



**SNUNEYMUXW FIRST NATION  
RECONCILIATION AGREEMENT**

## **Contents**

<b>ARTICLE 1 - INTERPRETATION.....</b>	<b>2</b>
<b>ARTICLE 2 – RECONCILIATION AND PURPOSE.....</b>	<b>6</b>
<b>ARTICLE 3 - COMING INTO EFFECT AND TERMINATION .....</b>	<b>6</b>
<b>ARTICLE 4 - REPRESENTATIONS AND WARRANTIES .....</b>	<b>6</b>
<b>ARTICLE 5 – CONDITIONS PRECEDENT.....</b>	<b>7</b>
<b>ARTICLE 6 – TRANSFER OF LANDS .....</b>	<b>8</b>
<b>ARTICLE 7 – CONDITION OF LANDS .....</b>	<b>10</b>
<b>ARTICLE 8 – ENCUMBRANCES .....</b>	<b>11</b>
<b>ARTICLE 9 – TRANSACTION COSTS .....</b>	<b>12</b>
<b>ARTICLE 10 - OTHER COVENANTS.....</b>	<b>12</b>
<b>ARTICLE 11 – STATUS OF LANDS .....</b>	<b>13</b>
<b>ARTICLE 12 – OVERLAPPING CLAIMS.....</b>	<b>14</b>
<b>ARTICLE 13 – EXISTING LITIGATION.....</b>	<b>14</b>
<b>ARTICLE 14 – NEWCASTLE ISLAND MARINE PROVINCIAL PARK AND <u>                    </u>NANAIMO ESTUARY.....</b>	<b>15</b>
<b>ARTICLE 15 – FUTURE DISCUSSIONS/NEGOTIATIONS .....</b>	<b>15</b>
<b>ARTICLE 16 – COST-SHARED LANDS WITH CANADA .....</b>	<b>16</b>
<b>ARTICLE 17 – DISPUTE RESOLUTION .....</b>	<b>16</b>
<b>ARTICLE 18 - NOTICES.....</b>	<b>16</b>

<b>ARTICLE 19 - GENERAL.....</b>	<b>17</b>
<b>SCHEDULE “1” - MAPS OF LANDS FOR ILLUSTRATIVE PURPOSES .....</b>	<b>20</b>
<b>SCHEDULE “2” PART 1 - PERMITTED ENCUMBRANCES.....</b>	<b>23</b>
<b>SCHEDULE “2” PART 2 - PERMITTED ENCUMBRANCES—INTERESTS NOT REGISTERED ON TITLE.....</b>	<b>24</b>
<b>SCHEDULE “3” - INSTRUMENTS OF REGISTRATION (TITLES, SURVEY PLANS, CHARGES AND OTHER INSTRUMENTS).....</b>	<b>25</b>
<b>SCHEDULE “4” - ADDITION TO RESERVE RESTRICTIVE COVENANT .....</b>	<b>26</b>
<b>SCHEDULE “5” - DESIGNATED COMPANY AGREEMENT.....</b>	<b>30</b>
<b>SCHEDULE “6” - GST CERTIFICATE.....</b>	<b>33</b>
<b>SCHEDULE “7” - ENGAGEMENT PROTOCOL .....</b>	<b>34</b>
<b>SCHEDULE “8” - MAP OF PROVINCIAL GABRIOLA LANDS AND TRM GABRIOLA LANDS .....</b>	<b>41</b>
<b>SCHEDULE “9” - NANAIMO ESTUARY “MEMORANDUM OF AGREEMENT” .....</b>	<b>42</b>
<b>SCHEDULE “10A” - LIST OF PROVINCIAL REFERRALS TO WHICH SNUNEYMUXW WILL DROP OBJECTIONS.....</b>	<b>53</b>
<b>SCHEDULE “10B” - LIST OF PROVINCIAL REFERRALS THAT SNUNEYMUXW WILL ADDRESS THROUGH LETTER IN SCHEDULE 12 .....</b>	<b>54</b>
<b>SCHEDULE “11” - TEMPLATE LETTER (FOR ARTICLE 6.3(E)) .....</b>	<b>55</b>
<b>SCHEDULE “12” - TEMPLATE LETTER (FOR ARTICLE 6.3(F)) .....</b>	<b>56</b>
<b>SCHEDULE “13” - PERMIT MODIFICATION AGREEMENT (NEWCASTLE ISLAND) .....</b>	<b>57</b>
<b>SCHEDULE “14” - 2003 OPERATIONS PERMIT .....</b>	<b>64</b>
<b>SCHEDULE “15” - MAP OF NANAIMO ESTUARY .....</b>	<b>77</b>

# SNUNEYMUXW FIRST NATION

## RECONCILIATION AGREEMENT

This Agreement is dated for reference March 27, 2013.

### BETWEEN:

**Her Majesty the Queen in right of the Province of British Columbia**, as represented by the Minister of Aboriginal Relations and Reconciliation

### AND:

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

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

### WHEREAS:

- A. On December 23, 1854, the Saalequun Tribe—of whom the Snuneymuxw people are successors— and the Crown entered into the Treaty of 1854, which is a treaty within the meaning of section 35 of the *Constitution Act, 1982*;
- B. In March 2005, the Province and the First Nations Leadership Council, representing the Assembly of First Nations – BC Region, First Nations Summit and the Union of BC Indian Chiefs, developed a vision that resulted in a New Relationship founded on principles of mutual respect, recognition and reconciliation of Aboriginal and treaty rights recognized and affirmed by section 35 of the *Constitution Act, 1982*; and
- C. In the spirit of the New Relationship, this agreement provides for, among other things, the transfer of certain lands to the Snuneymuxw First Nation in advance of a Final Reconciliation Agreement.

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

## **ARTICLE 1 - INTERPRETATION**

### **1.1 Definitions.** In this Agreement:

“Chief” means, in respect of the Snuneymuxw First Nation, the chief within the meaning of the *Indian Act* and the Snuneymuxw First Nation Electoral Code, 2007;

“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 under 6.2 are uploaded to the electronic meet and are filed in the Land Title Office;

“Council” and “Band Council” means, in respect of the Snuneymuxw First Nation, the council within the meaning of the *Indian Act* and the Snuneymuxw First Nation Electoral Code, 2007;

“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 in Schedule 1;

“Crown Grant” means a grant (as defined in the *Land Act*) of the fee simple title to land;

“Designated Company” means a company or other legal entity, including a limited partnership, incorporated or established under federal or provincial law, all the shares or interests 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 a Final Reconciliation Agreement takes effect;

“Engagement Protocol” means the document attached as Schedule 7;

“Final Reconciliation Agreement” means a final agreement concluded by the Parties and Canada under the British Columbia Treaty Commission process or another agreement between the Parties and Canada that provides certainty with respect to the Snuneymuxw First Nation’s Traditional Territory;

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

"GST" means the goods and services tax imposed under the *Excise Tax Act* (Canada);

“Lands” means any or all of the following, and as illustrated in Schedule 1:

Lot A, Section 1, Wellington District, Plan 36715, (PID 000-421-839), also known as **Departure Bay Property 001**

Block 202 , Douglas District, also known as **Mount Benson 012**

Block 271, Douglas District (PID 012-736-678), also known as **Mount Benson 013**

Block 18VL&M, Douglas District, Plan 691C (PID 008-720-886), also known as **Mount Benson 015**

“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;

“Nanaimo Estuary” means the area:

- referred to in the Memorandum of Agreement dated March 11, 2002, entered into by the Province and the Snuneymuxw First Nation and attached as Schedule 9; and
- as depicted in the map attached as Schedule 15 accompanying the 2006 Nanaimo Estuary Management Plan;

“New Relationship” means the vision developed in March 2005 by the Province and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit and Union of BC Indian Chiefs, that resulted in a new relationship founded on principles of mutual respect, recognition and reconciliation of Aboriginal rights;

“Permitted Encumbrances” means the reservations, exceptions, liens, charges, and interests described in Parts 1 and 2 of Schedule “2” for each of the Lands or any other Permitted Encumbrances agreed to by the Parties;

“Province” means Her Majesty the Queen in right of the Province of British Columbia;

“Provincial Gabriola Lands” means the lands illustrated in blue on the map attached as Schedule 8;

“Provincial Official” means:

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

“RA Date” means the date on which this Agreement is executed by the Parties;

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

“Traditional Territory” means, for the purposes of this Agreement, the Snuneymuxw First Nation’s claimed or asserted Traditional Territory; and

“TRM Gabriola Lands” means the lands identified on the map in yellow in Schedule 8.

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

- a) “this Agreement” means this Reconciliation Agreement, including the Schedules and any agreement, document or instrument executed or delivered pursuant to this Agreement;
- b) “including” means “including, but not limited to” and “includes” means “includes, but not limited to”;
- c) the headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this 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 any predecessor or 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 Parties;
- h) each and every release, covenant and other agreement given, and action to be taken, by the Snuneymuxw First Nation under this 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; and
- i) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

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

- Schedule “1” – Maps of Lands for Illustrative Purposes
- Schedule “2” – Permitted Encumbrances
- Schedule “3” – Instruments of Registration (titles, survey plans, charges and other instruments)
- Schedule “4” – Form C Additions to Reserve Restrictive Covenant
- Schedule “5” – Designated Company Agreement
- Schedule “6” – GST Certificate
- Schedule “7” – Engagement Protocol
- Schedule “8” – Map of Provincial Gabriola Lands and TRM Gabriola Lands
- Schedule “9” – Nanaimo Estuary “Memorandum of Agreement”
- Schedule “10a” – List of Provincial Referrals to Which Snuneymuxw will Drop Objections
- Schedule “10b” – List of Provincial Referrals That Snuneymuxw will Address Through Letter in Schedule 12
- Schedule “11” – Template Letter (for Article 6.3(e))
- Schedule “12” – Template Letter (for Article 6.3(f))
- Schedule “13” – Permit Modification Agreement (Newcastle Island)
- Schedule “14” – 2003 Operations Permit
- Schedule “15” – Map of Nanaimo Estuary

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

- 2.1 **Reconciliation.** The Snuneymuxw First Nation acknowledges and agrees that, in the spirit of the New Relationship, the Lands transferred to the Snuneymuxw First Nation in accordance with this Agreement constitute a contribution by the Province towards the reconciliation of the Province's and the Snuneymuxw First Nation's interests and, as such, the benefits provided to the Snuneymuxw First Nation under this Agreement will be counted as a portion of the Province's contribution towards any Final Reconciliation Agreement that the Parties and Canada may conclude.
- 2.2 **Purpose.** The purpose of this Agreement is to provide the Snuneymuxw First Nation with land as a reconciliation benefit that will be transferred in accordance with this Agreement and, if a Final Reconciliation Agreement is concluded, will, on the Effective Date, become an element of the Final Reconciliation Agreement.

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

- 3.1 **Coming into Effect.** This Agreement comes into effect on the RA Date.
- 3.2 **Termination.** This Agreement may be terminated in writing:
- a) by either Party on 90 days notice; or
  - b) by the Parties on a date mutually agreed on by the Parties.
- 3.3 **Termination on Litigation.** Notwithstanding 3.2, the Province may terminate this Agreement, including the transfer of any Lands which have not been completed, in the event the Snuneymuxw First Nation commences any action or other proceeding relating to any Governmental Action within the Traditional Territory.
- 3.4 **Survival of Lands Conditions.** Notwithstanding 3.2, and subject to a Final Reconciliation Agreement, where any of the Lands are transferred under this Agreement, Articles 7, 10 and 12 will survive the completion of the transfers or the termination of this 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 Agreement, that:
- a) it enters into this 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 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 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 agreement and transaction to which it is a party in accordance with this Agreement; and
- e) the Province has fulfilled its obligation to consult with the 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 Agreement, that:

- a) it has the legal power, capacity and authority to enter into this 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 Agreement.

## **ARTICLE 5 – CONDITIONS PRECEDENT**

5.1 **Band Council Resolution.** Prior to the execution of this 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 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 Agreement is subject to:

- a) withdrawal by the Snuneymuxw First Nation, in the form attached as Schedule 11, of any objection to all provincial referrals listed in Schedule 10a;
- b) the delivery by the Snuneymuxw First Nation of a letter, in the form set out in Schedule 12, for all provincial referrals listed in Schedule 10b;

- c) the Parties having begun implementation of the Engagement Protocol, attached as Schedule 7, on or before the Closing Date;
  - d) 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;
  - e) there being specific monies available within an approved Ministry of Aboriginal Relations and Reconciliation budget to complete any required surveys of the Lands;
  - f) the representations and warranties of the Snuneymuxw First Nation under this Agreement being true and correct on the applicable Closing Date;
  - g) 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 Agreement;
  - h) surveys for the Lands having been completed on or before the applicable Closing Date; and
  - i) the Province having given notice that the minister responsible has 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 its conditions precedent under 5.2 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 Agreement.
- 5.4 Waiver of Conditions Precedent. The conditions precedent set out in 5.2 are for the sole benefit of the Province and may be waived by the Province on written notice to the Snuneymuxw First Nation.

## **ARTICLE 6 – TRANSFER OF LANDS**

- 6.1 **Pre-Closing Deliveries by Snuneymuxw First Nation.** Within 60 days of written notice under 5.3, the Snuneymuxw First Nation will deliver to the Province a direction identifying the Designated Company that will take fee simple title to the Lands under 6.2.
- 6.2 **Closing Deliveries by Province.** Within 120 days after the issuance of a ministerial order under 5.2(i) after the RA Date, and subject to the Permitted Encumbrances and the terms of this Agreement, including the satisfaction or waiver of the conditions precedent under 5.1 and 5.2, the Province will provide

the Designated Company identified under 6.1 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, 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) an 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, if applicable, 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 Agreement (Schedule 5) and the GST certificate (Schedule 6);
- e) a letter from the Snuneymuxw First Nation in the form attached as Schedule 11 withdrawing its objections to the referrals listed in Schedule 10a;
- f) a letter from the Snuneymuxw First Nation in the form attached as Schedule 12 for the referrals listed in Schedule 10b; and
- g) 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 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 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 them 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 condition of the Lands (including surface water and groundwater), environmental or otherwise, including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Lands and on or under any surrounding or neighbouring land and the current and past uses of the Lands and any surrounding or neighbouring land.
- 7.4 **Environmental Remediation.** The Snuneymuxw First Nation will from and after the Closing:
- a) assume all environmental liabilities relating to the Lands including, but not limited to, all liability for the clean-up of any 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 all Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs, actions, causes of action, suits and proceedings with respect to all environmental liabilities relating to the Lands, including, but not limited to, any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands; and
- c) indemnify and save harmless all Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs or expenses suffered or incurred by them after the Closing arising out of or in connection with all environmental liabilities relating to the Lands, including, but not limited to, any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands.

## **ARTICLE 8 – ENCUMBRANCES**

8.1 **Permitted Encumbrances.** The Snuneymuxw First Nation acknowledges that it is familiar with the Permitted Encumbrances and accepts fee simple title to the Lands 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 between the execution of this Agreement and the registration of the Lands with the Land Title and Survey Authority:

- a) the Permitted Encumbrances may require updating;
- b) the Permitted Encumbrances will be as identified and agreed by the Parties on the Closing Date;
- c) Schedule 2 (Permitted Encumbrances) and Schedule 3 (Instruments of Registration) will be revised and will, as revised, form part of this Agreement; and
- d) the Permitted Encumbrances will be subject to the Final Reconciliation Agreement.

