Land Transfer Agreement may be amended from time to time by the Parties in writing.
- 14.9 **Time.** Time will be of the essence.

14.10 **Governing Law.** This Land Transfer Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

14.11 **Execution in Counterpart.** This Land Transfer Agreement may be entered into by each Party signing a separate copy of this Land Transfer Agreement (including a photocopy, email or facsimile copy) and delivering it to the other Party by email or facsimile transmission.

IN WITNESS WHEREOF the Parties have executed this Land Transfer Agreement as set out below:

**Signed on behalf of the Snuneymuxw  
First Nation by**



---

Chief Michael Wyse

September 19, 2020

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Date

**Signed on behalf of Her Majesty the  
Queen In Right of the Province of  
British Columbia by**



---

Honourable Scott Fraser  
Minister of Indigenous Relations and  
Reconciliation



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Witness

September 19, 2020

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Date



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Honourable Doug Donaldson  
Minister of Forests, Lands and Natural  
Resource Operations and Rural  
Development

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Witness

September 20, 2020

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Date

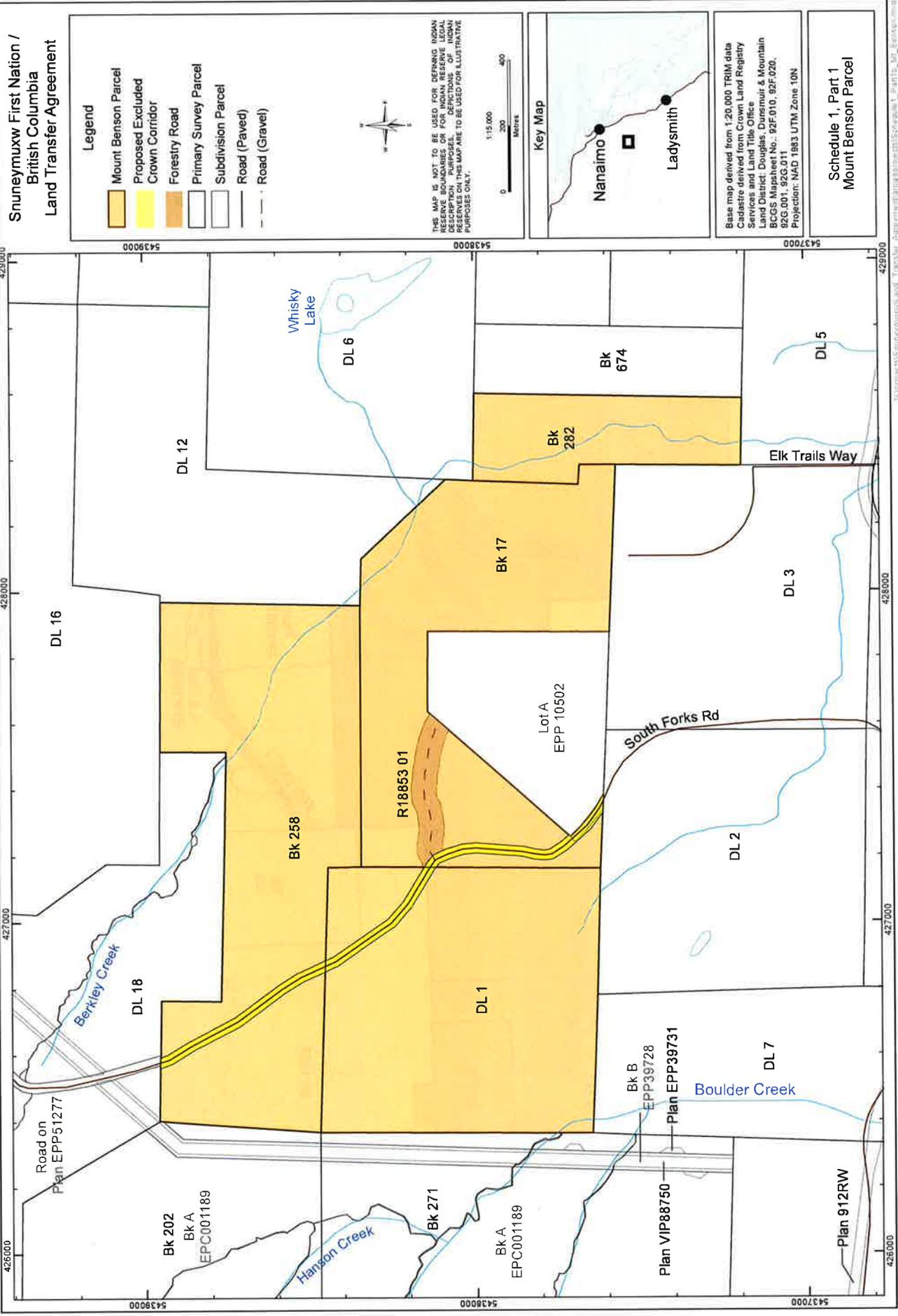
**Schedule "1" – Map of Lands for Illustrative Purposes**

**Part 1 – Map of Mount Benson Parcel for Illustrative Purposes**

**See attached**



Note: the parties agree that this map has been prepared and attached for illustrative purposes only and is not to be used for defining land boundaries or for their legal descriptions. Finalization of land boundaries remains subject to negotiation between the parties and completion of a legal survey.