## **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 other costs or fees associated with the preparation of Crown Grants or any other documents required to register the Lands and Permitted Encumbrances including, without limitation, any fees charged by the Land Title and Survey Authority; and
  - c) property transfer tax payable under the *Property Transfer Tax Act* which, for greater certainty, the Province agrees to either pay or waive.
- 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 and Charges.** The Snuneymuxw First Nation is responsible for any GST and any other transfer or registration charges for which the Province has not expressly agreed to accept responsibility under the terms of this Agreement.
- 9.4 **Annual Taxes and Other Costs.** The Designated Company is responsible for any and all annual taxes payable in respect of the Lands. 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 further acknowledges and covenants that:
- a) for a period of time commencing on the applicable Closing Date and ending on the earlier of the 10-year anniversary of the Closing Date or the Effective Date, it will not permit the Designated Company to dispose of its fee simple estate in:
    - i) Block 202, Douglas District, also known as **Mount Benson 012**;
    - ii) Block 271, Douglas District, also known as **Mount Benson 013**; or
    - iii) Block 18VL&M, Douglas District, also known as **Mount Benson 015**.

- b) any of the Lands that may be transferred to a Designated Company in accordance with this 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* and at no time after Closing will the Snuneymuxw First Nation seek to add any of the Lands to its reserve lands without the consent of the Province; and
  - c) the Lands are subject to provincial and local government laws, including applicable zoning, land use, land development and property tax laws, and at no time after Closing will the Snuneymuxw First Nation challenge the applicability of provincial laws to the Lands.
- 10.2 **Disposition of Interests in Lands.** Notwithstanding 10.1(a), the Snuneymuxw First Nation may charge or encumber the Lands provided that the Snuneymuxw First Nation advises the intended charge or encumbrance holder in writing that the Lands may, on the Effective Date, be transferred by the Designated Company to the Snuneymuxw First Nation.
- 10.3 **Provincial and Local Government Laws.** For greater certainty, 10.1(c) is not intended to affect the rights of the Snuneymuxw First Nation recognized and affirmed in section 35 of the *Constitution Act, 1982*.
- 10.4 **Indemnity for Charges.** The Snuneymuxw First Nation will indemnify and save harmless the Province and all Provincial Officials from any and all damages, losses, liabilities or costs that they may suffer or incur in connection with or as a result of any suit, action, claim, proceeding or demand arising in connection with any Permitted Encumbrance, any charge or encumbrance granted by the Snuneymuxw First Nation under 10.2, the transfer of the fee simple estate in the Lands to the Snuneymuxw First Nation and the Lands becoming treaty settlement lands.

## **ARTICLE 11 – STATUS OF LANDS**

- 11.1 **Lands Part of Final Reconciliation Agreement.** In the event the Snuneymuxw First Nation concludes a Final Reconciliation Agreement, the Snuneymuxw First Nation acknowledges that the Lands transferred to the Snuneymuxw First Nation under this Agreement will form part of the consideration provided by the Province and Canada under a Final Reconciliation Agreement.
- 11.2 **Status of Lands on Effective Date.** As part of any Final Reconciliation Agreement negotiations, the Parties and Canada will negotiate the status of the Lands transferred to the Snuneymuxw First Nation under this Agreement as treaty settlement lands or non-treaty settlement lands.

## **ARTICLE 12 – OVERLAPPING CLAIMS**

- 12.1 **Shared Territories.** Based on the Province's consultation area database, and information available to, and provided by the Snuneymuxw First Nation, the Parties concur that the Lands are not subject to overlapping or shared territory claims by other First Nations. Notwithstanding the foregoing, the Parties acknowledge that information may be provided by a First Nation that requires reconsideration.
- 12.2 **Other First Nations' Litigation.** In the event another First Nation claims that the Lands are within the territory claimed by that First Nation, and the Province is of the view that an adjustment to the boundaries of the Lands is needed, the Parties will attempt to reach agreement on:
- (a) amendments to the boundaries of the affected Lands; or
  - (b) where the Parties are unable to reach agreement under 12.2(a), or the boundary change results in a reduction in the size or value of the affected Lands, the possible transfer of other lands.

## **ARTICLE 13 – EXISTING LITIGATION**

- 13.1 **Existing Litigation.** The Province and the Snuneymuxw First Nation entered into a Memorandum of Agreement (attached as Schedule 9) dated March 11, 2002 pursuant to which the Snuneymuxw First Nation agreed to file a notice of discontinuance in *Snuneymuxw et al v HMQBC et al* (Vancouver Registry No. SO13336). The Snuneymuxw First Nation confirms that it has or, if it has not, that it will file the required notice of discontinuance and provide the Province with a copy of the notice. Notwithstanding the termination of the Memorandum of Agreement, the discontinuance will remain in effect until March 10, 2022.
- 13.2 **Termination of Litigation.** If the Parties and Canada conclude a Final Reconciliation Agreement, the Snuneymuxw First Nation will, without cost to any Party, terminate the litigation under 13.1, including without limitation:
- a) removing the Province as a party to the litigation; and
  - b) executing a release in a form agreeable to the Parties releasing the Province and all Provincial Officials from all claims, demands, actions, proceedings and damages that the Snuneymuxw First Nation may have against the Province or any Provincial Official by reason of the matters giving rise to the litigation under 13.1.
- 13.3 **New Litigation.** Before commencing any action or other proceeding relating to any Governmental Action within the Traditional Territory, the Snuneymuxw First Nation will:

- a) notify the Province of any interests it may have that may be impacted by the Governmental Action; and
- b) participate in the dispute resolution process set out in Article 17.

#### **ARTICLE 14 – NEWCASTLE ISLAND MARINE PROVINCIAL PARK AND NANAIMO ESTUARY**

- 14.1 **Newcastle Island Marine Provincial Park Contract.** In 2012, the Province and the Snuneymuxw First Nation entered into a Permit Modification Agreement (attached as Schedule 13) to modify and extend the 2003 Operations Permit (attached as Schedule 14) to March 31, 2013.
- 14.2 **Extension of Permit Modification Agreement.** The Parties agree to extend the Permit Modification Agreement, under the same terms and conditions, to March 31, 2015.
- 14.3 **Letter Regarding Newcastle Island Marine Provincial Park.** On or before the RA Date, the Province will provide to the Snuneymuxw First Nation a letter in a form to be agreed by the Parties in which the Province will undertake to discuss and attempt to address the concerns, interests and priorities of the Snuneymuxw First Nation regarding Newcastle Island Marine Provincial Park.
- 14.4 **Nanaimo Estuary.** The Province and the Snuneymuxw First Nation entered into a Memorandum of Agreement (attached as Schedule 9), dated March 11th, 2002, pursuant to which the Province agreed to include in a head lease with the Nanaimo Port Authority the requirement to review tenure activity authorized by the Nanaimo Port Authority on the fifth (2007), tenth (2012) and fifteenth (2017) anniversaries of the head lease. The Province and the Snuneymuxw First Nation agree to cancel the tenth (2012) anniversary review.

#### **ARTICLE 15 – FUTURE DISCUSSIONS/NEGOTIATIONS**

- 15.1 **Additional Lands.** Within two years after the Closing Date, the Parties will meet to discuss the transfer of additional lands to the Snuneymuxw First Nation.
- 15.2 **Conditions on Additional Lands.** The transfer of additional lands under 15.1 will be subject but not limited to the following conditions:
  - a) the litigation identified in 13.1 remaining discontinued;
  - b) no litigation, other than the litigation identified in 13.1, having been commenced by the Snuneymuxw First Nation against the Province or a Provincial Official relating to any Governmental Action within the Traditional Territory;

- c) an Engagement Protocol having been implemented and operating effectively, including timely review of applications; and
  - d) discussions regarding the Nanaimo Estuary having commenced and progress having been made to resolve the Parties' concerns and interests.
- 15.3 **Gabriola Lands.** The additional lands under 15.1 may include the Provincial Gabriola Lands and the TRM Gabriola Lands. The Snuneymuxw First Nation acknowledges that the addition of the TRM Gabriola Lands will be subject to Canada's agreement to transfer the TRM Gabriola Lands to the Province on such terms as are acceptable to the Province.

## **ARTICLE 16 – COST-SHARED LANDS WITH CANADA**

- 16.1 **Cost-Shared Values.** The Snuneymuxw First Nation acknowledges that the Province may, and will support the Province's efforts to, seek to cost share the values of the Lands with Canada under a Final Reconciliation Agreement.

## **ARTICLE 17 – DISPUTE RESOLUTION**

- 17.1 **Representatives.** If a dispute arises between the Province and the Snuneymuxw First Nation regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet within 60 days of notice from the initiating Party to attempt to resolve the dispute.
- 17.2 **Senior Representatives.** If the Parties are unable to resolve the dispute at the appropriate level within 60 days of the first meeting between the Parties, the interpretation issue will be raised to more senior levels of the Province and the Snuneymuxw First Nation.
- 17.3 **Other Means.** The Parties may amend the timelines under 17.1 or 17.2 or choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

## **ARTICLE 18 - NOTICES**

- 18.1 **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 Agreement must be in writing, unless otherwise specified herein, 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 Aboriginal Relations and Reconciliation  
P.O Box Stn. Prov. Govt.  
Victoria, B.C. V8W 9B1  
Fax: (250) 387-6073

and if to the Snuneymuxw First Nation:

Snuneymuxw First Nation  
668 Centre St.  
Nanaimo, B.C. V9R 4Z4  
Attention: Chief  
Fax: (250) 753-3492

- 18.2 **Change of Address.** Either Party may, from time to time, give written or e-mail notice to the other Party of any change of address or facsimile number of the Party giving such notice and after the giving of such notice, the address or facsimile number therein specified will, for purposes of this Agreement be conclusively deemed to be the address or facsimile number of the Party giving such notice.

## **ARTICLE 19 - GENERAL**

- 19.1 **Entire 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.
- 19.2 **Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.
- 19.3 **No Implied Waiver.** Any waiver of:
- a) a provision of this Agreement;
  - b) the performance by a Party of an obligation under this Agreement; or
  - c) 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.

- 19.4 **Successors.** This Agreement will enure to the benefit of and be binding on the Snuneymuxw First Nation and its successors and the Province.
- 19.5 **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 right 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.
- 19.6 **Not a Treaty.** This Agreement does not:
- a) constitute a treaty or land claims 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 or treaty rights or titles or any responsibilities of the Parties except as set out in this Agreement.
- 19.7 **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.
- 19.8 **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
- 19.9 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 19.10 **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile transmission.

IN WITNESS WHEREOF the Parties have executed this Agreement on March 27, 2013,  
as set out below:

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

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**Chief Douglas White III Kwulasultun**

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**Darcy Good, Witness**

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

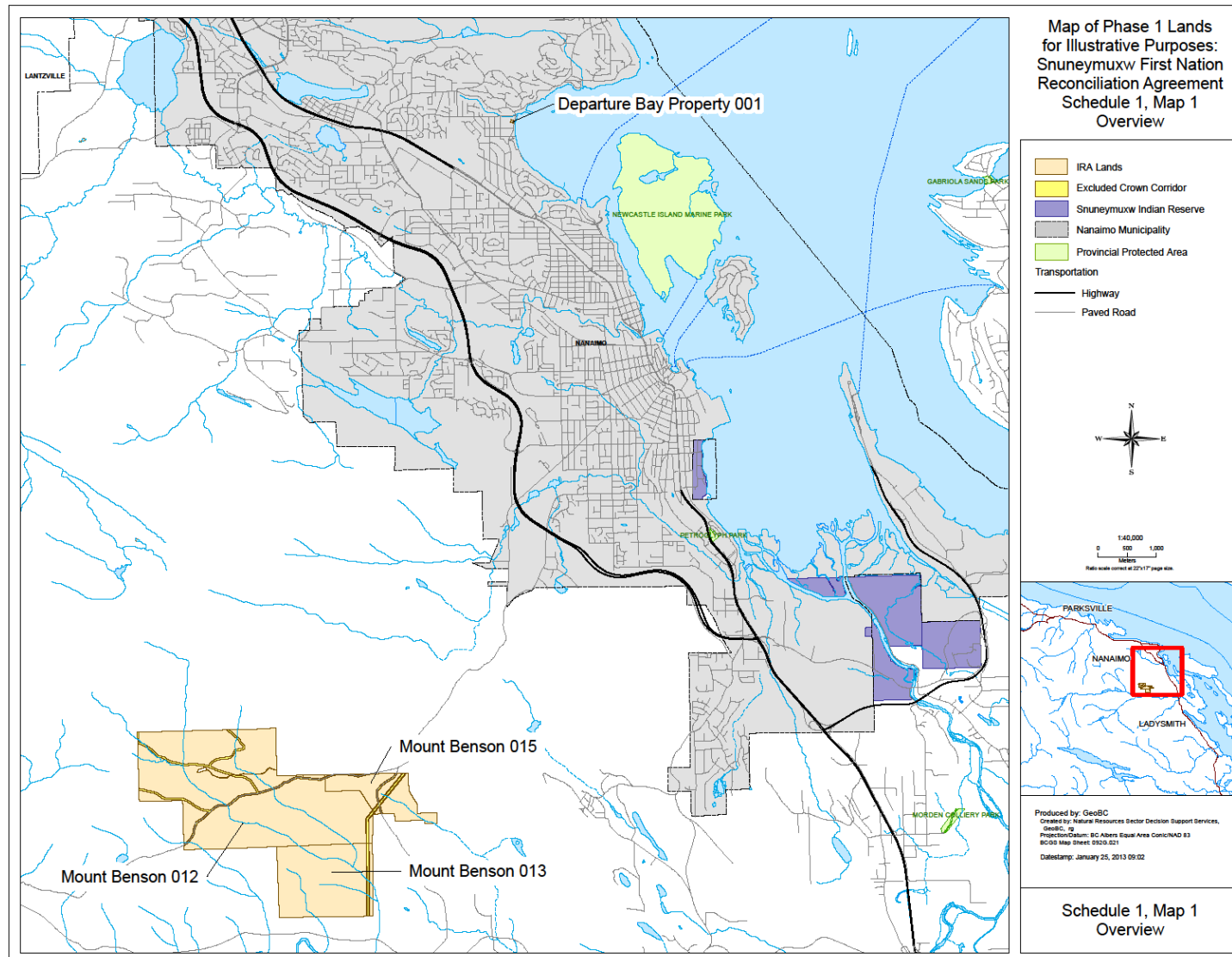
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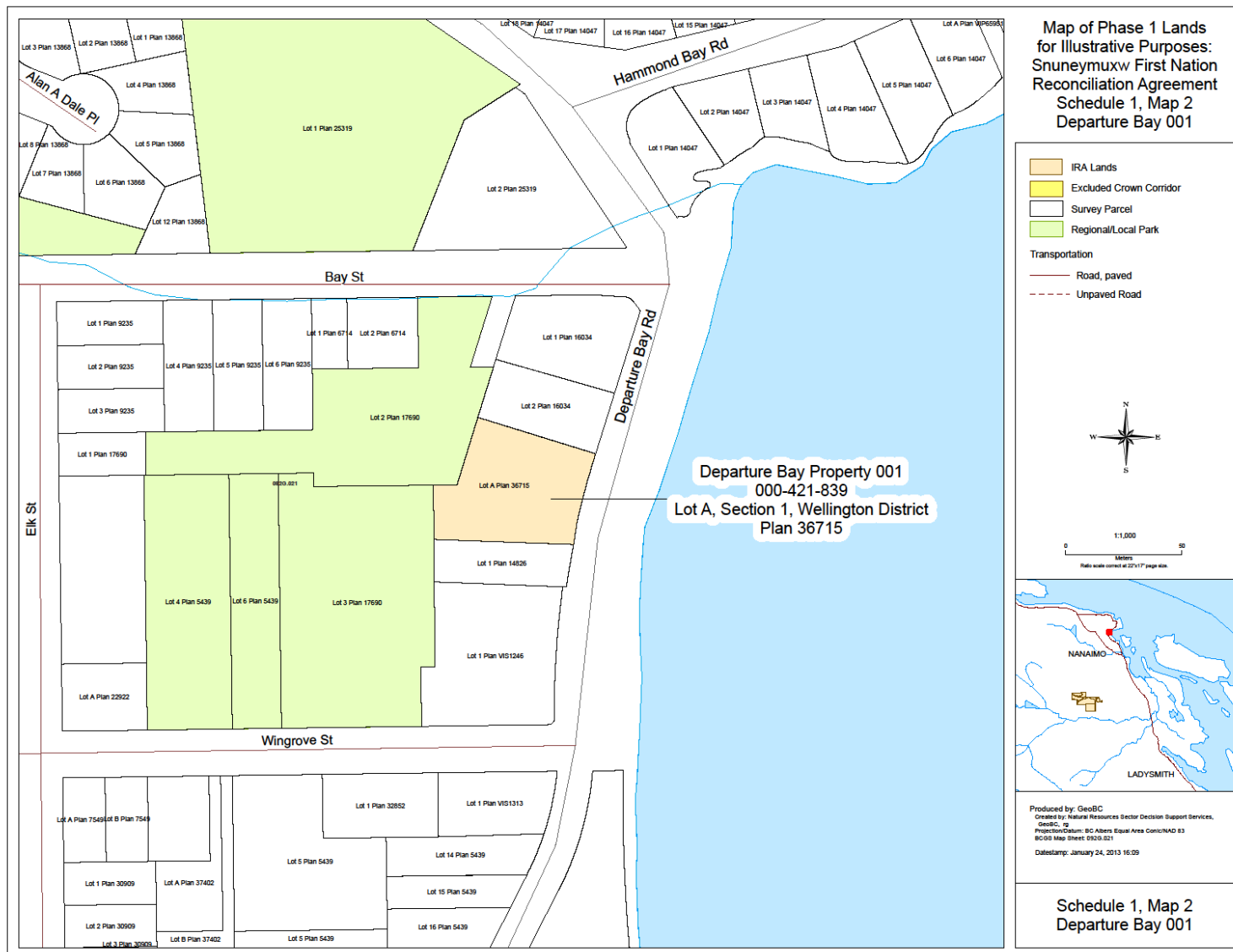
**Honourable Ida Chong, Minister of  
Aboriginal Relations and Reconciliation**