**Part 2 - Map of Mount McKay Parcel for Illustrative Purposes**

**See attached**



**Schedule “2” – Permitted Encumbrances**  
**(As set out in Article 8.2 of the Land Transfer Agreement this schedule is not yet finalized and remains subject to review and amendment)**

**Part 1 - Permitted Encumbrances Applicable to all Lands**

all interests registered on title under the *Land Title Act* as of the Closing Date

any conditional or final water license or substituted water license issued or given under the *Water Sustainability Act*, or any prior enactment of the Province of British Columbia of like effect, and to the rights of the holder of it to enter on the land and to maintain, repair and operate any works permitted on the land under the license at the date of the crown grant

all subsisting grants to, or subsisting rights of any person made or acquired under the *Mineral Tenure Act*, *Coal Act* or *Petroleum and Natural Gas Act* or under any prior or subsequent enactment of the Province of British Columbia of like effect

all other liens, charges and encumbrances granted by the Province, with the prior written consent of the Snuneymuxw First Nation prior to the Closing Date

the Snuneymuxw First Nation acknowledges that all existing interest holders and interests on the Lands may not have been identified in this Schedule prior to the execution of this Land Transfer Agreement and that these unidentified interests continue on the Lands

**Part 2A - Permitted Encumbrances Applicable to Mount Benson Parcel North**

- Distribution Right of Way Agreement in favour of BC Hydro and Telus to be in a form agreed to by Snuneymuxw First Nation, BC Hydro and Telus
- Statutory Right of Way in favour of the Province for Forest Research Installation EP0703.I-08 in a form agreed to by Snuneymuxw First Nation and the Province
- Statutory Right of Way in favour of the City of Nanaimo for access to DL 9 E&N in a form agreed to by Snuneymuxw First Nation and the City of Nanaimo
- Easements for access in favour of neighbouring land owners on substantially the same terms as set out in Schedule 9

**Part 2B - Permitted Encumbrances Applicable to Mount Benson Parcel South**

- Distribution Right of Way Agreement in favour of BC Hydro and Telus to be in a form agreed to by Snuneymuxw First Nation, BC Hydro and Telus
- Easements for access in favour of neighbouring land owners on substantially the same terms as set out in Schedule 9

**Part 2C - Permitted Encumbrances Applicable to Mount Benson Parcel East**

- Statutory Right of Way for Ancillary Rights, in favour of BC Hydro, to be in a form agreed to by Snuneymuxw First Nation and BC Hydro (required for extension of neighboring transmission line statutory right of way)
- Distribution Right of Way Agreement in favour of BC Hydro and Telus to be in a form agreed to by Snuneymuxw First Nation, BC Hydro and Telus
- Easements for access in favour of neighbouring land owners on substantially the same terms as set out in Schedule 9

**Part 2D - Permitted Encumbrances Applicable to Mount Benson Parcel Returned Crown Corridors**

**Block C**

- Statutory Right of Way in favour of the Province for access to Forest Research Installation in a form agreed to by Snuneymuxw First Nation and the Province
- Statutory Right of Way in favour of the City of Nanaimo for access to DL 9 E&N in a form agreed to by Snuneymuxw First Nation and the City of Nanaimo
- Easements for access in favour of neighbouring land owners on substantially the same terms as set out in Schedule 9

**Block D**

- Easements for access in favour of neighbouring land owners on substantially the same terms as set out in Schedule 9

**Part 3 - Permitted Encumbrances Applicable to Mount McKay Parcel**

- Statutory Right of Way for Ancillary Rights, in favour of BC Hydro, to be in a form agreed to by Snuneymuxw First Nation and BC Hydro (access required along multiple roads)
- Distribution Right of Way Agreement in favour of BC Hydro and Telus to be in a form agreed to by Snuneymuxw First Nation, BC Hydro and Telus
- Statutory Right of Way in favour of the Province for Forest Research Installation EP0703.I-04 and access thereto in a form agreed to by Snuneymuxw First Nation and the Province

- Section 219 Covenant in favour of the Province consistent with Section 5.4 a to address no harvesting within the Ungulate Winter Range Areas
- Statutory Right of Way in favour of the Province consistent with Section 5.4b to address public access to and use of the Spruston Staging Area Recreation Site
- Statutory Right of Way or Easement in favour of the Regional District of Nanaimo consistent with Section 5.4c to address public access to, maintenance, and use of the TransCanada Trail
- Easements for access in favour of neighbouring land owners on substantially the same terms as set out in Schedule 9

**Schedule "3" – Form of Permitted Encumbrances**

**Form of Permitted Encumbrances**

**This would include titles, survey plans, charges and other instruments to be agreed between the parties.**

**Schedule "4" - Designated Company Land Transfer Agreement**

This Agreement is dated for reference \_\_\_\_\_, 20\_\_.

**BETWEEN:**

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,  
represented by the Minister of Indigenous Relations and Reconciliation [address]

(the "Province")

**AND:**

\_\_\_\_\_, a company incorporated under the laws of British Columbia and  
having its principle place of business at [address]

(the "Designated Company")

(collectively referred to as the "Parties" and individually referred to as a "Party")

**WHEREAS:**

- A. The Province and the Snuneymuxw First Nation have entered into a Land Transfer Agreement dated \_\_\_\_\_ (the "Land Transfer Agreement") pursuant to which the Province will transfer to the Designated Company fee simple title to those lands legally described as:

[Insert Legal Description of lands]

(the "Lands")

- B. The Snuneymuxw First Nation and the Designated Company have agreed that, as a condition of the transfer of the Lands, the Designated Company will execute and deliver this agreement on the terms set out below.

**NOW THEREFORE** the Province and the Designated Company agree as follows:

1. **Defined Terms.** The terms "Province" and "Snuneymuxw First Nation" and any other capitalized terms used in this Agreement and defined in the Land Transfer Agreement will have the meaning given to those terms in the Land Transfer Agreement.
2. **Representations and Warranties.** The Designated Company represents and warrants that it is a "Designated Company" within the meaning of the Land Transfer Agreement and that it has the legal power, capacity and authority to enter into and to carry out its obligations under each agreement and transaction to which it is a party in accordance with this Agreement.
3. **Land Transfer Agreement Binding.** The terms of the Land Transfer Agreement relating to the Lands which are for the benefit of the Province are legally binding on the

Designated Company as if the Designated Company was a party to the Land Transfer Agreement, including, without limitation, those provisions of the Land Transfer Agreement relating to the condition of the Lands (Article 7), the Reservations and Permitted Encumbrances (Article 8) and other covenants (Article 10).

4. **Environmental Condition.** Without limiting the generality of the foregoing, the Designated Company waives the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* in connection with its acquisition of the Lands.
5. **Enforcement of LTA.** The Province may, in its sole discretion, enforce any term or condition of the Land Transfer Agreement, including any obligation, covenant or indemnity of the Snuneymuxw First Nation, against the Designated Company or the Snuneymuxw First Nation or both of them.
6. **Legal Advice.** The Designated Company acknowledges that it has had full opportunity to review the terms and conditions of this Agreement and the Land Transfer Agreement, a copy of which is attached as Schedule A, and to seek independent legal advice with respect to their terms and conditions.
7. **Entire Land Transfer Agreement.** This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement. The Schedules and Appendices to this Agreement form part of this Agreement.
8. **Further Acts and Assurances.** The Parties will, upon the reasonable request of the other Party, do such further lawful acts or deliver such further documents in a timely fashion as are reasonably required in order to fully perform and carry out the terms of this Agreement.
9. **No Implied Waiver.** Any waiver of a provision of this Agreement, the performance by a Party of an obligation under this Agreement or a default by a Party of an obligation under this Agreement will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.
10. **Successors.** This Agreement will enure to the benefit of and be binding on the Designated Company and its successors and the Province.
11. **No Admissions.** Nothing in this Agreement will be construed as an:
  - a) admission by the Province of the validity of any claim by the Snuneymuxw First Nation to a specific treaty or aboriginal right or aboriginal title within the meaning of section 35 of the *Constitution Act, 1982*; or
  - b) acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to the Snuneymuxw First Nation.
12. **Not a Treaty.** This Agreement does not:

- a) constitute a treaty or land claims Land Transfer Agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada); or
  - b) recognize, affirm, define, deny, limit or amend any aboriginal rights or titles or any responsibilities of the Parties except as set out in this Agreement.
13. **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.
14. **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
15. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
16. **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy, email or facsimile copy) and delivering it to the other Party by email or facsimile transmission.

Signed by the Designated Company as of \_\_\_\_\_, 20\_\_ by:

[Name of Company]

\_\_\_\_\_  
Per: Authorized Signatory

SIGNED on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA by the Minister of Indigenous Relations and Reconciliation or the Minister's authorized representative as of \_\_\_\_\_, 20\_\_\_\_\_:

\_\_\_\_\_  
Minister of Indigenous Relations and Reconciliation  
or the Minister's authorized representative

**Schedule "5" – GST Certificate**

**FORM 221(2)(b) (CERTIFICATE AS TO REGISTRATION STATUS OF PURCHASER)**

**Certificate as to Registration Status of Purchaser**

(Paragraphs 221(2)(b) and (c))

FROM: *[the "Vendor"]*

TO: *[the "Purchaser"]*

RE: *[the "Property"]*

---

THE PURCHASER HEREBY CERTIFIES TO THE VENDOR PURSUANT TO PARAGRAPHS 221(2)(b) AND (c) OF *THE EXCISE TAX ACT* (THE "ACT") THAT THE PURCHASER:

is a prescribed recipient under the Act.

[OR]

is registered under Part IX of the Act, its registration number is *[number]* and the Purchaser will account for the tax payable in respect of the purchase of the Property in accordance with the Act.

The Purchaser acknowledges that the Vendor is relying on this Certificate in connection with the sale of the Property.

Each term that is used in the Certificate and that is defined in, and for the purposes of, Part IX of the Act has the meaning assigned to it in Part IX of the Act.

DATED *[month, day, year]*.