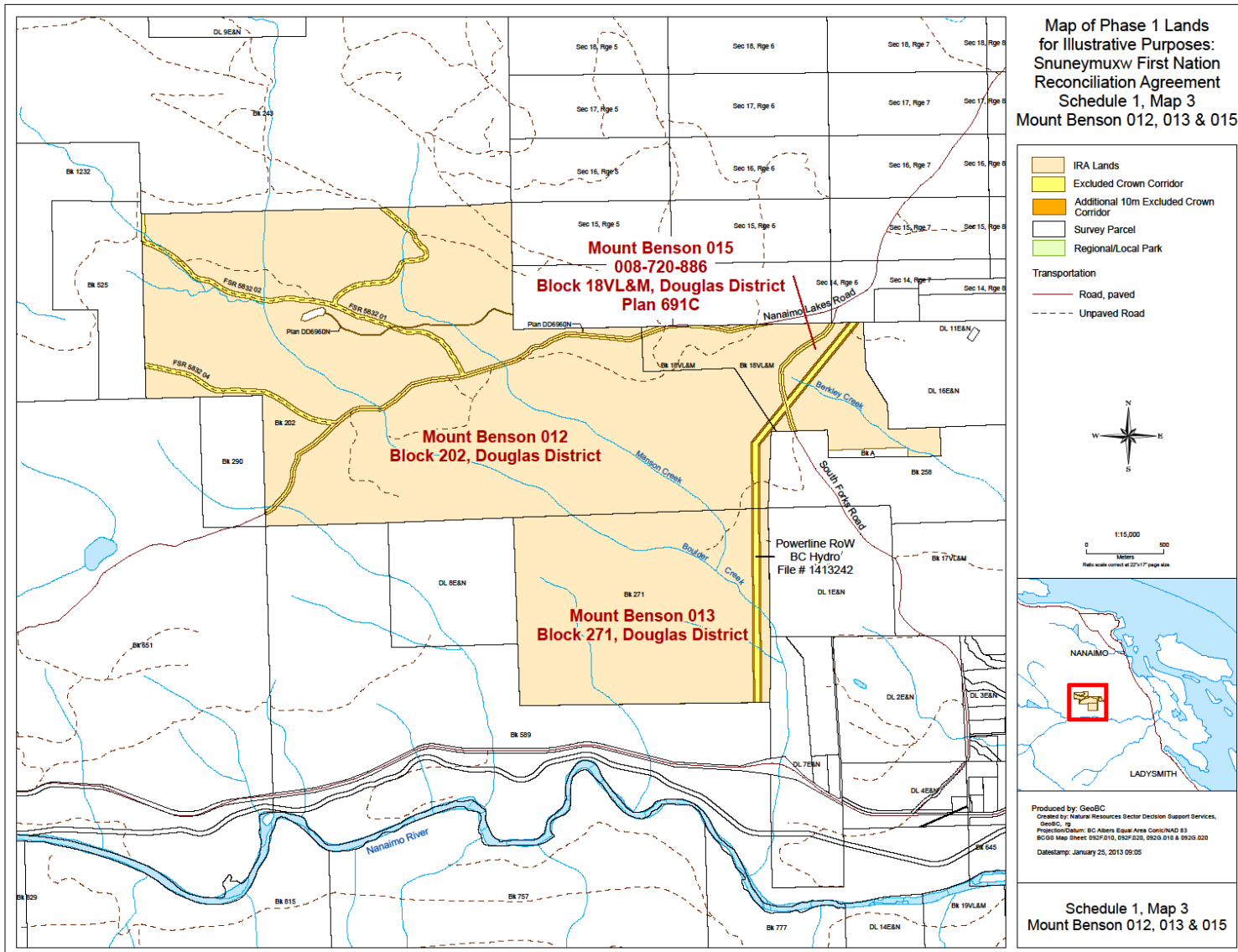
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**Mark Lofthouse, Chief Negotiator  
Witness**

## Schedule "1" – Maps of Lands for Illustrative Purposes







## **Schedule “2” Part 1 – Permitted Encumbrances**

In respect of all of the Lands:

1. All interests registered on title under the *Land Title Act* as of the Closing Date
2. All subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the land
3. All exceptions and reservations contained in section 50(1) of the *Land Act*
4. Any conditional or final water license or substituted water license issued or given under the *Water 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
5. 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
6. 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
7. 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 Agreement and that these unidentified interests continue on the Lands
8. A restrictive covenant in favour of Her Majesty the Queen in right of the Province of British Columbia to be registered against the title to this property in the form attached as Schedule 4 (Additions to Reserve Restrictive Covenant)

**Schedule “2” Part 2 – Permitted Encumbrances—Interests Not Registered on Title**

1. Utility and local government Interests for hydro, telephone, cablevision, heating/natural gas, water infrastructure, storm drains, dykes and waste disposal/sewer continue on the Lands.

**Schedule “3” - Instruments of Registration**  
**(Titles, Survey Plans, Charges and Other Instruments)**

## **Schedule "4" - Addition to Reserve Restrictive Covenant**

### **LAND TITLE ACT**

### **FORM C**

(Section 233)

Province of  
British Columbia

### **GENERAL INSTRUMENT-PART 1** (This area for Land Title Office Use)

Page 1 of 4 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

\_\_\_\_\_  
(Signature of Solicitor or Authorized Agent)

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

(PID)

(LEGAL DESCRIPTION)

3. NATURE OF INTEREST:\*

Description

Document Reference

Person Entitled to Interest

(Page and paragraph)

Section 219 Covenant

Entire Document

Transferee (Grantee)

4. TERMS: Part 2 of this instrument consist of (select one only)

- |     |                             |                                     |                                       |
|-----|-----------------------------|-------------------------------------|---------------------------------------|
| (a) | Filed Standard Charge Terms | <input type="checkbox"/>            | D.F. No.                              |
| (b) | Express Charge Terms        | <input checked="" type="checkbox"/> | Annexed as Part 2                     |
| (c) | Release                     | <input type="checkbox"/>            | There is no Part 2 of this instrument |

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

3. TRANSFEROR(S):\* (Grantor)

3. TRANSFeree(S): (Including postal address(es) and postal code(s))\* (Grantee)

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** as represented by the Minister of Forests, Lands, and Natural Resource Operations, Parliament Buildings, PO Box 9049, STN PROV GOVT, Victoria, British Columbia, V8W 9E2

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7. ADDITIONAL OR MODIFIED TERMS:\*

N/A

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8. EXECUTION(S):\*\* This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
				_____ By
				Its authorized signatory(ies):
				_____
				Print Name:
				_____
				Print Name:

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

\* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.  
\*\* If space insufficient, continue executions on additional page(s) in Form D.

## TERMS OF INSTRUMENT – PART 2

### WHEREAS:

- A. The Grantor is the registered owner of:

\_\_\_\_\_

(the “Land”);

- B. Under section 219 of the *Land Title Act*, there may be registered against title to any land, conditions or covenants in favour of the Grantee that the land, or any specified portion thereof, is not to be used other than in accordance with the terms of a covenant.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One (\$1.00) Dollar now paid by the Grantee to the Grantor, the receipt and sufficiency of which is hereby acknowledged, and pursuant to section 219 of the *Land Title Act*, the Grantor covenants and agrees with the Grantee as follows:

1. The Grantor covenants and agrees that the Grantor will not, in the absence of consent by the Grantee, transfer, alienate or deal with the Land in any manner which would see it incorporated into or become part of:
  - a. Reserves or special reserves as defined in the *Indian Act*; or
  - b. “Lands reserved for the Indians” under section 91(24) of the *Constitution Act, 1867*.
2. Wherever the singular or masculine are used in this Agreement, they shall be construed as meaning the plural or feminine or body corporate where the context or the parties so require.
3. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
4. The Grantor will indemnify and save harmless the Grantee from all actions, causes of action, claims demands, suits, losses, damages, debts, accounts, liabilities, costs, expenses and compensation of any kind, including fees of solicitors and other professional advisors, arising out of any breach, violation or non-performance by the Grantor of the covenants set out in section 1.
5. No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Grantee unless such waiver is expressed in writing by the Grantee and the waiver by the Grantee of any such term, condition, covenant or other provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of that or any other term, condition, covenant or other provision of this Agreement.
6. This Agreement will be interpreted according to the laws of the Province of British Columbia.

7. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect and, unless the context otherwise requires, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
8. If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or section, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.
9. This Agreement will be registered as a charge against the Land pursuant to section 219 of the *Land Title Act*.

IN WITNESS WHEREOF the Grantor has executed this Agreement on Form C attached.

**END OF DOCUMENT**

## **Schedule "5" - Designated Company Agreement**

This Agreement is dated for reference \_\_\_\_\_, 2012.

### **BETWEEN:**

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,  
represented by the Minister of Aboriginal 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 an agreement dated \_\_\_\_\_ (the "Reconciliation 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 Reconciliation Agreement will have the meaning given to those terms in the Reconciliation Agreement.
2. **Environmental Condition.** 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.
3. **RA Binding.** Without limiting the generality of the foregoing, the terms of the Reconciliation 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 Reconciliation Agreement, including, without limitation, 4.1, 10.1-10.2 and 10.4 of the Reconciliation Agreement.

4. **Enforcement of RA.** The Province may, in its sole discretion, enforce any term or condition of the Reconciliation 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.
5. **Legal Advice.** The Designated Company acknowledges that it has had full opportunity to review the terms and conditions of this Agreement and the Reconciliation Agreement, a copy of which is attached as Schedule A, and to seek independent legal advice with respect to their terms and conditions.
6. **Entire 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.
7. **Further Acts and Assurances.** The Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.
8. **No Implied Waiver.** Any waiver of:
  - a) a provision of this Agreement;
  - b) the performance by a Party of an obligation under this Agreement; or
  - c) 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.
9. **Successors.** This Agreement will enure to the benefit of and be binding on the Designated Company and its successors and the Province.
10. **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 right 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.
11. **Not a Treaty.** This Agreement does not:
  - a) constitute a treaty or land claims 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.
12. **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.
13. **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
14. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
15. **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by 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 Aboriginal Relations and Reconciliation or the Minister's authorized representative as of \_\_\_\_\_, 20\_\_\_\_\_:

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

**Schedule “6” – GST Certificate**

## **Schedule “7” – Engagement Protocol**

### **CONTEXT**

1. Snuneymuxw First Nation (Snuneymuxw) and the Province of British Columbia (British Columbia) acknowledge they have different views regarding land and resource decision-making in the Traditional Territory. One reason for these different views is the Parties’ interpretation of the Treaty of 1854.
2. Snuneymuxw and British Columbia will undertake the Engagement Protocol with the understanding that it is without prejudice to the different views concerning the legal implications of the Treaty of 1854, and that the development, under this Protocol, of processes for engagement does not change or affect the position either Party has, or may have, regarding its jurisdiction, responsibilities or decision-making authority or be interpreted in a manner that would affect or unlawfully interfere with that decision-making authority.

### **PURPOSE**

3. The purpose of the Engagement Protocol is for the Parties to undertake an 18-month pilot project that can be used as a foundation to support improvement in the relationship and engagement between the Snuneymuxw and British Columbia regarding land and resource matters in the Traditional Territory.

### **OBJECTIVES**

4. The Parties seek to achieve the following outcomes under this Agreement:
  - a. An improved understanding of each other’s respective views about the Treaty of 1854 and its implications for land and resource use in the Traditional Territory;
  - b. Development of processes contemplated in this document for the review of Applications for land and resource use in the Traditional Territory, with the purpose of building more effective and efficient processes for both Parties; and
  - c. Identification of issues and actions to be taken by the Parties for the ongoing improvement of the Nanaimo Estuary.

## **DEFINITIONS**

“Application” means an application under consideration by a Provincial Agency, seeking authorization(s) for land and resource use, including the application document, any materials for amendment, renewal or replacement approvals, and all supporting materials;

“Traditional Territory” means, for the purposes of this Engagement Protocol, the Snuneymuxw First Nation’s claimed or asserted Traditional Territory;

## **STRUCTURE**

5. To accomplish the objectives of the Engagement Protocol, the Parties will establish the following Working Groups:
  - a. Douglas Treaty Working Group (DTWG);
  - b. Engagement Process and Referral Working Group (EPRWG); and
  - c. Nanaimo Estuary Working Group (NEWG).
6. The establishment of these Working Groups will include the development of Working Group membership, as well as terms of reference and workplans, to guide their activities over the term of the Engagement Protocol. The Work Plan is attached as Appendix 1.
7. To support the continued relationship and understanding between the Parties, the Parties will each appoint one senior level official who will be available, on an ad-hoc basis, to provide to the Working Groups:
  - a. Guidance and direction; and
  - b. Assistance to resolve disputes that may arise from time to time.

## **DOUGLAS TREATY WORKING GROUP**

8. The DTWG is a forum for exchanging information and building understanding about the respective views of Snuneymuxw and British Columbia regarding the Treaty of 1854. These discussions may include:

- a. Exchanging historical information, discussion papers, and legal information; and
- b. Creating opportunities through workshops and other forums for relevant Snuneymuxw and Provincial officials to exchange perspectives.