*[Name of Corporate Vendor]*

\_\_\_\_\_  
*[Name of Individual Vendor]*

Per: \_\_\_\_\_

**Schedule "6" - Consent of Snuneymuxw First Nation  
in relation to Property Transfer Tax Matters**

TO WHOM IT MAY CONCERN:

1. Article \_\_\_\_ of the Land Transfer Agreement (the Land Transfer Agreement) between the Province of British Columbia and the Snuneymuxw First Nation, executed dated [date], provides that the Province is responsible for property transfer tax payable under the *Property Transfer Tax Act* (RSBC 1996), c. 378 in relation to the transfer of land under the Land Transfer Agreement (the "Property Transfer Tax").
2. In the event that:
  - a. an exemption from Property Transfer Tax is not enacted prior to the date on which payment of that tax is due, or
  - b. the Province pays the Property Transfer Tax,then [name of Designated Company] hereby
  - c. authorizes the Ministry of Finance and the Ministry of Indigenous Relations and Reconciliation to deal directly with one another in regard to all matters relating to the Property Transfer Tax, and
  - d. agrees that if there is any refund payable in respect of the Property Transfer Tax paid by the Province, then the amount of that refund may be retained by the Province.

Executed on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature of the duly authorized signatory for the [name of Designated Company]

\_\_\_\_\_  
Name and Title (please print)

**Schedule "7" - Map of Trans- Canada Trail**

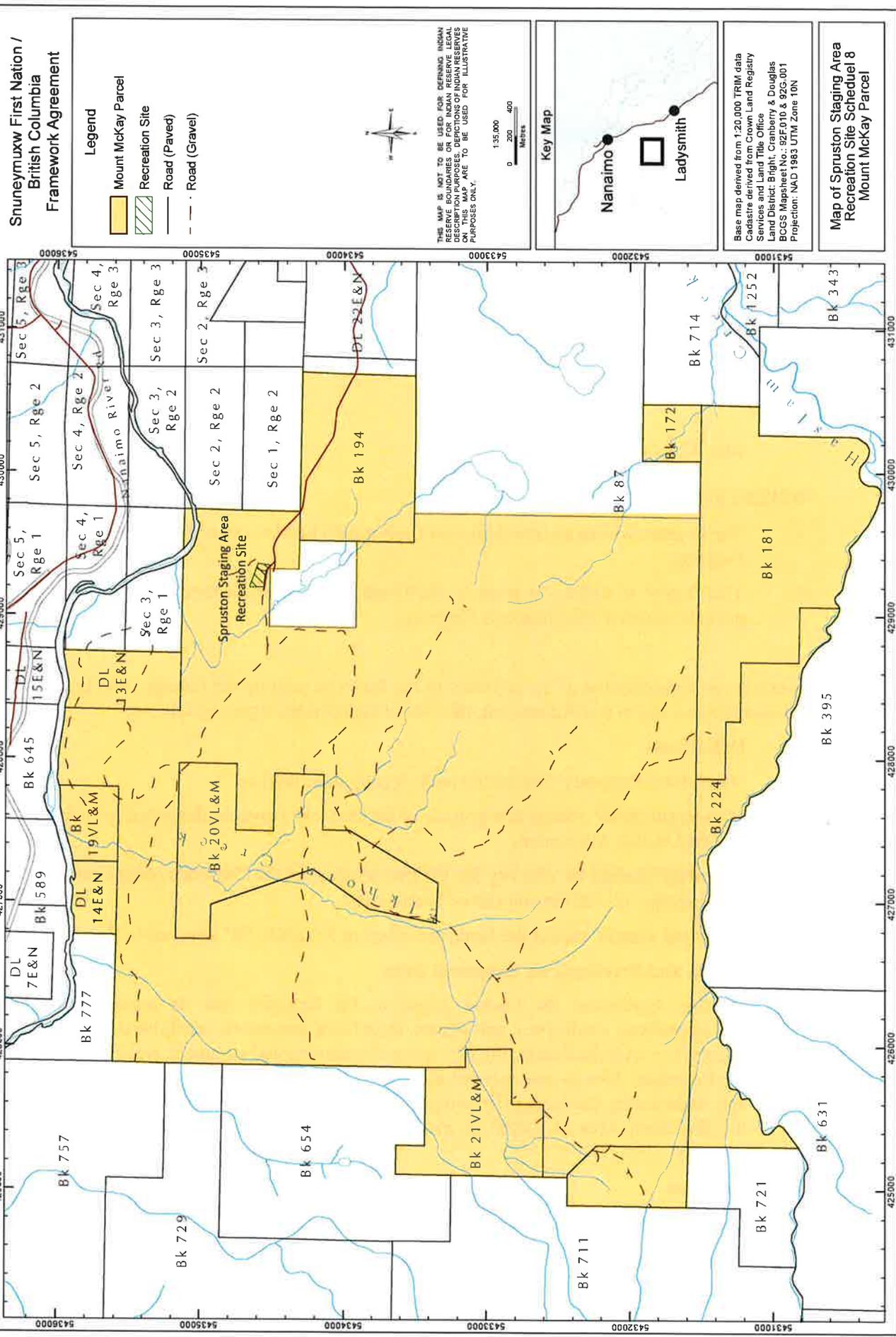
**See attached**



**Schedule "8" - Map of Spruston Staging Area Recreation Site**

**See attached**

Note: the parties agree that this map has been prepared and attached for illustrative purposes only and is not to be used for defining land boundaries or for their legal descriptions. Finalization of land boundaries remains subject to negotiation between the parties and completion of a legal survey.