## **ENGAGEMENT PROCESS AND REFERRAL WORKING GROUP (EPRWG)**

9. The EPRWG is a forum for developing processes between the Parties for the review of Applications for land and resource use in the Traditional Territory.
10. The development of processes may include:
  - a. Identification and development of critical information that will support the review of Applications, such as:
    - i. key contacts and roles;
    - ii. standards of information;
    - iii. boundaries of the Traditional Territory; and
    - iv. development of a referral inventory;
  - b. Development of clear processes and standards for communication of information;
  - c. Development of protocols, matrices or other tools to promote understanding and improve engagement between the Parties;
  - d. Development of workshops and other forums to share, develop and implement processes; and
  - e. Development of a hunting protocol to guide British Columbia and Snuneymuxw in hunting matters.
11. The EPRWG may explore opportunities to seek mandates and develop processes between the Parties for consensus recommendations, where appropriate.
12. The Parties may jointly or independently make recommendations to their respective decision-makers regarding an Application.

## **NANAIMO ESTUARY WORKING GROUP (NEWG)**

13. The NEWG is a forum to identify issues and actions to be taken by the Parties for the ongoing improvement of the Nanaimo Estuary.
14. The Parties endorsed the Nanaimo Estuary Management Plan (Plan) in February 2006, and created the Nanaimo Estuary Management Committee with the other organizations and government that endorsed the plan.
15. The NEWG agrees to complete the following tasks during the term of the Engagement Protocol:
  - a. Review the Plan, including the identification of the status of implementation and monitoring activities since the Plan;
  - b. Discuss an approach to incremental financial benefits to Snuneymuxw from log booming in the Nanaimo Estuary, including engagement with third parties, when appropriate;
  - c. Explore approaches to reduction of log boom storage in the Nanaimo Estuary;
  - d. Advise the Parties of any recommendations resulting from the completion of the review of the Plan in subparagraphs (a) through (c); and
  - e. Conduct other activities agreed to in writing by the Parties.
16. The Parties will provide the required leadership to act upon any recommendations in subparagraph 16(d) that are mutually agreed to by the Parties.

## **RELATIONSHIP OF WORKING GROUPS**

17. The Working Groups may share relevant information about their respective activities and may meet from time to time
18. By mutual agreement in writing, the Parties may combine the Working Groups into a single Working Group, to achieve the desired outcomes of the Engagement Protocol.

## **IMPLEMENTATION MATTERS**

19. Implementation of processes, protocols and other tools by the Working Groups is subject to approval of the Parties' respective decision-making processes.

## **REVIEW OF ENGAGEMENT PROTOCOL**

20. The Working Groups will review progress of the Engagement Protocol at three-month intervals, and other points in time mutually agreed to, during the 18-month term.
21. The reviews may include assessment of the workplan goals against achievements, general improvements of engagement processes for each Party, and improvements that could be adopted.

## **EXPANDING THE SCOPE OF THE ENGAGEMENT PROTOCOL**

22. By mutual agreement in writing, the Parties may address additional issues under this Agreement and establish additional Working Groups to address those issues.

## **FUNDING**

23. British Columbia will make an initial contribution of \$50,000 in funding to Snuneymuxw to enable it to participate in the working groups and other processes provided in this Engagement Protocol.
24. Subject to the initial three month review described in sections 20 and 21, and subject to British Columbia seeking appropriate mandates, further funding may be provided by British Columbia to implement this Engagement Protocol.
25. Subject to completion of the initial three month review described in sections 20 and 21, and British Columbia seeking appropriate mandates, further funding may be provided by British Columbia for the purposes of supporting Snuneymuxw in the implementation responsibilities arising from the development of processes, protocols, or other tools.
26. Notwithstanding any other provisions of this Agreement, the payments to be provided by British Columbia to Snuneymuxw are subject to:
  - a. there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any provincial fiscal year or part thereof when such payment is required, to make such payment; and

- b. Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.

## **TERM AND TERMINATION OF THE ENGAGEMENT PROTOCOL**

- 27. The term of the Engagement Protocol is 18 months from the RA Date.
- 28. By mutual agreement in writing, the Parties may extend the term of the Engagement Protocol.
- 29. Notwithstanding paragraph 28, this Engagement Protocol may be terminated as set out in paragraph 3.2 of the Reconciliation Agreement.
- 30. Where this Engagement Protocol is terminated under paragraph 29 and British Columbia has made any payments to Snuneymuxw to enable Snuneymuxw to implement this Engagement Protocol, Snuneymuxw will remit to British Columbia within 30 days of termination of this Engagement Protocol any funds unspent as of the termination date.

## **APPENDIX 1—DRAFT WORKPLAN**

### **MONTHS ONE TO THREE**

#### **General:**

- i. Establish Working Groups and determine membership; and
- ii. Appoint senior level officials
- iii. Conduct reviews at three months.

#### **DTWG**

- i. Identify sources of information concerning the Treaty of 1854, and develop an inventory of information sources;
- ii. Compile information concerning the Treaty of 1854;
- iii. Organize and undertake initial dialogues between British Columbia and Snuneymuxw concerning understandings and approaches to implementing the Treaty of 1854, including implications of the Treaty for decision-making concerning lands and resources in the Traditional Territory

#### **EPRWG**

- i. Identification and development of critical information such as key contacts and roles, standards of information, boundaries of the Traditional Territory;
- ii. Development of an Application inventory;
- iii. Review by parties of current Applications referred to Snuneymuxw, based on processes when developed.

#### **NEWG**

- i. Identification of issues and partners to implement short-term actions, including those to improve the Nanaimo Estuary;
- ii. Identification of steps required to complete the tasks identified in section 16.

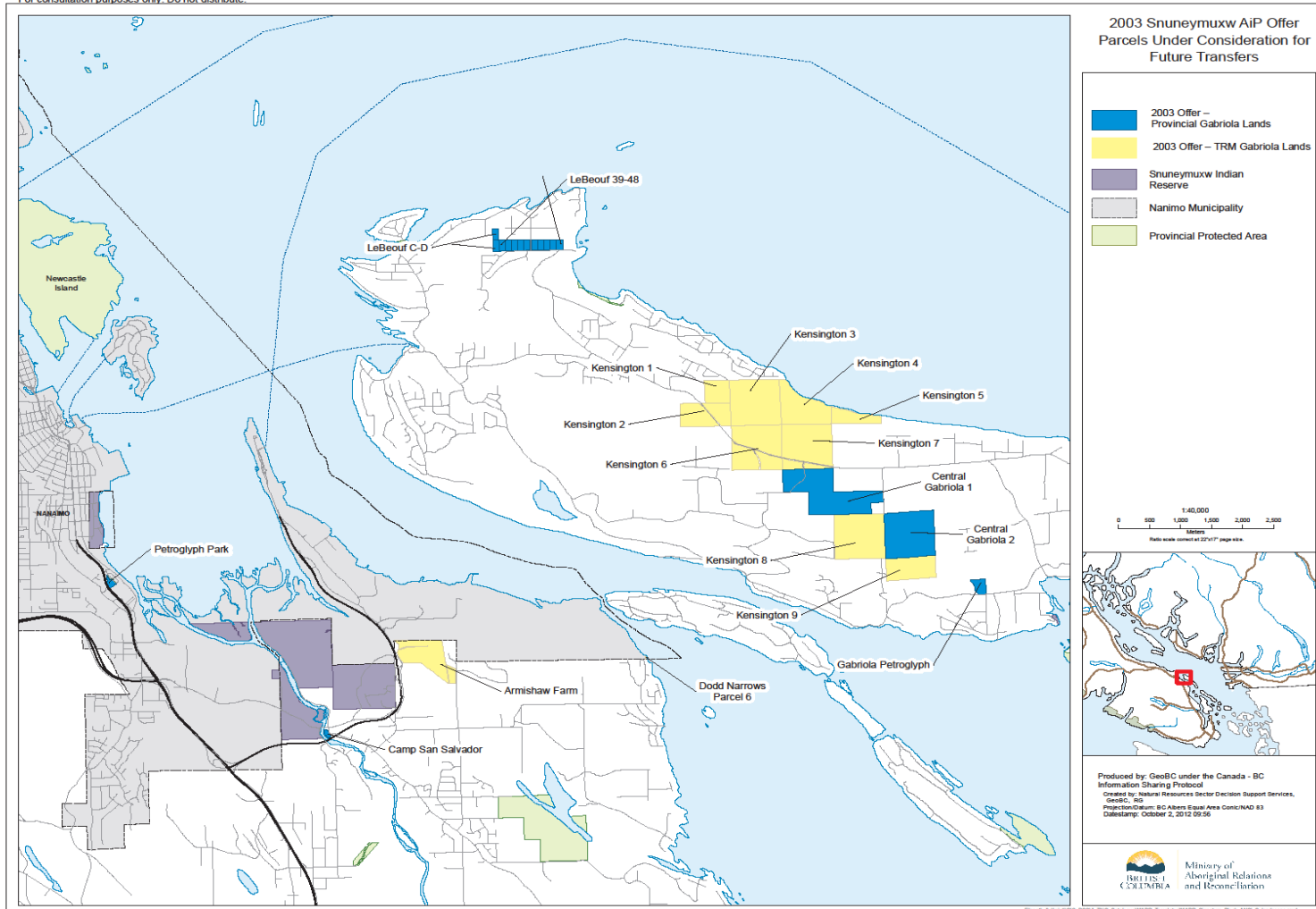
### **MONTHS FOUR TO TEN; ELEVEN TO EIGHTEEN**

The Working Groups will develop workplans for the periods of four to ten months, and eleven to eighteen months, as required.

## Schedule "8" – Map of Provincial Gabriola Lands and TRM Gabriola Lands

Confidential  
This is not an offer.  
For consultation purposes only. Do not distribute.

Date: October 2, 2012



**Schedule “9” – Nanaimo Estuary “Memorandum of Agreement”**

## MEMORANDUM OF AGREEMENT

### BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA, as represented by the Minister of Sustainable Resource  
Management

("the Province")

### AND:

THE SNUNEYMUXW FIRST NATION, as represented by Chief and Council

("Snuneymuxw First Nation")

(Collectively, the "Parties")

### WHEREAS:

- A. The Nanaimo Port Authority administers certain provincial foreshore and submerged lands within the Nanaimo Estuary pursuant to an Indenture dated November 1, 1962, and modified by Agreement dated May 4, 1979 (the "Existing Head Lease").
- B. The Province may issue a replacement head lease to the Nanaimo Port Authority prior to October 31, 2002, the date the Existing Head Lease expires.
- C. On June 14, 2001, the Snuneymuxw First Nation commenced an action in the British Columbia Supreme Court against the Province, British Columbia Assets and Land Corporation, Canada and the Nanaimo Port Authority in *Snuneymuxw First Nation et al v. HMQBC et al* (Vancouver Registry No. S013336).
- D. The Parties have been working co-operatively on an Estuary Management Planning Process for the Nanaimo Estuary, along with federal agencies including the Nanaimo Port Authority, with a view to addressing the concerns of the Snuneymuxw First Nation in relation to log boom storage and the proposed grant of a replacement headlease to the Nanaimo Port Authority.
- E. The Estuary Management Planning Process continues through October 2002.
- F. The Snuneymuxw First Nation asserts that it has Douglas Treaty rights to fish as formerly in the Nanaimo Estuary.

**NOW THEREFORE**, the Province and the Snuneymuxw First Nation **AGREE AS FOLLOWS**:

**Definitions**

1. In this Memorandum of Agreement (the "Agreement"):
  - (a) "Action" means the proceeding commenced by the Snuneymuxw First Nation against the Province, British Columbia Assets and Land Corporation, Canada and the Nanaimo Port Authority on June 14, 2001, in the British Columbia Supreme Court in *Snuneymuxw First Nation et al v. HMQBC et al* (Vancouver Registry No. S013336);
  - (b) "EMPP" means the Nanaimo Estuary Management Planning Process, which began in January, 2001 and is being led jointly by the Ministry of Sustainable Resource Management and the Snuneymuxw First Nation;
  - (c) "Head Lease" means the lease referred to in section 2 of this Agreement;
  - (d) "Head Lease Area" means a portion of the Nanaimo Estuary, marked 'proposed modifications' and shaded in blue on the map attached as Schedule A to this Agreement;
  - (e) "Industry Users Group" means all the holders of log storage tenures granted by the Nanaimo Port Authority within the Head Lease Area under authority of the Head Lease;
  - (f) "MSRM" means the Ministry of Sustainable Resource Management;
  - (g) "Nanaimo Estuary" means the area outlined in blue on the map attached as Schedule B to this Agreement; and
  - (h) "NPA" means the Nanaimo Port Authority, an agency of the Government of Canada incorporated pursuant to the *Canada Marine Act*, and having offices at 104 Front Street, Nanaimo BC V9R 5H7.

**Replacement Head Lease**

2. If the Province grants a lease to the NPA, the lease will have a maximum term of twenty years and will include:
  - (a) A requirement that every five years, commencing on the fifth, tenth and fifteenth anniversary of the date that the lease is granted, the Province will review tenure activity authorized by the NPA under the lease and will:

- i. consider in its review, any information, analysis or recommendations provided by the Snuneymuxw First Nation pursuant to the monitoring program described in sections 3 to 10 of this Agreement;
  - ii. decide at the end of each review, how much of the Head Lease Area is required to support saw mills within the vicinity of Nanaimo and southern Vancouver Island; and
  - iii. further decide at the end of each review, taking into account the information provided under subsections (i) and (ii), to what extent require the NPA to reduce the size or size and location of specific log storage tenures granted by the NPA under authority of the lease;
- (b) A provision to the effect that the Province will be under no obligation to renew the lease upon its expiration in twenty years;
- (c) A requirement that the NPA will:
- i. terminate log storage tenures over the lots referred to and depicted as Lots 101 and 102 on the map attached as Schedule A to this Agreement as soon as possible and, in any event, no later than the first anniversary of the date that the lease is granted; and
  - ii. only issue subleases of the lease for log storage over the areas referred to as lots 103, 104, 105 and 106 and 213 and depicted in blue shading on the map attached as Schedule A to this Agreement. The approximate area for log storage within each lot will be as follows: lot 103, 28.99 hectares; lot 104, 9.75 hectares; lot 105, 84.23 hectares; lot 106, 17.75 hectares; lot 213, 21.43 hectares; for a total log storage area of 162.15 hectares;
  - iii. require all Industry User Groups to provide information necessary to allow monitoring under sections 3 to 10 of this Agreement.

#### **Monitoring Program**

- 3. The Province will provide funding to the Snuneymuxw First Nation in the amount of \$10,000 per year for a period of five years so that the Snuneymuxw First Nation can monitor log storage in the Nanaimo Estuary.
- 4. The first payment required under section 3 will be paid to the Snuneymuxw First Nation within thirty days of execution of this Agreement by the Parties. For the next 4 years thereafter, the payment will be made within thirty days of the anniversary date of this Agreement.

5. Working with staff from the MSRM, the Snuneymuxw First Nation will use the funding provided under sections 3 and 4 to collect data from the Industry Users Groups on:
  - (a) the source of logs coming into the Head Lease Area for storage within a site tenured by the NPA under the Head Lease;
  - (b) the destination to which the logs go once they leave the Nanaimo Estuary; and
  - (c) the volume of logs coming in from each source and going out to each destination.
  - (d) monitor the location of logs stored during the tenure term and compare the actual log storage with the sub tenures issued by the NPA.
6. At the end of the five year period referred to in section 3, the Province, in consultation with the Snuneymuxw First Nation, will review the provincial funding that has been provided to the Snuneymuxw First Nation to monitor log storage subleases in the Nanaimo Estuary.
7. The purpose of the review under section 6 will be to determine whether it is cost-effective to continue to monitor the log storage subleases.
8. Regardless of whether the Province continues to provide funding to the Snuneymuxw First Nation after the end of the five year period referred to in section 3, Industry User Groups will be required to continue to provide information to the Snuneymuxw First Nation under section 2(c)(iii) of this Agreement, and the Province will continue to take into account any information, analysis or recommendations provided by the Snuneymuxw First Nation in accordance with section 2(a)(iii).
9. Nothing in sections 6, 7 or 8 of this Agreement will be interpreted as imposing an obligation on the Province to continue to provide funding to the Snuneymuxw First Nation beyond the end of the five year period referred to in section 3.
10. Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Snuneymuxw First Nation under this Agreement is subject to:
  - (a) there being sufficient monies available for the payment in an appropriation, as defined in the *Financial Administration Act*, in any fiscal year or part thereof when the payment of money by the Province falls due; and
  - (b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation referred to in the preceding paragraph.

### Shellfish Aquaculture

11. Upon the completion of the EMPP or, in any event, within one year of the date that this Agreement is signed by the Parties, the Province will designate, based on mutual agreement of the Parties, an appropriate portion of the Nanaimo Estuary outside the Head Lease Area within the area identified in the map attached as Schedule B for shellfish harvesting by the Snuneymuxw First Nation, and reserve the designated area from disposition under section 16 of the *Land Act*.

### Termination of Litigation

12. In consideration of the terms set out in this Agreement:
  - (a) The Snuneymuxw First Nation will file a notice of discontinuance of the Action and will provide a copy of that notice to the Province within thirty days of execution of this Agreement by the Parties; and
  - (b) The Snuneymuxw First Nation will not, for the duration of this Agreement, in any proceedings against the Province or the NPA before any Court, board, commission or other tribunal, seek to set aside or obtain injunctive relief with respect to the Head Lease or any authorizations granted under authority of the Head Lease respecting log boom storage and related activities in or near the Nanaimo Estuary. For greater certainty, nothing in this Agreement will prevent the Snuneymuxw First Nation from seeking, at any time, through the courts, specific claims or other processes, compensation for alleged infringements of aboriginal or Douglas treaty rights relating to log boom storage or related activities in or near the Nanaimo Estuary, regardless of whether the infringement occurred before or after the date the notice of discontinuance is filed.
13. No party will rely on the passage of time from the effective date of this Agreement to the termination of this Agreement as a basis for any legal or equitable defence in any proceeding in which the Snuneymuxw First Nation seeks to set aside or obtain injunctive relief with respect to the Head Lease or any authorizations granted under authority of the Head Lease for log boom storage and related activities in or near the Nanaimo River Estuary.

### Interpretation

14. Nothing in this Agreement is intended or is to be interpreted as creating, granting, authorizing or recognizing any rights of occupation to lands referred to in this Agreement or its schedules.

15. Except as otherwise provided for in this Agreement, this Agreement is without prejudice to any aboriginal and Douglas treaty rights of the Snuneymuxw First Nation, to any positions the Snuneymuxw First Nation may take in Treaty or other negotiations, and to the merits of any claims that the Snuneymuxw First Nation may make in other future proceedings. For greater certainty, the Province will not rely on this Agreement in court to allege or assert that, by signing this Agreement, the Snuneymuxw First Nation has agreed to extinguish any aboriginal or Douglas Treaty rights or has agreed to adversely affect, suspend or forego the exercise of any aboriginal or Douglas Treaty rights, except to the extent provided for in this Agreement and only for the term of this Agreement.
16. This Agreement is without prejudice to the merits of any position the Province has taken or may take in any proceedings, consistent with the terms of or after the expiry of this Agreement.
17. Nothing in this Agreement will prevent the Snuneymuxw First Nation from defending or responding to, or intervening in, other proceedings commenced by persons other than the Parties, in order to protect the title, rights, claims or interests of the Snuneymuxw First Nation.
18. Nothing in this Agreement will prevent the Province from defending or responding to, or intervening in, other proceedings commenced by persons other than the Parties, in order to protect the title, rights or interests of the Province from competing or adverse claims made in those other proceedings.
19. In this Agreement, the headings are for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the extent or intent of any part of this Agreement.

#### **Term of Agreement**

20. The term of this Agreement is from the date it is signed by both Parties until the earlier of:
  - (a) the termination of the Head Lease;
  - (b) a breach of a term of this Agreement by any one Party; or
  - (c) 20 years from the date that the Head Lease is granted.

## Notices

21. Any notice given by either party to the other will be deemed to be given if in writing and mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to the Province:

Land and Water British Columbia Incorporated.  
2080-A Labieux Road  
Nanaimo BC V9T 6J9

to Snuneymuxw First Nation:

Snuneymuxw First Nation  
668 Centre Street  
Nanaimo BC V9R 4Z4

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

22. To expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided for in section 21.


**Amendment**

23. Amendments to this Agreement must be in writing and signed by authorized representatives of the Snuneymuxw First Nation and the Province.

**SIGNED BY THE PARTIES ON THE DATES SET OUT BELOW.**

SIGNED on behalf of the SNUNEYMUXW )  
FIRST NATION, as represented by its )  
Chief and Band Councillors, for and on )  
behalf of the Snuneymuxw First Nation )  
and the Snuneymuxw Band Council, on )  
the date below: )

  
Chief John Wesley

  
Date

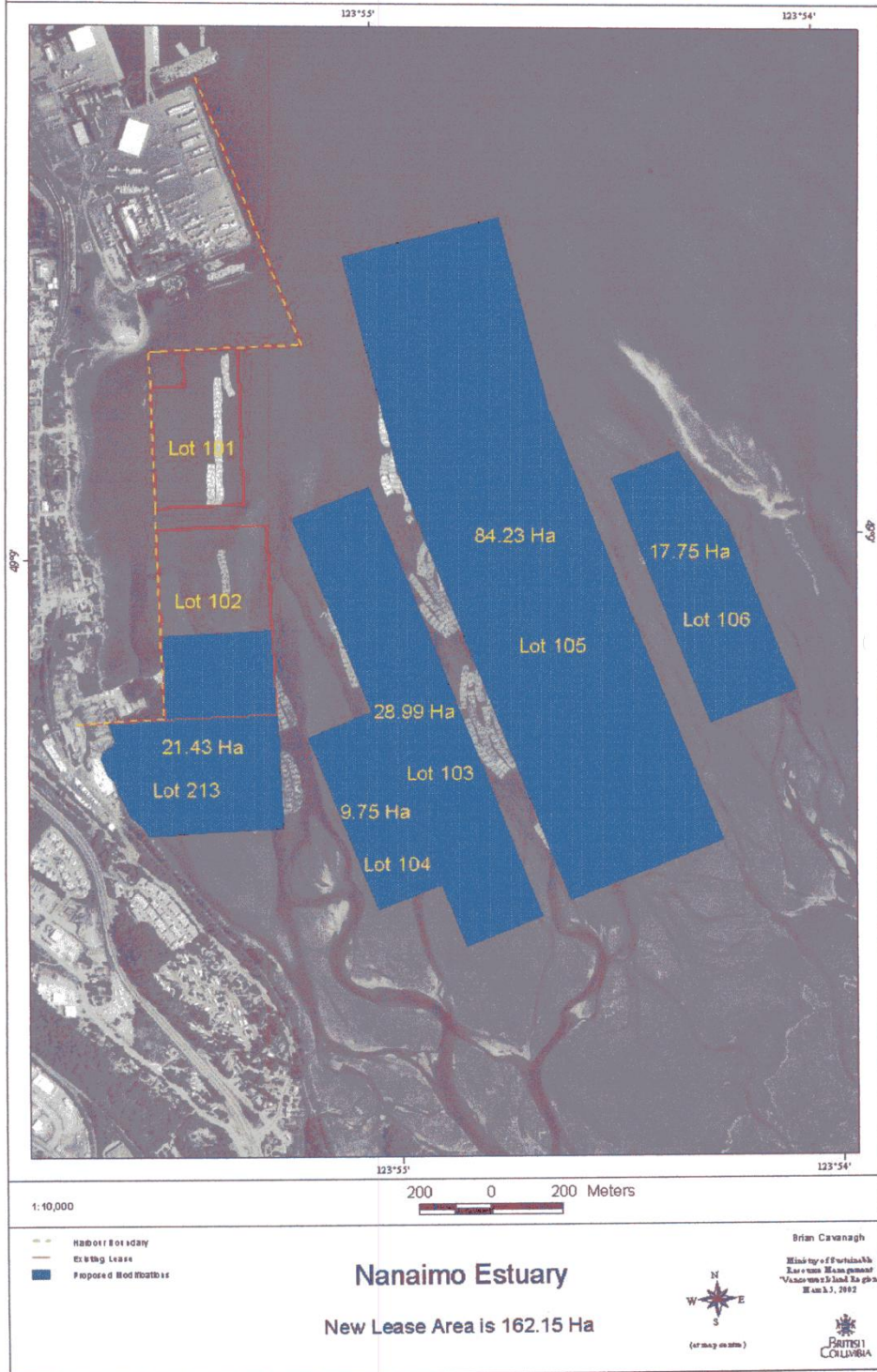
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SIGNED on behalf of HER MAJESTY THE )  
QUEEN IN RIGHT OF THE PROVINCE )  
OF BRITISH COLUMBIA by the Minister of )  
Sustainable Resource Management: )

  
Date

  
The Honourable Stanley B. Hagen

## Schedule A: Modified Lease Areas



## Schedule B

### Shellfish Area Memorandum of Understanding



500 0 500 Meters



Ministry of Sustainable  
Resource Management  
"Vancouver Island Region"  
March 8, 2002



**Schedule “10a” – List of Provincial Referrals to Which Snuneymuxw will Drop Objections**

<b>No.</b>	<b>Client</b>	<b>File #</b>	<b>Purpose of Tenure</b>	<b>New, replacement or amendment</b>	<b>Location</b>
1	Reeve, Charles Edward	0204676	Commercial wharf	Replacement	Gabriola
2	Lehigh Hanson Materials Limited	0218017	Commercial Wharf	Replacement	Departure Bay
3	George, Donald	1400178	Private moorage	Replacement	Nanaimo
4	Dakin, Ruth	1400614	Private moorage	Replacement	Nanaimo
5	Lyall, Robert	1400617	Private moorage	Replacement	Nanaimo
6	Jenks, Michael	1407453	Private moorage	Replacement	Gabriola
7	Da Fonseca, Joaquim	1412121	Private moorage	Replacement	Mudge Island
8	Babcook, John	1412137	Private moorage	Replacement	Gabriola Passage
9	Forrest, Scott	1412143	Private moorage	Replacement	Mudge Island
10	Lynch, Jennifer	1412312	Private moorage	Replacement	Gabriola Island
11	Mathiesen, John	1413409	Private moorage	New	Mudge Island
12	Rooks, Robert Lee	1413651	Private moorage	New	Descanso Bay
13	Vivian, Peter Sidney	1413699	Private moorage	New	Stuart Channel - Yellow Point
14	James, Malcolm Alexander	1413750	Private moorage	New	Northumberland Channel, Gabriola Island
15	Chard, David	1400542	Private moorage	Replacement	Degnen Bay
16	Maddison, Rodney	1400543	Private moorage	Replacement	Degnen Bay
17	Johnstone, Paul	1400169	Private moorage	Replacement	Departure Bay
18	Von Ritschl, Andreas	1400609	Private moorage	Replacement	Departure Bay
19	Taylor, Thomas	1400765	Private moorage	Replacement	Protection Island
20	Rickson, Douglas	1406767	Private moorage	Replacement	Protection Island
21	Hales	1401004	Private moorage	Replacement	Degnen Bay
22	Oudshoorn	1400120	Private moorage	Replacement	Degnen Bay
23	Struch	0348965	Strata moorage	Replacement	Departure Bay
24	Sharpe, Donald Albert	1413790	Private moorage	New	Gabriola Island
25	Island Timberlands	0138775	Log handling and storage	Replacement	Northwest Bay

**Schedule “10b” – List of Provincial Referrals That Snuneymuxw will Address  
Through Letter in Schedule 12**

<b>No.</b>	<b>Client</b>	<b>File #</b>	<b>Purpose of Tenure</b>	<b>New, Replacement or Amendment</b>	<b>Location</b>
1	Chemainus First Nation	W1713	Woodlot (add new area)	Amendment to Woodlot Licence to add additional area to woodlot	Ladysmith
2	Chemainus First Nation	W1713	Crown grant (removal of Crown grant area from Woodlot W1713)	Amendment to Woodlot Licence	Ladysmith
3	Chemainus First Nation	W1713	Crown Grant (removal of Crown grant area from Provincial Forest)	Amendment to Provincial Forest	Ladysmith
4	Greene, Ronald	0319796	Commercial wharf	Replacement	Ladysmith
5	Hug, Robert	1400725	Private moorage	Replacement	Saturna Island
6	0928814 B.C. Ltd.	1412931	Investigative and monitoring phase	New	Porlier Pass
7	0928814 B.C. Ltd.	1413742	Investigative and monitoring phase	New	Porlier Pass
8	0928814 B.C. Ltd.	1413743	Investigative and Monitoring Phase	New	Porlier Pass
9	MPH Holding Ltd	W1713	Road dedication (removal of road area from Woodlot W1713)	Amendment to Woodlot Licence	Ladysmith
10	MPH Holding Ltd	W1713	Road dedication (removal of road area from Provincial Forest)	Amendment to Provincial Forest	Ladysmith
11	Maplestar Seafood Ltd.	1414042	Aquaculture (shell fish)	New	Nanoose Harbour

**Schedule “11” – Template Letter (for Article 6.3(e))**

(Date)

(Name and address of referring ministry or agency)

Attention: (Name of official in charge of the file)

Re: (Client names and file nos.)

Snuneymuxw First Nation has reviewed the material provided to it by your office regarding the above noted referrals. Based on that review and other considerations, be advised that Snuneymuxw withdraws any previous objection to the referrals and will not raise any other objection to them.

This letter is delivered on the following understanding:

1. This letter will be effective on the date the Reconciliation Agreement is executed by Snuneymuxw and British Columbia; and
2. This letter applies to the projects referred to in the referrals listed in Schedule 10a and does not apply to any referrals made or required for any other projects or proponents.

Snuneymuxw First Nation

Per:

Chief Douglas White III Kwulasultun

**Schedule “12” – Template Letter (for Article 6.3(f))**

(Date)

(Name and address of referring ministry or agency)

Attention: (Name of official in charge of the file)

Re: (Client names and file nos.)

Snuneymuxw First Nation has reviewed the material provided to it by your office regarding the above noted referrals. Based on that review and other considerations, be advised that Snuneymuxw will not respond to or take other action regarding the referrals.

This letter is delivered on the following understanding:

1. This letter will be effective on the date the Reconciliation Agreement is executed by Snuneymuxw and British Columbia; and
2. This letter applies to the projects referred to in Schedule 10b and does not apply to any referrals made or required for any other projects or proponents.