**Legend**

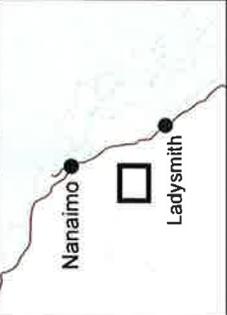
- Mount McKay Parcel
- Recreation Site
- Road (Paved)
- Road (Gravel)



THIS MAP IS NOT TO BE USED FOR DETERMINING INDIAN RESERVE OR INDIAN RESERVATION BOUNDARIES OR FOR ANY OTHER PURPOSES. DEPICTIONS OF INDIAN RESERVES ON THIS MAP ARE TO BE USED FOR ILLUSTRATIVE PURPOSES ONLY.



Key Map



Base map derived from 1:20,000 TRIM data  
 Cadastre derived from Crown Land Registry  
 Services and Land Title Office  
 Land District: Bright, Cranberry & Douglas  
 BCSS Mapsheet No.: 92E 010 & 92E 001  
 Projection: NAD 1983 UTM Zone 10N

**Map of Spruston Staging Area  
 Recreation Site Schedule 8  
 Mount McKay Parcel**

425000 426000 427000 428000 429000 430000 431000  
 5435000 5436000 5437000 5438000 5439000 5440000 5441000

**Schedule "9" – Private Road Easement Form**

THIS AGREEMENT is dated \_\_\_\_\_, 20\_\_.

BETWEEN:

(the "Owner")

AND:

(the "Grantee")

**WHEREAS:**

- A. The Grantee wishes an easement over the Servient Lands to provide access to the Grantee's Property.
- B. The Owner is willing to grant to the Grantee an easement over the Servient Lands to provide access to the Grantee's Property.

Therefore in consideration of the payment of the fee to be paid by the Grantee, and the Grantee's covenants as set out in this Agreement, the Owner and Grantee agree as follows:

**1.0 Definitions**

"Grantee's Property" means the lands legally described as:

"Easement Area" means that portion of the Servient Lands as described in Schedule "A" attached to this Agreement;

"Security" means the security for the performance of the Grantee's obligations as set out in paragraph 12.1 in the amount of \$[amount];

"Servient Lands" means the lands described in Schedule "B" attached to this Agreement.

**2.0 Rights and Privileges on Easement Area**

- 2.1 By this Agreement the Owner grants to the Grantee, and its invitees, permittees, representatives, employees, and agents, their heirs, executors, administrators and assigns, in common with the Owner, the full, free and uninterrupted easement, right and liberty over the Easement Area to enter on and use the Easement Area for the purpose of constructing and maintaining (including trimming or removing trees and vegetation) a road and using the Easement Area as a road to give pedestrian and vehicular access to the Grantee's Property.

**3.0 Duration**

3.1 This Easement is appurtenant to the Grantee's Property and passes with a conveyance or other disposition of the estate in fee simple of the Grantee's Property, and is binding on the Servient Lands, provided that the Owner and the Grantee agree that if the Servient Lands are subdivided, the Easement will not run with those parcels derived from the Servient Lands which do not include any part of the Easement Area and the Easement will be deemed to be discharged from such parts.

#### **4.0 Annual Fee**

4.1 The Grantee will pay the Owner an annual fee in advance in the amount of [amount], to cover the Owner's costs of administering this Agreement.

#### **5.0 Covenant**

5.1 The obligations of the Grantee in this Agreement constitute both contractual obligations and covenants under Section 219 of the *Land Title Act* in respect of the Grantee's Property and run with the Grantee's Property and bind successors in title.

#### **6.0 Non Exclusive Use**

6.1 This Agreement will not entitle the Grantee to exclusive possession of the Easement Area and the Owner reserves the right to use the Easement Area and to grant other dispositions of the Easement Area so long as the use or the grant does not materially impair the Grantee's permitted use of the Easement Area. Notwithstanding the generality of the foregoing, the Grantee acknowledges and agrees that the interests in land contained in this Agreement are subject to the prior rights to use the Servient Lands granted as of the date hereof to:

- (a) [Grantee]; and
- (b) [Grantee].

The Owner acknowledges and agrees that if title to the Servient Lands is registered in the Land Title Office pursuant to paragraph 20.2 hereof, the interests in land contained in this Agreement will be registered as a charge against the Servient Lands in priority to all other charges save only for the prior rights referred to above in favour of [Grantee] and [Grantee].