Snuneymuxw First Nation

Per:

Chief Douglas White III Kwulasultun

**Schedule “13” – Permit Modification Agreement (Newcastle Island)**



## PERMIT MODIFICATION AGREEMENT

Min Contract No.: VI0510159  
Resp: 296A9  
Serv. Line: 31240  
Stob: 6937  
Project: 2950585  
WCB No.: 364100  
Modification No.: #11

THIS AMENDMENT AGREEMENT IS DATED FOR REFERENCE, March 31, 2012, and is made under the *Park Act*.

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the Minister responsible for the *Park Act* at the following address:

The Ministry of Environment  
2080 Labieux Rd  
Nanaimo, BC V9T 6J9  
(the "Province", "we", "us" or "our", as applicable)

AND

Snuneymuxw First Nation  
668 Centre St  
Nanaimo BC V9R 4Z4  
(the "Contractor", "Permittee" "you" or "your" as applicable)

WHEREAS:

- A. The Province issued Park Use Permit No. VI0510159 to the Permittee dated for reference April 1, 2003 and the Province and Permittee (the "Parties") agreed to amend the permit by way of agreements dated for reference December 1, 2003, April 1, 2004, September 29, 2004, March 14, 2005, March 21, 2006, March 26, 2007, March 28, April 1, 2008 and March 31, 2010, March 31, 2011 (the "Agreement").
- B. The Parties have agreed to modify the Agreement in the manner as set out below (this "Amendment Agreement").

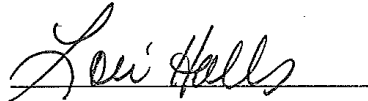
THIS AMENDMENT AGREEMENT WITNESSES THAT the Parties agree as follows:

1. The Agreement is modified by:
  - a) Extending the "Expiration Date" until March 31, 2013;
  - b) Removing sections 5.03 to 5.07;
  - c) Deleting Schedule "D" – Financial Obligations, and replacing it with the Schedule "D" – Financial Obligations attached hereto as Appendix 1; and,
  - d) Deleting Schedule "E" Insurance and replacing it with the Schedule "E" – Insurance attached hereto as Appendix 2.
2. Except as modified by this Amendment Agreement, the Agreement is ratified and confirmed.
3. This Amendment Agreement and the Agreement shall be read and construed together.
4. Time continues to be of the essence of the Agreement and is of the essence of this Amendment Agreement.

5. This Amendment Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
6. The Parties agree that despite the dates of execution of this Amendment Agreement, the effective date of this Amendment Agreement is the date of reference of this Amendment Agreement first mentioned above.

IN WITNESS WHEREOF the parties have executed this Agreement

SIGNED and DELIVERED on behalf of the  
Province by a duly authorized representative of  
the Province.



Lori Halls  
Assistant Deputy Minister  
BC Parks and Conservation Service

Duly Authorized Representative

Date: June 15 / 12

SIGNED and DELIVERED on behalf of the  
Permittee (or by an authorized signatory of the  
permittee if a Corporation).



Chief Douglas White III, Kwulasultun  
Snuneymuxw First Nation

Signature of Permittee or Authorized Signatory

Date: July 28, 2012

APPENDIX 1

**SCHEDULE "D"- FINANCIAL  
OBLIGATIONS**

- 1.1 Not earlier than the last day of the time periods listed below, the Permittee will submit to the Province a written statement of account for:
- a) the amount set out opposite the applicable time period which specifies that the Permittee's obligations under this Permit for that time period have been completed in accordance with this Permit.

Permit #VI0510159

*Deficiency Payment Table*

<i>Time Period (2010/11)</i>	<i>Amount</i>
April 1 to April 30	\$12,408.16
May 1 to May 31	\$12,408.16
June 1 to June 30	\$12,408.16
July 1 to July 31	\$12,408.16
August 1 to August 31	\$12,408.16
September 1 to September 31	\$12,408.16
October 1 to October 31	\$12,408.16
November 1 to November 31	\$12,408.16
December 1 to December 31	\$12,408.16
January 1 to January 31	\$12,408.16
February 1 to February 29	\$12,408.16
March 1 to March 31	\$12,408.24
<b>Totals</b>	<b>\$148,898.00</b>

- 1.2 Provided the Permittee's obligations under this Permit for the time period set out in paragraph 1.1 have been completed to the satisfaction of the Province, the Province will pay to the Permittee the amount set out in the written statement of account submitted to the Province under paragraph 1.1 no later than 60 days, and not earlier than 30 days following the Province's receipt of the statement of account.
- 1.3 If the Permittee's obligations under this Permit for the time period for which the statement of account is submitted have not been completed to the satisfaction of the Province, the Province

may, in its sole discretion, reduce the amount of the payment required to be made by it under this Permit by an amount determined to be a genuine pre-estimate of liquidated damages.

- 1.4 The last payment required to be made to the Permittee pursuant to paragraphs 1.1 to 1.3 above for each Operating Season will, in addition to the reduction made pursuant to paragraph 1.3, be reduced by an amount equal to the Park User Fees Increase collected by the Permittee during any part of an Operating Season for which a reduction has not previously been made.
- 1.5 The Province may, by way of set-off, reduce any payment required to be made by the Province to the Permittee under this Permit.
- 1.6 The payment of money by the Province to the Permittee pursuant to this Permit is subject to the *Financial Administration Act*.
- 1.7 The Parties agree that the payments required to be made in accordance with the terms of this Schedule will not change upon any change in provincial or federal government taxes.

## Appendix "2"

### SCHEDULE "E" INSURANCE

1. The Permittee must, without limiting its obligation or liabilities and at its own expense, purchase and maintain throughout the term of this Agreement the following insurances with insurers licensed in Canada in forms and amounts acceptable to the Province:
    - (a) liability insurance by way of one or more policies (e.g. Commercial General Liability, and/or Marina Operators Liability) covering the risks of third party bodily injury (including death) and property damage, applying to the combined operations or activities of the Permittee carried on from the Operating Area, which will include general liability of the Permittee and liability specific to the operations of marina facilities, in an amount not less than Five Million Dollars (\$5,000,000) Dollars inclusive per occurrence, or such higher amount as the Province may from time to time reasonably require. Where Marina Operators and Commercial General Liability policies are issued separately, each such policy shall be in an amount not less than Five Million Dollars (\$5,000,000) Dollars inclusive per occurrence or such higher amounts as the Province may from time to time reasonably require for any of the separate policies.

This insurance must:

    - (i) include the Province as an additional insured;
    - (ii) be endorsed to provide the Province with 30 days advance written notice of cancellation or material change; and
    - (iii) include a cross liability clause.  - (b) Watercraft Liability insurance for all owned and non-owned watercraft operated or used by you in the performance of this Agreement (including rented watercraft) in an amount not less than the limits of liability imposed by the Marine Liability Act and in any event not less than \$5,000,000.00 inclusive per occurrence, and this insurance must:
    - (iv) include the Province as an additional insured;
    - (v) be endorsed to provide the Province with 30 days advance written notice of cancellation or material change; and
    - (vi) include a cross liability clause.
  - (c) All-risk Property insurance in an amount adequate to cover the full replacement cost of the tools, equipment, supplies or belongings brought to the Operating Area by the Permittee, and any tenant's fixture added by the Permittee that is normally removable by a tenant and is not part of a building or part of the Operating Area. Such policy shall include coverage for the perils of fire, water damage, vandalism and plate glass and, if available, earthquake and flood, and include a waiver of subrogation in favour of the Province.
2. All insurance described in section 1 above must:
  - (a) be primary; and
  - (b) not require the sharing of any loss by any insurer of the Province.

3. The Permittee must provide the Province with evidence of all required insurance except automobile liability in the form of a completed Province of British Columbia Certificate of Insurance:
  - (a) Within 10 working days of commencement of the Services;
  - (b) If the insurance policy(ies) expire before the end of the term of this Agreement, within 10 working days of expiration, evidence of new or renewal policy(ies) of all expired insurance;
  - (c) Notwithstanding paragraph 3(a) or (b) above, if requested by the Province at any time, the Permittee must provide to the Province certified copies of the required insurance policies.
4. The Permittee shall provide, maintain, and pay for, any additional insurance which it is required by law to carry, or which it considers necessary to cover risks not otherwise covered by insurance specified in this schedule in its sole discretion.
5. The Permittee acknowledges that the Province may, from time to time, notify the Permittee to
  - (a) change the amount of insurance required under this Agreement; and
  - (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required under this Agreement;

and the Permittee will, within 30 days of receiving such notice, cause the amounts and types to be changed and deliver to the Province a completed Province of British Columbia Certificate of Insurance for all insurance then required under this Agreement.

**Schedule “14” – 2003 Operations Permit**



BRITISH  
COLUMBIA

BC  
Parks

# OPERATIONS PERMIT

APRIL 1, 2003 to NOVEMBER 30, 2003

This Park Use Permit No. **SV9710027** (the "Permit") is dated for reference as of the date of its execution by the Province and is issued under the *Park Act*.

**Newcastle Island Provincial Marine Park**

(the "Park")

FROM:  
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,  
represented by the Minister responsible for the *Park Act* (the "Province") at the following address:

TO:  
**Snuneymuxw First Nation**  
(the "Permittee") at the following address  
**668 Centre Street  
Nanaimo BC V9R 4Z4**

Ministry of Water, Land and Air Protection  
Vancouver Island Region  
2080 Labeux Rd  
Nanaimo BC V9T 6E9

THE PROVINCE AND THE PERMITTEE AGREE AS FOLLOWS:

## ARTICLE I — DEFINITIONS

1.01 In this Permit and in the Schedules attached to it

"Annual Operating Plan" means the plan referred to in Article X;

"Commencement Date" means, notwithstanding the date of execution of this Permit, April 1, 2000;

Renewal: Start Date: APRIL 1, 2003;

"Equipment" means the materials, tools, supplies and equipment provided to the Permittee by the Province, as listed in Schedule "A", and includes all replacements of such materials, tools, supplies and equipment;

"Expiration Date" means NOVEMBER 30, 2003;

"Facilities" means all buildings, structures and Improvements located in the Permit Area (schedule C), together with all replacements, alterations, additions, improvements and repairs to any of them;

"Financial Guarantee" means the financial guarantee referred to in Article VI.

"GST" means the goods and services tax imposed under the *Excise Tax Act* (Canada);

"Gross Revenue" means Park User Fees Basic, excluding the GST on the Park User Fees Basic collected by the Permittee from Park Users;

"Minor Repairs" means repairs, not including Operational Repairs, of the Facilities where the total cost of such repairs, including materials and labour, is less than or equal to \$4000.00 in each Operating Season;

"Off Season" means that part of the Term not included in the Operating Season;

"Operating Season" means the period(s) of time set out in Schedule "B";

"Operational Repairs" means all repairs of the Facilities that are

- (a) required to ensure that the Facilities are maintained in a safe and operational condition, and
- (b) of a routine maintenance nature,

which include, but are not limited to,

- (c) replacing toilet seats, toilet paper dispensers, light bulbs, hot water tank elements and broken or damaged taps, mirrors and hinges on hung doors,

- (d) repairing or replacing broken or rotten sign posts and garbage and wood corral rails and posts,

- (e) repairing toilet and shower dividers and leaky pipes,

- (f) repairing or replacing broken or damaged latches and locks, and

- (g) replacing leaky washers and component parts of taps, showers and flush valves;

"Operational Standards" means the operational standards set by the Province, from time to time, and delivered by the Province to the Permittee;

"Overflow Camping" means camping permitted by the Province in an area that is not designated as a campground;

"Park Host" means a person who volunteers his or her time to the Province to provide a hospitality service to Park Users by

- (a) supplying information about programs, facilities, services and recreational opportunities in the Park,

- (b) supplying information about local businesses, services and recreational opportunities in the vicinity of the Park,

- (c) emphasizing the importance of the Regulations and camping etiquette, and

- (d) reporting problems with the Facilities to the Province;

"Park User" means a person in the Park;

"Park User Fees Basic" means the fees set by the Regulations in force on the date of execution of this Permit;

"Park User Fees Exemption" means an exemption from the payment of Park User Fees Basic and Park User Fees Increase made under the Regulations;

"Park User Fees Increase" means any increase in the fees set by the Regulations during the Term which exceed the Park User Fees Basic;

"Park User Permit" means a pre-printed "One-write" camping permit form or a self-registration camping permit envelope;

"Permit Area" means that part of the Park described in Schedule "C";

"Permittee" includes the employees, agents and subcontractors of the Permittee;

"Regulations" means the regulations made under the *Park Act*;

"Stock Receipt" means the form by which the Permittee acknowledges receipt of Park User Permits from the Province; and

"Term" means the period of time set out in Article III.

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## ARTICLE II — PERMITTEE'S RIGHTS

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- 2.01 Subject to this Permit, the *Park Act* and the Regulations, the Province grants to the Permittee the exclusive right to use and occupy the Permit Area during the Operating Season for the purpose of
- (a) operating and maintaining the Facilities;
  - (b) collecting and retaining Park User Fees Basic;
  - (c) collecting and remitting Park User Fees Increase to the Province in accordance with Schedule "D";
  - (d) permitting Park Users who are exempted from paying fees by a Park User Fees Exemption, to use and occupy the Facilities free of charge;
  - (e) providing public safety and control; and
  - (f) providing firewood for sale to Park Users.
- 2.02 Subject to this Permit, the *Park Act* and the Regulations, the Province grants to the Permittee the right to use and occupy the Permit Area during the Off Season at such times as may be necessary in order for the Permittee to comply with the Operational Standards.
- 2.03 Subject to this Permit, the *Park Act* and the Regulations, the Permittee may, with the written approval of the Province,
- (a) purchase advertising for the Permit Area;
  - (b) promote public use of the Permit Area at trade shows;
  - (c) produce brochures about the Permit Area; and
  - (d) sponsor special events in the Permit Area.
- 2.04 Subject to this Permit, the *Park Act* and the Regulations, the Province, in addition to the rights referred to in section 2.01, grants to the Permittee the exclusive right to control the Permit Area during each Operating Season in order to ensure its safe and orderly use by Park Users including the right to
- (a) regulate and prohibit the movement and activities of Park Users within the Permit Area;
  - (b) regulate the access and entry of Park Users to the Permit Area;
  - (c) evict Park Users from the Permit Area;
  - (d) regulate and prohibit the use and movement of vehicles within the Permit Area; and
  - (e) make such arrangements with the local police force as the Permittee deems necessary in order to regulate public safety and conduct in the Permit Area.
- 2.05 The Permittee will use reasonable efforts to ensure that Park Users do not enter areas within the Permit Area that are, in the Permittee's opinion, unsafe due to existing or potential hazards.
- 2.06 Nothing in section 2.05 requires the Permittee to make safe any area within the Permit Area or to remove any existing hazards within the Permit Area except to the extent that it is required to do so by this Permit.
- 2.07 The Permittee will ensure that Park Users do not carry on activities within the Permit Area that are prohibited under the *Park Act* and the Regulations.

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## ARTICLE III — TERM

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- 3.01 The term of this Permit starts on the Commencement Date and ends on the Expiration Date, subject to its earlier termination under Article XIV.