#### **7.0 Covenants of the Grantee**

7.1 The Grantee covenants with the Owner:

- (a) to pay the annual fee as described in paragraph 4.1 at the address of the Owner set out above or at such other place as the Owner may specify under paragraph 14.1;
- (b) to pay and discharge when due all applicable taxes, levies, charges and assessments now or hereafter assessed, levied or charged which relate to the Easement Area or any of the Grantee's improvements on the Easement Area, which the Grantee is liable to pay;
- (c) to observe, abide by and comply with all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent government authority, including an Owner government, in any way affecting the Easement Area and improvements situate thereon, or their use and occupation;
- (d) not to commit or suffer any wilful or voluntary waste, spoil or destruction on the Easement Area or do or suffer to be done thereon by its invitees, permittees,

representatives, employees, or agents, or anyone for whom the Grantee is responsible at law, anything that may be or becomes a nuisance or annoyance to the Servient Lands;

- (e) not to dump or bury debris or rubbish of any kind on the Easement Area;
- (f) to deliver to the Owner from time to time, upon demand, proof of insurance required under this Agreement, receipts or other evidence of payment of any taxes or charges owing, and other monetary obligations of the Grantee required to be observed by the Grantee pursuant to this Agreement;
- (g) to indemnify and save harmless the Owner and the Owner's servants, employees and agents against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of:
  - (i) any breach, violation or non-performance of any covenant, condition or obligation under this Agreement by the Grantee; and
  - (ii) any personal injury, bodily injury (including death), or property damage, occurring on or off the Servient Lands and arising out of the Grantee's use or occupation of the Easement Area under this Agreement,

and the Owner may add the amount of any losses, damages, costs and liabilities to the fees payable under paragraph 4.1, and the amount added will be payable to the Owner immediately upon demand;

- (h) in respect of the use of the Easement Area by the Grantee or anyone permitted by the Grantee to use the Easement Area to keep the Easement Area in a safe, clean and sanitary condition satisfactory to the Owner acting reasonably, including, without limitation, maintaining and repairing any damage to the Easement Area caused by the Grantee's use under this Agreement, and to make safe, clean and sanitary any portion of the Easement Area or any improvement thereon that the Owner, acting reasonably, may direct by notice in writing to the Grantee;
- (i) to permit the Owner or its authorized representative to enter upon the Easement Area at any time to examine its condition;
- (j) to use and occupy the Easement Area in accordance with the provisions of this Agreement;
- (k) on the expiration or at the earlier cancellation of this Agreement:
  - (i) to quit peaceably and deliver possession of the Easement Area to the Owner; and
  - (ii) if requested by the Owner to de-commission the road, including the removal of any structures or works on the Easement Area, and restore the surface of the Easement Area to the satisfaction of the Owner acting reasonably;

and all of the Grantee's right, interest and estate in the Servient Lands will be absolutely forfeited to the Owner and to the extent necessary, this covenant shall survive the expiration or cancellation of this Agreement;

- (l) to obtain and keep in force insurance covering the Owner and the Grantee (without any rights of cross-claim or subrogation against the Owner) against claims for personal injury, death, property damage or third party or public liability claims arising from any accident or occurrence on the Easement Area to an amount not less than \$[amount];
- (m) notwithstanding subparagraph (l), the Owner may from time to time, acting reasonably, considering the amount of insurance a prudent owner would carry, require the Grantee to increase the amount of insurance and the Grantee will, within 60 days of receiving the request, obtain the required additional insurance and deliver to the Owner written confirmation of the change;
- (n) not to interfere with the activities, works or other improvements of any other person who enters on or uses or occupies the Easement Area under a prior or subsequent right or interest granted by the Owner, or who is otherwise authorized by the Owner to enter on or use or occupy the Easement Area, in accordance with paragraph 6.1; and
- (o) if the Grantee, or its agents, contractors or representatives, discover any archaeological material on the Easement Area, to take all reasonable steps and precautions to minimize disturbance of that material, and to immediately notify the Owner.

## **8.0 Cancellation**

- 8.1 Despite any other provision of this Agreement, this Agreement may be cancelled if the Grantee fails or refuses to observe or perform any term in this Agreement, and the failure continues after the Owner gives written notice of the failure to the Grantee for a period of:
- (a) 30 days; or
  - (b) 150 days, if the failure because of its nature reasonably requires more than 30 days to cure, and provided that the Grantee proceeds diligently and continuously to cure the failure,

then the Owner may by further written notice to the Grantee cancel this Agreement and despite paragraph 7.1(k), any improvements to the Easement Area will, at the discretion of the Owner, become the property of the Owner.

## **9.0 Relocation of Easement Area**

- 9.1 If the Owner requires the Easement Area for another purpose, the Owner may, on 180 days written notice to the Grantee and in consultation with the Grantee:
- (a) at the Owner's cost locate and construct an alternate road providing access to the Grantee's Property to a standard at least equivalent to the original road;
  - (b) grant a replacement agreement for the alternate road on the same terms as this Agreement; and
  - (c) by further written notice to the Grantee cancel this Agreement;

and on cancellation the Grantee will quit peaceably and deliver possession of the Easement Area, except that the Grantee may, at its election, within 60 days of the cancellation, or

such longer time as reasonably required, remove any fixtures from the Easement Area, but the Grantee will not be required to comply with paragraph 7.1(k)(ii).

#### **10.0 Third Party Notice**

10.1 The Owner will not dispose of, or agree to dispose of, the Servient Lands without first notifying any intended purchaser of the existence of this Agreement, and of the priority that this Agreement has over any interests granted or created in the Servient Lands after the date hereof.

#### **11.0 Ownership of Commercially Valuable Timber**

11.1 Notwithstanding paragraph 2.1, all timber of commercial value on the Easement Area will remain the property of the Owner.