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## ARTICLE IV — FINANCIAL OBLIGATIONS

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- 4.01 The Permittee will, within 5 days after the end of each month of the Operating Season, deliver to the Province a financial statement for the immediately preceding month of the Operating Season which includes a statement of

- (a) the Gross Revenue for that month; and
  - (b) the revenue received by the Permittee in that month as a result of a Park User Fees Increase.
- 4.02 The Permittee will maintain books of account and enter in them all transactions relating to the Permittee's operations under this Permit.
- 4.03 The Permittee will, within 30 days after the end of each Operating Season, deliver to the Province a financial statement that has been reconciled with the monthly statement provided in accordance with section 4.01 and includes
- (a) a statement of the Gross Revenue for that Operating Season;
  - (b) a statement of the revenue received by the Permittee in that Operating Season as a result of a Park User Fees Increase; and
  - (c) all information, reports and data that the Province may require concerning the Permittee's operations under this Permit.
- 4.04 Upon reasonable notice to the Permittee and at reasonable times, the Province may, at its own expense, inspect, copy and audit the Permittee's books of account and all other records kept by the Permittee relating to its operations under this Permit.
- 4.05 If as a result of an audit conducted by the Province under section 4.04, the Province determines that an amount paid or credited to the benefit of the Province under this Permit was less than that required, the Permittee will immediately pay to the Province
- (a) the amount by which the amount determined by the audit exceeds the amount paid or credited to the benefit of the Province under this Permit; and
  - (b) an amount not exceeding the cost incurred by the Province to conduct the audit.
- 4.06 The Permittee will, in accordance with the *Excise Tax Act* (Canada), remit to the Receiver General (Canada) the GST collected by the Permittee on Park User Fees Basic and Park User Fees Increase.

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## ARTICLE V — INDEMNIFICATION AND INSURANCE

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- 5.01 The Permittee will indemnify the Province, its employees and agents, against all losses, claims, damages, actions, causes of action, costs and expenses that the Province, its employees and agents may sustain, incur, suffer or be put to at any time arising, directly or indirectly, out of any act or omission of the Permittee, excepting always liability arising out of the independent negligent acts of the Province.
- 5.02 During the Term, the Permittee will maintain, with insurers licensed in British Columbia, the insurance specified in Schedule "E", in forms and amounts acceptable to the Province.
- 5.03 All insurance required to be maintained by the Permittee under this Permit will be primary and not require any insurer of the Province to share or contribute to any loss.
- 5.04 Prior to the commencement of its operations under this Permit, the Permittee will provide the Province with a "Province of British Columbia Certificate of Insurance" that has been completed by the Permittee's insurer to evidence the maintenance of all policies of insurance required to be maintained by the Permittee under this Permit.
- 5.05 When requested by the Province, the Permittee will provide to the Province certified copies of all policies of insurance required to be maintained by the Permittee under this Permit.
- 5.06 All policies of insurance required to be maintained by the Permittee under this Permit will be endorsed with a requirement that the Province be provided 30 days' prior written notice of cancellation of or a material change to the policy.
- 5.07 The Province, acting reasonably, may, from time to time by notice in writing, require the Permittee to increase the amount of insurance maintained by the Permittee under section 5.02, and the Permittee will, within 60 days of receiving the notice, cause the amount of insurance to be increased to the amount specified in the notice and it will deliver to the Province evidence of that increase.

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## ARTICLE VI — FINANCIAL GUARANTEE

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- 6.01 On or before the Commencement Date, the Permittee will deliver to the Province a Financial Guarantee in a form satisfactory to the Province in the amount of \$11,500.00 which must be kept in force during the Term.
- 6.02 The Province may claim or draw down the Financial Guarantee to pay
- (a) all money owed by the Permittee to the Province under this Permit; and
  - (b) all costs incurred or expenses assumed by the Province as a result of the Permittee's failure to fulfil any of its obligations under this Permit.
- 6.03 The Province, acting reasonably, may, from time to time by notice in writing to the Permittee, require the Permittee to increase the amount of the Financial Guarantee to an amount that the Province considers is needed to satisfy the Permittee's obligations under this Permit, and the Permittee will, within 30 days of receiving the notice, deliver to the Province proof that the amount of the Financial Guarantee has been increased accordingly.
- 6.04 If, at any time, the Financial Guarantee is claimed or drawn down by the Province, the Permittee will immediately deliver to the Province proof that the Financial Guarantee has been replenished by the Permittee to the amount required by this Article.
- 6.05 At the end of the Term, if the obligations of the Permittee under this Permit have been fulfilled to the satisfaction of the Province, the Province will return to the Permittee the Financial Guarantee, less any amounts claimed or drawn down by the Province under section 6.02 that have not been replenished by the Permittee under section 6.04.

## ARTICLE VII — PERMITTEE'S GENERAL COVENANTS

- 7.01 The Permittee must
- (a) observe and perform all of its covenants and obligations under this Permit;
  - (b) pay all money payable under this Permit, when due, to the Province at the address specified in Article XV and pay to the Province interest at the rate prescribed in the *Financial Administration Act* on all money not paid to the Province when due;
  - (c) pay, when due, all taxes, levies, charges and assessments that relate to the Permittee's operations under this Permit;
  - (d) comply with all laws, bylaws, orders, directions, ordinances and regulations of all governmental authorities that affect the Permit Area, the Park, its use and occupation, and the Permittee's operations under this Permit;
  - (e) attend, at the Permittee's expense, all informational meetings that it is required, by the Province, to attend;
  - (f) comply with all orders and directions made, verbally or in writing, by the Province to the Permittee relating to the Park, this Permit or the Permit Area;
  - (g) refrain from all acts that would negatively affect public perception of the Park or the Province;
  - (h) not interfere with or disrupt the lawful activities and operations of other permittees or Park Users in the Park;
  - (i) not cause or permit any wilful or voluntary waste, spoil, damage or destruction to the Park;
  - (j) take all reasonable precautions to prevent and suppress fires in the Permit Area;
  - (k) not misrepresent the Permittee's rights or obligations under this Permit in any advertisement, sign, circular, pamphlet, letterhead or other advertising medium;
  - (l) not construct, erect, place or alter any building, fixture, equipment, structure or improvement, including the Facilities, in the Permit Area, except as required or permitted by this Permit;
  - (m) not interfere with free public access in or to the Permit Area except as may be permitted under section 2.04;
  - (n) ensure that the Facilities are fully operational by the first day of each Operating Season;

- (o) ensure that its employees, agents and subcontractors are familiar with
  - (i) the *Park Act*, the Regulations and all other laws and regulations affecting the Park, and
  - (ii) the terms of this Permit as they affect public safety and conduct in the Permit Area;
- (p) provide, at its own expense, all labour, tools, vehicles, equipment, materials and supplies that
  - (i) were listed in the proposal which led to the granting of this Permit,
  - (ii) are necessary to fulfil its obligations under the Permit, and
  - (iii) are of a standard suitable to complete its obligations under this Permit to the satisfaction of the Province;
- (q) not damage, destroy or remove any natural resource (as that term is defined in section 1 of the *Park Act*) in the Park except as permitted by this Permit;
- (r) repair, at its expense and as required by the Province, all damage to the Permit Area and the Facilities caused by or on behalf of the Permittee or permitted to be done by the Permittee;
- (s) undertake and complete all survey programs the Province may require to be implemented during the Term in order for the Province to obtain information from Park Users as to their satisfaction with the services provided by the Permittee under this Permit;
- (t) ensure that its employees, agents and subcontractors do not contravene the *Park Act* or the Regulations when they are in the Park;
- (u) designate, in writing, a representative who is acceptable to the Province, who can be contacted by the Province at all times during the Term;
- (v) not interfere with the Province in its exercise of the rights reserved to it under this Permit; and
- (w) keep the Permit Area in a safe, clean and sanitary condition to the satisfaction of the Province and, at the request of the Province, make the Permit Area safe, clean and sanitary.

## ARTICLE VIII — PERMITTEE'S OPERATING COVENANTS

- 8.01 The Permittee must
- (a) during each Operating Season, collect Park User Fees Basic and Park User Fees Increase from all Park Users in the Permit Area who are required to pay Park User Fees Basic and Park User Fees Increase;
  - (b) ensure that the Park User Fees Increase is collected on and after the effective date of the Park User Fees Increase;
  - (c) operate, manage and maintain the Facilities and Permit Area as required by the Operational Standards;
  - (d) ensure firewood is available for sale to Park Users during the Operating Season;
  - (e) undertake and complete, at its expense,
    - (i) all Operational Repairs, and
    - (ii) with the prior written approval of the Province, all Minor Repairs;
  - (f) if, prior to the end of each Operating Season it has not completed Minor Repairs equal in value to the amount of money set out in section 1.01,
    - (i) undertake and complete all projects approved by the Province, or
    - (ii) pay to the Province a sum of money equal to the difference between the value of the Minor Repairs completed in the Operating Season and the amount of money set out in section 1.01;
  - (g) pay all wages and salaries owed to its employees and all monies owed to its agents, subcontractors or other creditors on account of its operations under this Permit;
  - (h) observe and perform all of its covenants and obligations set out in the Annual Operating Plan; and

- (i) when requested by the Province, provide the Province with a written statement of

- (i) all materials and supplies, including firewood, used by the Permittee in its operations under this Permit during the Operating Season, and

- (ii) the frequency of sewage removal from the Permit Area by the Permittee during the Operating Season.

8.02 With respect to the Equipment, the Permittee will

- (a) only use the Equipment to fulfil its obligations under this Permit;
- (b) ensure that the Equipment is operated by qualified and competent operators;
- (c) ensure that the Equipment is used for the purpose for which it is designed;
- (d) ensure that the Equipment is not abused or overworked;
- (e) maintain the Equipment in an efficient operating condition;
- (f) pay for all fuel, lubricants and parts that are required to maintain and repair the Equipment;
- (g) repair all damage to the Equipment caused by the Permittee;
- (h) securely store the Equipment when it is not in use; and
- (i) return the Equipment to the Province in a state of good repair at the end of the Term.

## ARTICLE IX — PARK USER PERMITS

9.01 If the Permittee uses Park User Permits in its operations under this Permit, the Permittee will

- (a) acquire the Park User Permits from the Province and acknowledge their receipt on a Stock Receipt;
- (b) keep the Park User Permits in its custody and control;
- (c) issue a Park User Permit to all Park Users when it collects Park User Fees Basic and Park User Fees Increase;
- (d) within 30 days after the end of each Operating Season, provide to the Province the following information:
  - (i) the number of Park User Permits in the custody and control of the Permittee from the previous Operating Season,
  - (ii) the number of Park User Permits acquired by the Permittee from the Province in that Operating Season,
  - (iii) the number of Park User Permits issued to Park Users by the Permittee during that Operating Season,
  - (iv) the number of Park User Permits in the custody and control of the Permittee at the end of that Operating Season, and
  - (v) the number of Park User Permits estimated by the Permittee to be required for the next Operating Season;
- (e) without limiting the generality of section 5.01, indemnify the Province against all losses, claims, damages, actions, causes of action, costs and expenses that the Province may sustain, incur, suffer or be put to at any time arising directly or indirectly out of any Park User Permits being lost, damaged, destroyed or stolen while in the custody and control of the Permittee.

## ARTICLE X — ANNUAL OPERATING PLAN

10.01 The Permittee must submit to the Province for its written approval, not later than 90 days prior to the first day of the first Operating Season, and Annual Operating Plan covering the Operating Season and the Off Season (if applicable) consistent with the accepted proposal, which will:

- (a) list the principals of the Permittee and the address of those principals;
- (b) name the Permittee's key personnel and describe their duties responsibilities and experience;

- (c) describe the number of full-time and part-time employees of the Permittee and the proposed staffing schedule;

- (d) outline the Permittee's plan to manage and operate the Permit Area which will include a schedule of its daily operations in the Permit Area;

- (e) set out an emergency procedures plan for the Permit Area to deal with, but not limited to the following

- (i) initial response to nuisance fires,
- (ii) initial public search,
- (iii) first aid,
- (iv) problem animals,
- (v) public control problems, and
- (vi) emergency communications;

- (f) list the make, model and date of manufacture of all vehicles, vessels and equipment to be used by the Permittee in its operations under this Permit;

- (g) contain a copy of the Permittee's Occupational Health and Safety Program;

- (h) subject to section 13.03, list the names of all subcontractors to be retained by the Permittee to complete its obligations under this Permit;

- (i) describe the proposed advertising and promotional plan for the Permit Area;

- (j) list all recreational services that the Permittee proposes to offer in the Permit area; and

- (k) be executed by the Permittee and contain space for the Province to indicate its written approval of the Annual Operating Plan.

10.02 At least 90 days prior to the start of each subsequent Operating Season during the Term of the Permit, the Permittee will submit to the Province for its approval the following:

- (a) an acknowledgement in writing that there are no changes to the preceding Annual Operating Plan or a list of all changes to be made that differ from the preceding Annual Operating Plan;
- (b) proof that Workers' Compensation Board commitments have been met and are up to date;
- (c) proof that the required insurance is in place;
- (d) provide all information that the Province may have requested in writing, of the Permittee; and
- (e) any other matter not specifically requested but relevant to the operation.

10.03 If the first Annual Operating Plan or the requested changes to subsequent Annual Operating Plans are not acceptable to the Province, the Province will, not later than 60 days before the first day of the Operating Season, notify the Permittee, in writing, of the reasons for the Annual Operating Plan not being acceptable to the Province and the Permittee must:

- (a) make all necessary amendments to the Annual Operating Plan,
- (b) submit the amended Annual Operating Plan to the Province for its written approval, and
- (c) obtain the written approval of the Province (which approval will not be unreasonably withheld) of the Annual Operating Plan not later than 30 days before the first day of Operating Season.

## ARTICLE XI — PROVINCE'S OBLIGATIONS

11.01 The Province will

- (a) pay all money it owes to the Permittee under this Permit in accordance with the terms of the Permit; and
- (b) provide the Equipment to the Permittee.

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## ARTICLE XII — THE PERMITTEE'S RIGHTS

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- 12.01 The Province reserves all of its rights with respect to the Park and Permit Area that are not expressly granted to the Permittee by this Permit, including, but not limited to, the right to:
- (a) unimpeded access within the Permit Area for itself, its representatives, employees and agents;
  - (b) manage, protect, develop, construct, repair, alter and maintain the Facilities;
  - (c) grant further rights to use and occupy the Park and the Permit Area, provided that the exercise of those rights by the person to whom they are granted does not unreasonably interfere with the Permittee's rights under this Permit;
  - (d) inspect the Permittee's operations in the Permit Area;
  - (e) administer the Park Host, and all other volunteer programs, within the Permit Area;
  - (f) designate an area in the Permit Area for Overflow Camping;
  - (g) limit Overflow Camping to specific times and date;
  - (h) limit the number of parties permitted to camp in an area designated for Overflow Camping;
  - (i) implement and administer camping and picnicking reservation systems in the Permit Area and to direct the method by which those systems will be administered by the Permittee;
  - (j) set Park User Fees Increase by way of the Regulations;
  - (k) set any other fee, in addition to Park User Fees Basic and Park User Fees Increase, by way of the Regulations and to arrange for the collection of the additional fee;
  - (l) add to, amend, delete or replace the Operational Standards; and
  - (l) implement, in the Permit Area, the survey program referred to in subsection 7.01(s).

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## ARTICLE XIII — TRANSFERS, ENCUMBRANCES AND SUBCONTRACTING

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- 13.01 The Permittee will not assign, transfer, mortgage, licence or otherwise dispose of its rights and privileges under this Permit without the prior written consent of the Province, which consent may be unreasonably withheld.
- 13.02 For the purpose of section 13.01, if the Permittee is a corporation then a change in the control (as that term is defined in subsection 1(a) of the *Company Act*) of the Permittee is deemed to be a transfer of its rights and privileges under this Permit.
- 13.03 The Permittee will not subcontract any of its obligations under this Permit to any person, without the prior written consent of the Province.