#### **12.0 Security**

12.1 The Grantee will deliver the Security to the Owner within 30 days of the commencement of this Agreement, and in any event prior to the Grantee's use of the Easement Area, as security for the performance of the Grantee's obligations under this Agreement, and the following will apply:

- (a) the Grantee will maintain the Security in full until the later of:
  - (i) the termination of this Agreement; or
  - (ii) the complete fulfillment of all of the Grantee's obligations under this Agreement;
- (b) if the Grantee defaults in the performance of any of its obligations under this Agreement, the Owner may, in its sole election, draw on and use the Security to reimburse the Owner for all reasonable costs and expenses, including legal and other professional services costs if any, caused by or arising out of the Grantee's breach, and in the event of a call on the Security of the Grantee will, as a condition of the continuation of this Agreement, immediately pay to the Owner the amount of the draw so that the full amount of the Security is available.

12.2 The parties agree that the amount of the Security does not constitute a liquidated damages estimate of the Owner's damages if the Grantee breaches its obligations hereunder and the Owner reserves its right to claim for further damages.

#### **13.0 Disputes**

13.1 Any dispute arising out of or in connection with this Agreement will be resolved as follows:

- (a) the parties will attempt to resolve disputes by good faith negotiations, including timely disclosure of all relevant facts, information and documents;
- (b) either party may, at any time, by written notice request that the dispute be referred to mediation, conducted by a mediator, knowledgeable about the matters in dispute;
- (c) if the dispute is not resolved within 30 days of the notice to mediate under subparagraph (b) then, on the agreement of both parties, the dispute may be referred to a single arbitrator for final resolution. If the parties do not agree to arbitration then either party may refer the matter to a court of competent jurisdiction;

except that it is not incompatible with this paragraph for a party to apply to a court at any time for interim or conservatory relief, and for the court to grant that relief.

#### **14.0 Notice**

14.1 If notice is required or permitted under this Agreement, the notice:

- (a) must be in writing;
- (b) must be delivered to the address set out above, or other address as specified in writing by a party; and
- (c) may be given in one or more of the following ways:
  - (i) delivered personally or by courier, and it will be deemed to have been given when actually received;
  - (ii) mailed by pre-paid post in Canada, and it will be deemed received on the eighth business day following, except in the case of mail interruption in which case actual receipt is required; or
  - (iii) by telex, telecopy, email or similar form of communication and if transmitted on a business day before 3 pm, it will be deemed to have been given on that day and if transmitted after 3 pm on a business day it will be deemed to have been given on the next business day after the date of the transmission, except in the case of mail interruption in which case actual receipt is required.

#### **15.0 Waiver and Consent**

15.1 A breach of any term, condition, covenant or other provision of this Agreement may only be waived in writing, and any waiver will not be construed as a waiver of any subsequent breach. Consent to or approval of any act, where consent or approval is required under this Agreement, will not be construed as consent to or approval of any subsequent act.

#### **16.0 Remedies**

16.1 No remedy set out in this Agreement is exclusive of any other remedy provided by law, but will be in addition to any other remedy existing at law, in equity, or by statute.

#### **17.0 Enurement**

17.1 The terms and provisions of this Agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their successors and permitted assigns.

#### **18.0 Entire Agreement**

18.1 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent written agreement.

#### **19.0 Interpretation**

19.1 In this Agreement:

- (a) all attached schedules form an integral part of this Agreement;

- (b) unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender, body politic and a corporation;
  - (c) the headings are for convenience only and are not to be construed as defining or in any way limiting the scope or intent of the Agreement;
  - (d) a reference to an enactment of British Columbia or of Canada will be deemed to include a reference to any subsequent amendments or replacements; and
  - (e) if any provision is determined by a court or arbitrator of competent jurisdiction to be illegal or unenforceable, that provision will be considered separate and severable, and the legality or enforceability of the remaining provisions will not be affected by that determination.
- 19.2 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 19.3 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then the Owner or the Grantee, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that the Owner or the Grantee have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

**20.0 Land Registry System**

- 20.1 If the Owner or any other entity creates and maintains a land registry in relation to the Servient Lands, or a register of interests affecting the Servient Lands, the parties agree to file this Agreement in any such registry or take steps to see that it is duly recorded in any applicable register or other system; and
- 20.2 The Owner agrees to give the Grantee notice of its intention to raise title to any portion of the Servient Lands in the Provincial Land Title Office so that appropriate and timely arrangements can be made between them for the re-execution of this Agreement, with such modifications to form as may be necessary to make this Agreement registrable in the Land Title Office, and for registration in the Land Title Office in the priority referred to in paragraph 6.1 hereof concurrently with the raising of such title.

IN WITNESS THEREOF the parties have duly executed this Agreement, as of the date first referred to above.