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## ARTICLE XIV — TERMINATION

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- 14.01 The Province may exercise any of its remedies under section 14.02 if any one or more of the following events occur:
- (a) the Permittee fails to pay money payable by it under this Permit and the default continues for a period of 7 days after the Province has given the Permittee written notice specifying the default and requiring payment;
  - (b) the Permittee fails to observe or perform any of its covenants or obligations under this Permit (other than the payment of money) and the default is not remedied within a period of time specified in a written notice from the Province to the Permittee;
  - (c) the Permittee has cured a specific default on two previous occasions, whether under this Permit or any other park or resource use permit issued to the Permittee by the Province, and a similar default again occurs;

- (d) this Permit has been suspended at any time during the Term and, subsequent to that suspension, the Permittee defaults in its obligations under subsection 7.01(d);
- (e) the Permit Area is damaged or destroyed by any cause;
- (f) the Park is closed to public use by the Province;
- (g) an order is made, a resolution passed or a petition filed for the liquidation or winding up of the Permittee;
- (h) a receiver is appointed to operate the business of the Permittee;
- (i) the Permittee files a petition in bankruptcy, is adjudged bankrupt, is petitioned into bankruptcy, makes an assignment for the benefit of its creditors, becomes insolvent or takes the benefit or protection of any statute relating to bankruptcy or insolvency;
- (j) any of the Permittee's assets are seized in execution from the Permit Area;
- (k) the Permittee fails, in the sole opinion of the Province, to control the Permit Area, as permitted under section 2.04, so that the Permit Area is safe for use by all Park Users; or
- (l) the Permittee is determined to be in default of any agreement, other than this Permit, in effect between the Province and the Permittee.

- 14.02 If any event of default listed in section 14.01 occurs, the Province may do any one or more of the following:

- (a) pursue any remedy available to it at law or equity, it being acknowledged by the Permittee that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy to cure the default;
- (b) take any action, in its own name or in the name of the Permittee, that may reasonably be required to cure the default and the Permittee will pay to the Province, on demand, all costs and expenses the Province incurs from such action;
- (c) suspend, in whole or in part, the rights granted to the Permittee under this Permit;
- (d) terminate this Permit; or
- (e) subject to section 15.05, waive the event of default.

- 14.03 The Province may, in its sole discretion, on 30 days written notice, terminate this Permit

- (a) during the Off Season; or
- (b) if there is no Off Season, during the month of January.

- 14.04 The Permittee and the Province may, at any time during the Term, agree in writing to terminate this Permit, and, except as otherwise provided in this Permit, the parties will be released from their obligations under this Permit.

- 14.05 On the expiration or earlier termination of this Permit, the Permittee will

- (a) deliver vacant possession of the Permit Area and the Facilities to the Province in a safe, clean and sanitary condition and in a state of good repair;
- (b) deliver possession of the Equipment to the Province in a state of good repair and in working order; and
- (c) remove all chattels of the Permittee from the Permit Area within 30 days of the expiration or earlier termination of this Permit, unless otherwise advised in writing, by the Province.

- 14.06 The obligation of the Permittee to

- (a) pay all money payable to the Province under this Permit; and
  - (b) comply with Articles V and VI and sections 8.02 and 14.05;
- will survive the expiration or sooner termination of this Permit.

- 14.07 The Permittee will not be entitled to compensation, whether in damages or otherwise, from the Province if this Permit is suspended or terminated in accordance with this Article.

- 14.08 Title to and ownership of the Facilities is and will continue to be vested in the Province.

## ARTICLE XV — GENERAL TERMS AND CONDITIONS

- 15.01 The Permittee and the Province will undertake all actions and execute all documents necessary to ensure that the intent of this Permit is fulfilled.
- 15.02 All notices, demands, consents or requests required to be given by either party to the other will be deemed to be given if in writing and delivered by hand or mailed by prepaid registered mail in Canada to the address first written above or to any other address that either party may, from time to time, direct in writing, and any such notice, demand, consent or request will be deemed to have been received, if delivered, on the day of delivery, and, if mailed, 48 hours after the time of mailing, except in the case of mail interruption in which case actual receipt is required.
- 15.03 Notwithstanding section 15.02, any written notice to be given by the Province to the Permittee under this Permit will be effectively given if it is posted in a conspicuous place on the Permit Area.
- 15.04 No provision of this Permit will be considered to have been waived by the Province unless the waiver is expressed in writing by the Province.
- 15.05 The waiver by the Province of a breach by the Permittee of any provision of this Permit will not be construed as or constitute a waiver of any subsequent breach of that provision.
- 15.06 This Permit may be inspected by the public at the times and places specified by the Province.
- 15.07 All employees of the Permittee are the employees of the Permittee and not of the Province and the Permittee is solely responsible for relief, substitutions, pay, supervision, discipline, the payment of unemployment insurance and workers' compensation assessments, leave and all other matters arising out of the relationship of employer and employee.
- 15.08 The Permittee is an independent contractor and not the agent, employee, joint venturer or partner of the Province, and nothing in this Permit gives the Permittee any authority or power to bind the Province in any way.

- 15.09 The Province is not liable for any loss, damage, cost or expense incurred by the Permittee as a result of strikes, lockouts, or other labour disruption, floods or other acts of God, vandalism or any other interference with the Permittee's operations under this Permit or with the assets of the Permittee.
- 15.10 Each Schedule to this Permit and the Operational Standards are integral parts of this Permit as if set out at length in this Permit.
- 15.11 If any conflict or inconsistency exists between the body of this Permit and either the Schedules to this Permit or the Operational Standards, the body of this Permit will govern to the extent of the conflict or inconsistency.

## ARTICLE XVI — INTERPRETATION

- 16.01 In this Permit, unless the context requires otherwise, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter genders and vice versa.
- 16.02 The captions and headings in this Permit are for convenience only and are not to be construed as defining or in any way limiting the scope or intent of this Permit.
- 16.03 This Permit will be interpreted according to the laws of the Province of British Columbia.
- 16.04 Wherever there is a reference to an enactment of the Province of British Columbia or of Canada in this Permit, that reference will include a reference to any subsequent legislation of like effect and unless the context requires otherwise, all enactments referred to in this Permit are enactments of the Province of British Columbia.
- 16.05 If any section of this Permit or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections of this Permit will not be affected and will remain enforceable to the fullest extent permitted by law.
- 16.06 If all or part of the Permit Area is in a recreation area established or continued under the *Park Act*, this Permit is deemed to be a resource use permit as that term is defined in the *Park Act*.

IN WITNESS WHEREOF the parties have duly executed this Permit.

SIGNED by the Permittee in the presence of

Witness Signature

Signature of the Permittee

Date:

OR

SIGNED by an Authorized Signatory of the Permittee in the presence of

Witness Signature

Authorized Signatory of the Permittee

Title: CHIEF

Date: April 4, 03

representative of the Minister responsible for the Park Act in the presence of

Witness Signature

Authorized Representative of the Province

Date of Execution: April 7/03

SIGNED on behalf of Her Majesty the Queen in Right of the Province of British Columbia by an authorized

## SCHEDULE "A"- THE EQUIPMENT

"Equipment" means

- (a) identification cards and magnetic door signs for vehicle identification;
- (b) materials and supplies for revenue collection;
- (c) refund books;
- (d) printed material for information boards;
- (e) eviction notices;
- (f) *Park Act* and the Park and Recreation Area Regulations;
- (g) the following forms:
  - (i) "Complaint/Occurrence Report",
  - (i) "Monthly Public Safety/Park Security Report",
  - (ii) "Campground Attendance Sheets",
  - (iii) "Site Occupancy Reports",
  - (iv) "Daily Site Sheets",
  - (v) "Multi-night Occupancy Record Sheets",
  - (vi) "Miscellaneous Attendance sheets
  - (vii) "Playground Inspection Reports",
  - (viii) "Operational Standards Checklist".
- (h) all fire suppression equipment on site; replacement costs to be paid by the Permittee;
- (i) all garbage and recycle bins on site, replacement costs to be paid by the Permittee;
- (j) all first aid equipment presently on site, replacement costs to be paid by the Permittee;
- (k) all park signs;
- (l) comment cards;
- (m) park stamp.

## **SCHEDULE "B"- OPERATING SEASON**

The Operating Season means the period of time commencing on:

**April 1 to October 15 2003 of the Permit.**

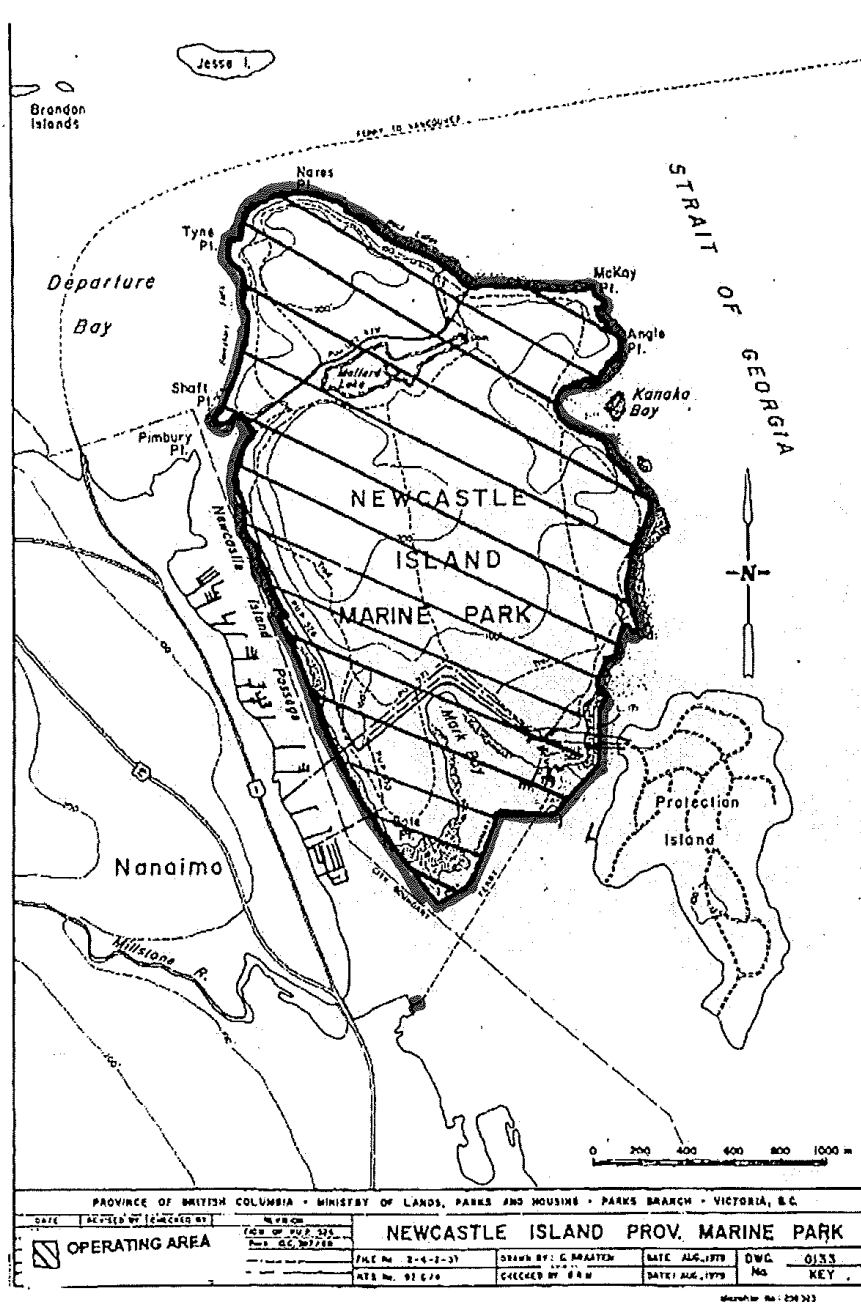
The Winter Operating Season means the period of time commencing on:

**October 16, to November 30, 2003.**

## **SCHEDULE "C"- PERMIT AREA**

The Permit Area as named below:

**Newcastle Island Provincial Marine Park includes all, but not limited to, the campground, group sites, picnic areas, day use areas, trails, roads, all buildings and structures (except for the interior of the Pavilion and the barbecue shelter immediately behind the Pavilion), signs, service areas, docks, floats, piers, piles, beaches, fences, interpretative sites, bridges, boardwalks, utilities, and foreshore, including information shelter, float, pier and ramp at Maffeo Sutton Park used for the ferry service for Newcastle island.**



## SCHEDULE "D"- FINANCIAL OBLIGATIONS

- 1.1 Not earlier than the last day of the time periods listed below, the Permittee will submit to the Province a written statement of account for the amount set out opposite the applicable time period which specifies that the Permittee's obligations under this Permit for that time period have been completed in accordance with this Permit.

**Permit #SV9710027**

Invoice Period	%	Year 2003
April 1 to April 30	20%	\$13,000
May 1 to May 31	20%	\$13,000
June 1 to June 30	10%	\$6500
July 1 to July 31	10%	\$6500
August 1 to August 31	10%	\$6500
September 1 to September 30	10%	\$6500
October 1 to October 31	10%	\$6500
November 1 to November 30	10%	\$6500
<b>Totals</b>	<b>100%</b>	<b>\$65,000</b>

## **SCHEDULE "D"- FINANCIAL OBLIGATIONS (cont'd)**

- 1.2 Provided the Permittee's obligations under this Permit for the time period set out in paragraph 1.1 have been completed to the satisfaction of the Province, the Province will pay to the Permittee the amount set out in the written statement of account submitted to the Province and under paragraph 1.1 no later than 60 days, and not earlier than 30 days following the Province's receipt of the statement of account.
- 1.3 If the Permittee's obligations under this Permit for the time period for which the statement of account is submitted have not been completed to the satisfaction of the Province, the Province may, in its sole discretion, reduce the amount of the payment required to be made by it under this Permit by an amount determined to be a genuine pre-estimate of liquidated damages.
- 1.4 Each payment required to be made to the Permittee pursuant to paragraph 1.2 will be reduced by an amount equal to the Park User Fees Increase collected by the Permittee during the immediately preceding month of the Operating Season.
- 1.5 The last payment required to be made to the Permittee pursuant to paragraph 1.4 for each Operating Season will, in addition to the reduction made pursuant to paragraph 1.4, be reduced by an amount equal to the Park User Fees Increase collected by the Permittee during any part of an Operating Season for which a reduction has not previously been made.
- 1.6 The Province may, by way of set-off, reduce any payment required to be made by the Province to the Permittee under this Permit.
- 1.7 The payment of money by the Province to the Permittee pursuant to this Permit is subject to the *Financial Administration Act*.

## **SCHEDULE "E" - INSURANCE**

- 1.1 Commercial General Liability insurance with the Province added as an additional insured in an amount not less than \$2,000,000.00 inclusive per occurrence against bodily injury and property damage, and including, but not limited to, the following endorsements:
- (a) products and completed operations liability,
  - (b) owner's and contractor's protective liability,
  - (c) blanket written contractual liability,
  - (d) contingent employer's liability,
  - (e) personal injury liability,
  - (f) non-owned automobile liability,
  - (g) cross liability,
  - (h) employees as additional insureds,
  - (i) broad form property damage.
- 1.2 Automobile Liability insurance on all vehicles owned, operated or licensed in the name of the Permittee in an amount not less than \$1,000,000.00 inclusive per occurrence.
- 1.3 Marine Liability insurance on all vessels owned, operated or leased by the name of the Permittee in an amount not less than \$2,000,000.00 inclusive per occurrence.
- 1.4 All risks property insurance on a replacement cost basis insuring all tools and equipment provided by the Permittee as listed in Schedule "A" and "C".

**Schedule “15” – Map of Nanaimo Estuary**