[Grantor]  
by its duly authorized representatives

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

[Grantee]  
Per: \_\_\_\_\_

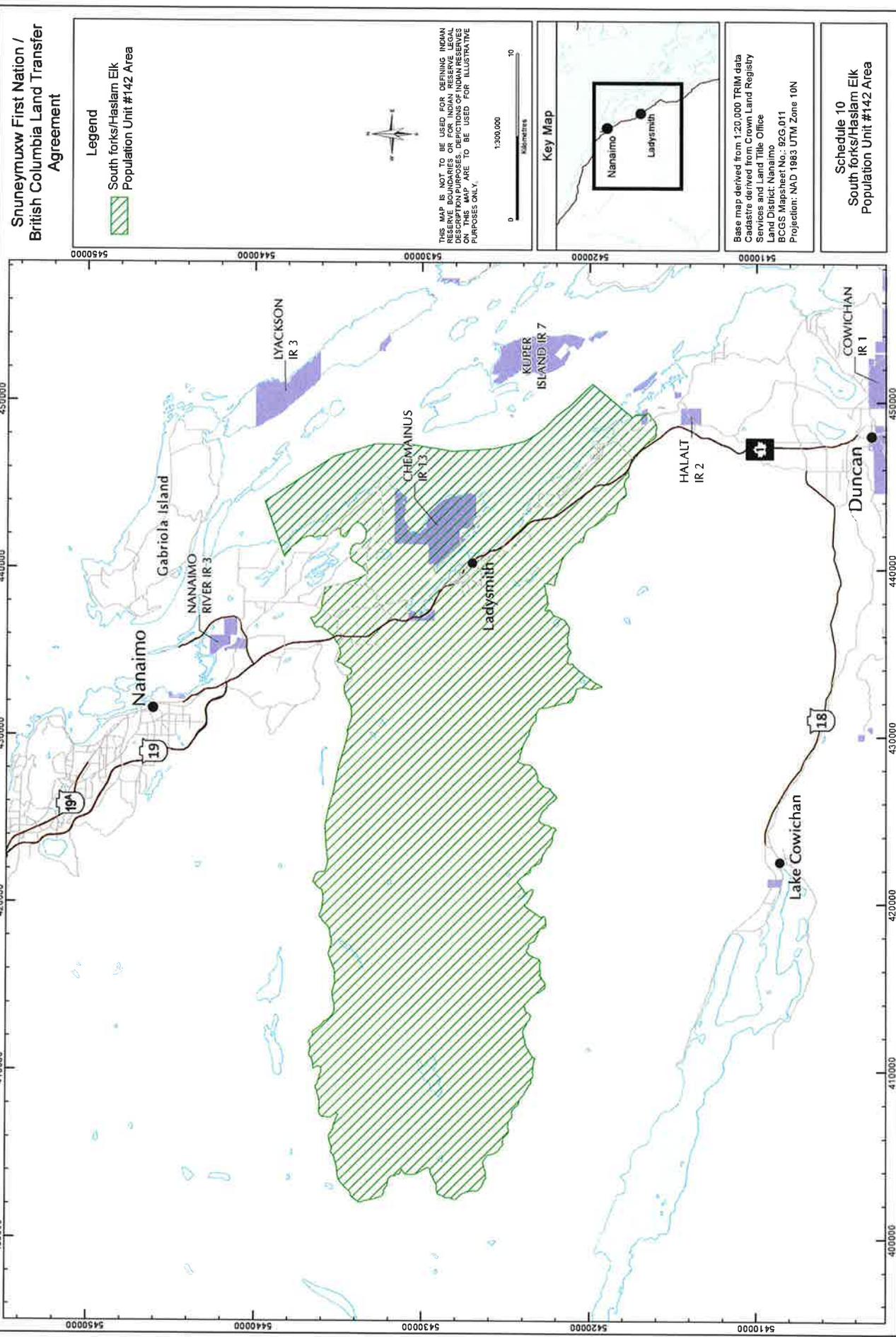
Schedule "A"  
[Attach Plan of Easement Area]

Schedule "B"  
[Attach Plan of Servient Lands]

**Schedule "10" – South forks/Haslam Elk Population Unit #142 Area**

**See attached**

Note: the parties agree that this map has been prepared and attached for illustrative purposes only and is not to be used for defining land boundaries or for their legal observations. Finalization of land boundaries remains subject to negotiation between the parties and completion of a legal survey.

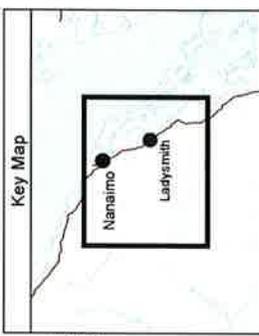


**Snuneymuxw First Nation /  
British Columbia Land Transfer  
Agreement**

**Legend**  
 South forks/Haslam Elk  
 Population Unit #142 Area

THIS MAP IS NOT TO BE USED FOR DEFINING INDIAN RESERVE BOUNDARIES OR FOR INDIAN RESERVE LEGAL PURPOSES. THE BOUNDARIES SHOWN ON THIS MAP ARE TO BE USED FOR ILLUSTRATIVE PURPOSES ONLY.

0 1:300,000 10  
 METRES



Base map derived from 1:20,000 TRIM data  
 Cadastre derived from Crown Land Registry  
 Services and Land Title Office  
 Land District: Nanaimo  
 BCGS Mapsheet No.: 92G.011  
 Projection: NAD 1983 UTM Zone 10N

**Schedule 10  
 South forks/Haslam Elk  
 Population Unit #142 Area**

